

COURT NO. 2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 2072/2018 with MA 2282/2018

Ex Nb Sub Ajab Singh **... Applicant**

Versus

Union of India & Ors. **... Respondents**

For Applicant : Mr. Praveen Kumar, Advocate
For Respondents : Mr. R S Chhillar, Advocate

CORAM :

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

MA 2282/2018

This is an application filed by the applicant under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of 4093 days delay in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of **UoI & Ors vs Tarsem Singh 2009(1)AISLJ 371** and in **Ex Sep Chain Singh vs Union of India & Ors (Civil Appeal No. 30073/2017)**, the MA 2282/2018 is allowed despite opposition on behalf of the respondents and the delay in filing the OA 2072/2018 is thus condoned.

OA 2072/2018

The applicant 'Ex-Nb/Sub Ajab Singh no. JC-6662946-M'
vide the present OA makes the following prayers:-

“(a) Call for the records.

(b) Direct Respondents to grant Disability Pension @ 20% and round off the same to 50% for life to the applicant with effect from 01 Oct 2006 i.e. the date of invaliding out from service with interest @ 12% p.a. till final payment is made.

(c) Direct the respondents to grant Ex-gratia amount as he was invalided out from service.

(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.”

2. The applicant was enrolled in the Indian Army in the trade of DVR (MT) on 24.08.1979 and was discharged on 30.09.2006 (AN) under Army Rule 13 (3) Item 1 (i) (a) of 1954 on completion of his terms of engagement. At the time of discharge, the RMB held at the Military Hospital Bareilly opined that the disability that he suffered from “CSOM (LEFT)” was neither attributable to nor aggravated by military service, though the composite assessment for the disability was assessed at 20% for life.

3. The applicant was granted service pension with effect from 01.10.2006 for life vide PCDA (Pensions), Allahabad Pension payment Order (PPO) No. S/036832/2006 (Army) dated 07.09.2006. The disability claim of the applicant was declined vide letter no. JC-662946M/NS/DP dated 07.11.2006 placed on record as Annexure R2 to the counter affidavit dated 15.02.2019. No appeal was preferred by the applicant against the said order.

However, the applicant submitted a petition dated 08.08.2014 for grant of disability pension which was responded to by ASC Records (South) vide letter No JC-662946/Pen/Disb/T-6 dated 04.09.2014. Thereafter, the applicant submitted petitions dated 05.01.2015, 07.05.2018, 17.09.2018 for grant of disability pension which were responded to by ASC Records (South) vide letters, i.e No JC-662946/Pen/Disb/T-5 dated 22.01.2015, JC-662496/Pen/Disb/T-6 dated 22.05.2018 and dated 10.11.2018 respectively.

4. The response of the respondents to each of these petitions filed by the applicant was as per the terms of the letter dated 07.11.2016 no. JS662946/NS/DP already adverted to hereinabove in para 3. In as much as the instant OA has been filed on 12.11.2018, in the interest of justice, we consider it appropriate to take up the OA in terms of Section 21 (1) of the AFT Act 2007.

ANALYSIS

5. Vide order dated 22.05.2023, the respondents were directed to produce the original Medical Records which were so produced and taken on record vide order dated 21.08.2023.

6. The said original RMB proceedings dated 18.07.2006 vide Part-I of the personal statement recorded therein gives the details

of the service of the applicant in field/operational/sea service, which indicates that the applicant was posted:-

- from 16.07.1985 to 10.10.1985 at 503 ASC Battalion Leh on a field posting;
- from 06.02.1990 to 09.03.1993 at 5104 ASC Battalion, Tezpur Assam on a field posting;
- from 02.07.1996 to 17.02.1998 at 5089 ASC Coupe Udampur on a field posting; and
- from 08.02.2003 to 31.12.2005 at 521 ASC Battlion, Rangiah, another field posting,

during his total length of service of 27 years.

