

COURT No. 1, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA 2069/2018

Ex Sgt Rajeev Kumar Katiyar

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Rajesh Nandal, Advocate

For Respondents : Mr. Y P Singh, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

Invoking the jurisdiction of the Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 read as under :

- (a) To declare the action of the respondents as unjust, arbitrary and illegal; and**
- (b) To direct the respondents to sanction the disability pension from 20% arrived at in 31 May 2006 i.e his date of retirement, whereas the condition has further worsened /aggravated since the onset of the disease.**
- (c) To direct the respondents to grant the benefit of rounding of disability arrived at**

20% for life of the applicant to 50% and disability pension comprising of disability element and service element after rounding off the disability from in terms of their policy letter dated 31 Jan 2001.

- (d) To direct the respondent to take justified view to safeguard future health management and restricted employment of the applicant due to the disease*
- (e) To grant an interest of 12% on the delayed payment of service element of the disability pension and revision of disability element of the disability pension; and*
- (f) To award exemplary costs upon the Respondents in the facts and circumstances of the record; and*
- (g) To pass such further order or orders, direction / directions as this Hon'ble Tribunal may deem fit and proper in accordance with law.*

BRIEF FACTS

2. The applicant was enrolled in the Indian Air Force on 19.05.1986 and was discharged from service on 31.05.2006 under the clause "On fulfilling the conditions of his enrolment" after rendering a total of 20 years and 13 days of regular service. The applicant was found fit to be released in medical category

CEE(P), for the disability of 'Neurogenic Muscular Dystrophy RLL (Old)' @ 20% . The applicant was subjected to a Release Medical Board (RMB) held on 29.06.2005 whereby the percentage of disability was assessed @ 20% for life, however, the net qualifying percentage for the disability was assessed @ nil for life as the disability was adjudged as neither attributable to nor aggravated by military service.

3. On adjudication, AOC AFRO has upheld the recommendations of RMB and rejected the disability pension claim of the applicant vide letter no. RO/3305/3A/Med Cat dated 26.04.2006. The outcome was communicated to the air veteran vide letter No. Air RO/2703/697907/05/06 P&W (DP/RMB) dated 09.05.2006 with an advice that he may prefer an appeal to the appellate committee within six months from the date of receipt of the letter. The applicant did not prefer first and second appeal and aggrieved by the rejection of his claim for disability pension by the respondents, the applicant had filed the instant OA. In the interest of justice thus, it is considered appropriate to take up the present OA for consideration, in terms of Section 21(1) of the AFT, Act 2007.

CONTENTIONS OF THE PARTIES

4. The learned counsel for the applicant submitted that the applicant is a "Radio Fitter" by trade and has put in 19 years and 01 month of long service in the Indian Air Force.

5. The learned counsel for the applicant submitted that the applicant was subjected to a thorough medical examination conducted by the medical board at the time of his entry into service and was found medically fit to join the service in Indian Air Force and was posted to various Air Force units in varied geographical conditions. The learned counsel for the applicant submitted that no note of any disability was recorded in the service documents of the applicant at the time of the entry into the service, and that he served in the Air Force at various places in different environmental and service conditions in his prolonged service, thereby, any disability that arose during his service has to be deemed to be attributable to or aggravated by military service.

6. The learned counsel for the applicant placed reliance on the verdicts of the Hon'ble Supreme Court in the case of **Union of India and others vs. D.S Nakara** AIR 1983 SC 130, Civil Appeal No 5591/2006 titled **KJS Buttar Vs. Union of India &**

Ors, and in the case of **Shiv Dass vs. Union of India** AIR 2007 SC 1330.

7. The learned counsel for the applicant also placed reliance on the orders passed by Armed Forces Tribunal in case of **Manoj Kumar Vs Union of India & Ors**, in TA 50 of 2011 decided on 17.07.2013, wherein relief was granted to the similarly situated personnel in that case.

8. Per contra, the learned counsel for the respondents submits that under the provisions of Rule 153 of the Pension Regulations for the Indian Air Force, 1961 (Part-I), the primary condition for the grant of disability pension is invalidation out of service on account of a disability which is attributable to or aggravated by Air Force service and is assessed @ 20% or more. In other words, disability pension is granted to those who fulfill the following two criteria simultaneously:-

- (i) Disability must be either attributable to or aggravated by service.
- (ii) Degree of disablement should be assessed at 20% or more.