7. As per para 3 of the said RMB, the onset of the disability of **CSOM Left** is indicated to have been from 09.06.2006 onwards at Bareilly. Para 3 of the said RMB reads to the effect:-

Illness, wound, injury	First started		Where treated	Approximate dates and periods treated
	Date	Place		
CSOM (LT)	09/06/2006	Bareilly	At Bareilly	09/06/06 29/06/06

The Statement of the Commanding officer dated 06.07.2006 indicates that as per para 2 (a), (b), (c) qua the applicant as under:-

“2. Was he in Low Medical Category (Y/N) – **Yes**

If yes

(a) What was/were the disability/disabilities? CSOM (L/T)

- (b) What was his medical category & since when? – **01 Jan 06**
 (c) How long has he been in lower medical category? – **18 Jul 05 to till date**”

Significantly, though vide para 12 & 13 of the Statement of the Commanding Officer, it is stated to the effect:-

“12. Do you consider the disability is attributable to service? – **NO**

13. Do you consider the disability aggravated by service? – **NO**”,

it is essential to observe that there are white fluid marks both at para 12 & 13 of the Statement of the Commanding Officer above the words ‘NO’ in para 12 and beneath the words ‘NO’ in para 13 of the said statement, whereby the Commanding Officer has stated that he did not consider the disability of the applicant as being either attributable to or aggravated by military service. This is an aspect which cannot be overlooked and an adverse inference has to be drawn against the respondents qua the veracity of this document.

8. The opinion of the Medical Board in Part-V states as under:-

Disability	Attributable to Service (Y/N)	Aggravated to Service (Y/N)	Not connected with service (Y/N)	Reason/cause/ specific conditions & period in service
CSOM (LT)	No	No	Yes	As per AFMS dated 18/07/2005.

It is further been stated on page 5 of the RMB to the effect:-

"2. Did the disability exist before entering service ?
(Y/N could be) **NO**

3. In case the disability existed at the time of entry, is it possible that it could not be detected during the routine medical examination carried out at the time of the entry? **NO**

4. In case of disability awarded Aggravation, whether the effects of such aggravation still persist? If yes, whether the effects of aggravation will persist for a material period. **NO**

5. (a) Was the disability attributable to the individual's own negligence or misconduct? If yes in what way? **NO**

(b) If not attributable, was it aggravated by negligence or misconduct? If so, in what way and to what percentage of the total disablement? **NO**

(c) Has the individual refused to undergo operation treatment? If so, individual's reasons will be recorded. **NO**"

9. The percentage of disablement is set forth in para 6 of the RMB to the effect:-

"

Disability numbered (As in Question 1, Part IV)	Percentage of disablement	Probable duration of degree disablement	Composite assessment for all disabilities with duration (Max 100%)
CSOM (LT)	20%	For life long	20% (Twenty percent)

"

10. The applicant was released in category H2 (permanent).
 The specialist opinion of the graded specialist as detailed in the
 RMB in Medical Case Sheet indicates to the effect:-

CONFIDENTIAL MSE-7A

MILITARY HOSPITAL BAREILLY

MEDICAL CASE SHEET

Name Ajab Singh Service No. JC-662946 M Rank Nb/Sub

Unit 506 ASC Arms/ Corps/ Branch/ Trade Army/Navy/Airforce Service Age
Ht.
WT

Diagnosis

07-06	<p style="text-align: center;"><u>Summary and Opinion of Maj NRETO</u></p> <p>... 40 yrs serving person a case of <u>CSOM (LT) on LMC H2 (Perm)</u> reported for <u>RMB - LMS - 07 Jan 2006</u>; Onset - 2005; during PME, it was detected. Recently, individual claims having <u>scanty inconspicuous ear discharge (LT) - No other</u> <u>ENT complaints. No otalgia/ tinnitus/ giddiness.</u> <u>General Physical and Systemic Exam - NAD</u></p> <p><u>ENT Exam</u></p> <p><u>Nose</u> - mild DNS (LT) <u>Throat</u> - NAD <u>Ears</u> -</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;"><u>RT</u></td> <td style="width: 50%; border: none;"><u>LT</u></td> </tr> <tr> <td style="border: none;">NAD</td> <td style="border: none;">exam healthy</td> </tr> <tr> <td style="border: none;">Pinna; Post aural region</td> <td style="border: none;">NAD</td> </tr> <tr> <td style="border: none;">Tympanic membrane</td> <td style="border: none;"> few tympanic sclerotic patches ⊕ small residual perforation ⊕ </td> </tr> <tr> <td style="border: none;">+ve Rinne</td> <td style="border: none;">-ve</td> </tr> <tr> <td style="border: none;">wachs →</td> <td style="border: none;">normal</td> </tr> <tr> <td style="border: none;">normal ABC</td> <td style="border: none;">NAD</td> </tr> <tr> <td style="border: none;">NAD VII m</td> <td style="border: none;">NAD</td> </tr> <tr> <td style="border: none;">Other neuro-otological exam - NAD</td> <td style="border: none;">NAD</td> </tr> </table>	<u>RT</u>	<u>LT</u>	NAD	exam healthy	Pinna; Post aural region	NAD	Tympanic membrane	few tympanic sclerotic patches ⊕ small residual perforation ⊕	+ve Rinne	-ve	wachs →	normal	normal ABC	NAD	NAD VII m	NAD	Other neuro-otological exam - NAD	NAD
<u>RT</u>	<u>LT</u>																		
NAD	exam healthy																		
Pinna; Post aural region	NAD																		
Tympanic membrane	few tympanic sclerotic patches ⊕ small residual perforation ⊕																		
+ve Rinne	-ve																		
wachs →	normal																		
normal ABC	NAD																		
NAD VII m	NAD																		
Other neuro-otological exam - NAD	NAD																		

thus, very clearly stating that the onset of the disability in **2005**,
 when it was detected during PME, though it is stated in para 3 of

the personal statement of the applicant as well as in para 4 in the statement of the case that the date of origin of the disability was **09.06.2006** at Bareilly. The medical case sheet shows its onset in **2005** during medical examination conducted of the applicant.

11. In terms of Para 57 of Chapter VI of Guide to Medical Officers- 2002 it has been provided to the effect:-

"57. Otitis Media

Otitis media can be classified into acute and chronic, based on extent of Inflammatory reaction and the presence or absence of suppuration. It should be noted that an initial non-suppurative condition may proceed to suppurative one and chronicity if neglected or inadequately treated. The common predisposing factors are upper respiratory tract infection, infection from postnasal packs in the treatment of epistaxis and rarely as a manifestation of allergy.

Chronic otitis media may be:

(a) **Active:** When there is pus discharge

(b) **Quiescent:** With intermittent pus discharge for a period less than 6 months.

(c) **Inactive:** Cessation of discharge for six months without resumption. It may reactivate by reinfection through perforation of tympanic membrane.

(d) **Healed:** Total extinction of disease and healing of perforated tympanic membrane.

Chronic suppuration in attic and antrum associated with perforation (attic) and posterior marginal perforation and complications like cholesteatoma and polyp are ominous signs and carries a risk of bone destruction, recurrence after surgery.

If chronic suppurative otitis media originates during service it should be accepted as attributable to service. When diagnosed comparatively early in service there may be evidence of cholesteatoma, polypi and granulation, which would show beyond reasonable doubt that the condition existed before service. This, however, would not necessarily be the case when the disease is discovered for the first time after long service and in the absence of any

pre-service ear trouble. The importance of a detailed study history and findings in the member's original service documents cannot be over-emphasised. However, a history of a single isolated attack of acute otitis media in childhood cannot, in the absence of any intervening history of aural disease, be held to be the commencement of an injurious process which only gave rise to symptoms in service many years later.

The pre-existing disease can be aggravated by such conditions as exposure to adverse climatic conditions such as damp or cold, debilitating disease, exposure to gun fire or bomb bursts and swimming in infected waters."

12. Significantly, it is spelt out clearly vide Para 57 of the GMO 2002 that if chronic suppurative otitis media originates during service, it should be accepted as attributable to service. None of the conditions that have been detailed in Para 57 of the GMO Military Pensions 2002 to indicate that the applicant had any previous history of having suffered acute otitis media in his childhood or any subsequent intervening history of oral disease have been brought forth on the record by the respondents. Likewise, there is nothing to indicate on the medical records of the respondents that the condition of otitis media that the applicant suffered from with its onset in 2005 as per the medical case sheet existed before the applicant joined service nor was it diagnosed comparatively early in service.

13. In view thereof, in terms of the settled law as laid down by the Hon'ble Supreme Court in **Dharamvir Singh vs UOI & Ors** (Civil Appeal No. 4949/2013) 2013 AIR SCW 4236 decided on

02.07.2013, wherein it has been held vide para 28 thereof the effect:-

"28. A conjoint reading of various provisions, reproduced above, makes it clear that:

(i) Disability pension to be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable or aggravated by military service to be determined under "Entitlement Rules for Casualty Pensionary Awards, 1982" of Appendix-II (Regulation 173).

(ii) A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service. [Rule 5 r/w Rule 14(b)].

(iii) Onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally. (Rule 9).

(iv) If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service. [Rule 14(c)].

(v) If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service. [14(b)].