The learned counsel further submits that the RMB has assessed the applicant's disability as neither attributable to nor aggravated by service which thus does not fulfill the criteria (i) as

above and hence the applicant is not entitled for the grant of disability pension in accordance with the prevailing rules and policies.

ANALYSIS

9. We have heard the learned counsel for the parties and have also perused the record produced before us.

10. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, we find that the disability of 'Neurogenic Muscular Dystrophy RLL (Old)' has not been covered by any of the provisions of the Guide to Medical Officers (Military Pensions) 2002 as the Air Warrior had retired in the year 2006 and GMO (MP) 2002 is applicable in his case. The said disability has also not been covered by any provisions of GMO (MP) 2008. For determining the attributability, it would therefore be helpful to refer to the medical review/article available in the open domain in respect of various factors which can cause 'Neurogenic Muscular Dystrophy RLL (Old)'. In support of this, the medical review (website page ref. <https://my.clevelandclinic.org/health/diseases/neuromuscular-disorders>) in relation to the neuromuscular-disorders is referred to as under:

“What are neuromuscular disorders?”

Neuromuscular disorders represent a broad range of conditions that involve dysfunction of peripheral nerves, muscles or the communication between them. This most often results in muscle weakness, muscle atrophy (loss) and disturbance of sensation (like numbness and tingling). Neuromuscular disorders can cause other symptoms as well, depending on the type

What causes neuromuscular disorders?

Neuromuscular disorders have many different causes. But some of them are genetic. This means that you inherited the genes from your biological parents, or a genetic mutation (change) happened randomly. A neuromuscular disorder may result from an error in a single gene or several genes.

Some neuromuscular disorders are autoimmune diseases. Others are a result of an injury, nutritional or metabolic disturbance, toxin exposure or inflammation. Sometimes, there's no known cause.

Further as mentioned by the Indian Association of Muscular Dystrophy (website page ref <https://iamd.in/muscular-dystrophy/>), Muscular Dystrophy are referred as progressive neuromuscular disorders which are genetic in nature. The relevant paras are extracted below:

Muscular Dystrophy refers to progressive neuromuscular genetic disorders where the muscles gradually lose their strength leading to complete

immobility and dependence on others for everyday activities. Muscular Dystrophy can occur at any age and can affect more than one sibling in a family.

This has been further concurred by the National Institute of Neurological Disorders and Stroke which states Muscular Dystrophy as a group of genetic diseases (website page ref https://www.ninds.nih.gov/health_information/disorders/muscular-dystrophy). There relevant paras are extracted below:

“Muscular dystrophy (MD) refers to a group of genetic diseases that cause progressive weakness and degeneration of skeletal muscles. These disorders (of which there are more than 30) vary in age of onset, severity, and the pattern of the affected muscles. All forms of MD grow worse over time as muscles progressively degenerate and weaken. Many people with MD eventually lose the ability to walk.”

11. Having perused all the causes of Neurogenic Muscular Dystrophy RLL (Old) as brought out in the literature above, it is apparent that the applicant's disability was not caused due to any nerve injury to the spinal cord or peripheral nerves or was also not caused due to any infection/due to exposure to toxins or inflammation or use of certain medications as per the documents produced before us. It is quite likely that the said disability of the applicant could be due to genetic disorder or metabolic disorder

which is not attributable to military service conditions. The applicant has suffered the said disability within 3 years of joining the service whilst he posted at a peace location. The applicant has also not put anything on record to support that the disability was aggravated by military service. The RMB has therefore rightly assessed the disability of the applicant as neither attributable to nor aggravated by military service as it is constitutional in nature.

CONCLUSION

12. In view of the aforesaid consideration, the applicant is not entitled for grant of disability element of pension. The OA 2069/2018 stands dismissed being devoid of merits.

13. There is no order as to costs.

Pronounced in open Court on this 17 day of December, 2024.

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

**[REAR ADMIRAL DHIREN VIG]
MEMBER (A)**