(vi) If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons. [14(b)]; and

(vii) It is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II of the "Guide to Medical (Military Pension), 2002 - "Entitlement :

General Principles", including paragraph 7,8 and 9 as referred to above."

in the absence of any note made about the disease to the effect that the applicant suffered from the same at the time of his joining service, the deterioration of health in the course of his military service has to be presumed to be due to service conditions and the onus of the proof of condition of non-entitlement is not on the applicant but on the respondents and as the disability has persisted till discharge, aggravation has to be accepted. Furthermore, in the facts and circumstances of the instant case, it has thus to be presumed that the disability that the applicant suffered from which had its onset purportedly on 09.06.2006 as per the RMB and in 2005 as per the Medical Case Sheet after 27 years of service was and is attributable to military service in terms of Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel 1982 as applicable in the facts and circumstances of the instant case in terms of Rule 5, 9, 14 (b) (c) which read as under:-

"5. The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions:—

Prior to and during service

(a) A member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance.

(b) In the event of his subsequently being discharged from service on medical grounds any deterioration in his health which has taken place is due to service.

Onus of proof

9. *The claimant shall not be called upon to prove the conditions of entitlement. He/she will receive the benefit of any reasonable doubt. This benefit will be given more liberally to the claimants in field/ afloat service cases.*

14.(b) *A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service, if no note of it was made at the time of the individual's acceptance for military service. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.*

(c) If a disease is accepted as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service."

The observations of the Hon'ble Supreme Court in (2013 7 SCC 316, **Sukhvinder Singh Vs. Union Of India &Ors**, dated 25.06.2014 reported in 2014 STPL (Web) 468 SC, **UOI &Ors. Vs. Rajbir Singh** (2015) 12 SCC 264 and **UOI & Ors. Vs. Manjeet Singh** dated 12.05.2015, Civil Appeal no. 4357-4358 of 2015 lay down to similar effect.

14. We are fortified in our view, in view of the order of this Tribunal dated 17.09.2024 in OA 108/2017 titled as **JWO Gian Chand Drolia vs UOI & Ors**, wherein in similar circumstances the applicant thereof, who was enrolled in the Indian Air Force on 10.11.1972 and was released from service in Feb 2007 in low medical category CEE(H)(P) was discharged with disability of ID

CSOM LT UNSAFE (OPTD) at 20% for life, qua which though the Release Medical Board opined it to be neither attributable to nor aggravated by military service, that applicant was held entitled to the grant of the disability element of pension, in view of the para 57 of Chapter VI of GMO 2002 and the verdict of the Hon'ble Supreme Court in **Dharamvir Singh** (supra).

15. Reliance on behalf of the respondents placed on the WHO article '*Chronic suppurative otitis media*' *Burden of Illness and Management Options*, does not take into account any condition whatsoever of an armed force personnel who is deployed to perform arduous nature of duties in hazardous and inhospitable terrain and whilst being exposed to extreme cold climatic conditions. The same also does not take into account the exposure to heavy and loud sounds that the applicant has faced whilst working near tanks and during blasts or firing, as averred in paragraph 4.11 of the OA, which has not been refuted by the respondents through their counter affidavit dated 15.02.2019.

CONCLUSION

16. Thus, in the facts and circumstances of the instant case, the applicant is held entitled to the grant of the disability element of pension qua the disability of "**CSOM (LEFT)**", assessed at 20% for life which is directed to be broad banded to 50% for life in

terms of the verdict of the Hon'ble Supreme Court in **Union of India vs Ram Avtar** (decided on 10.12.2014 in Civil Appeal no. 418 of 2012), which however in terms of the verdict of the Hon'ble Supreme Court in **UOI Vs. Tarsem Singh** (supra) are directed to be confined to commence from three years prior to the filing of the OA.

17. The respondents are directed to issue the corrigendum PPO with directions to the respondents to pay the arrears within a period of three months from the date of receipt of a copy of this order, *failing which*, the respondents would be liable to pay interest @6% p.a. on the arrears due from the date of this order.

18. As regards, the prayer clause (c) made by the applicant seeking the grant ex-gratia amount, in terms of letter no 20(5)/2009/D(Pay/Services) dated 04.06.2010, there is nothing to indicate that the onset of the disability of the applicant was due to any of the circumstances detailed in this letter. The amount of ex-gratia payment as prayed by the applicant cannot be granted.

19. The OA 2072 / 2018 is disposed of accordingly.

Pronounced in the open Court on 5 day of December, 2024.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

14 of 14