

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

OA No. 2098/2018

Lt Col Vasanthakumaran BK (SL-05067H) (Retd)... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. I.S. Yadav, Advocate

For Respondents : Mr. Karan Singh Bhati, Gp. Capt., Senior CGSC

CORAM:

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

1. 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 quash the respondents letter No. 13418/sl-05067H/GS/MP-6 (F)/330/2017/AG/PS-4(Imp-I) dated 02 June 2017 dated 15 Mar 2018 and dated 31 August 2018

(c) To direct the respondents to grant the disability element of pension 20% from the date of retirement i.e., 31 May 2017 and further

O.A. 2098/2018

Lt Col. Vasanthakumaran BK

rounding off the disability element of pension from 20% to 50% in terms of letter dated 31 Jan 2001, and;

(d) to grant an interest of 18% on the delayed payment of service element of the disability pension and revision and;

(e) Pass any other further order or orders, direction / directions as this Learned Tribunal may deem fit and proper in accordance with law.”

BRIEF FACTS

2. The applicant Lt. Col. Vasanthakumaran BK (retd.) was enrolled in the Indian Army on 14.07.1975, commissioned on 13.12.1997 and was superannuated w.e.f. 31 May 2017 on completion of 40 Years of qualifying service with composite disability of 20%. The applicant is suffering from the disease “IDIOPATHIC PARKINSON’S DISEASE” with 20% disability for life.

3. The RMB held on 31 May 2017, has assessed the composite disability @ 20% for life with remarks that the disability is neither attributable to nor aggravated by military service. The RMB has assessed the disability as N.A.N.A. without assigning any reasons.

4. The claim for grant of the disability pension was rejected by the respondents vide its letter dated 02.06.2017 stating that the disability is neither attributable to nor aggravated by military service. The applicant preferred the

first appeal dated 26.06.2017 which was rejected on 15.03.2018. The applicant thereafter preferred second appeal on 23.02.2018 and the same was rejected on 31.08.2018.

5. The onset of the disabilities is indicated in Part - IV in the Statement of the Case in the RMB as under: -

**PART IV
STATEMENT OF CASE**

1. Chronological list the disabilities.

Disabilities	Date of origin	Rank of the indl	Place and unit where serving at the time
IDIOPATHIC PARKINSON'S DISEASE	02 Jun 2016	Lt Col	Mhow (MP), MCTE Mhow

6. The opinion given by the medical board in opining the disabilities to be neither attributable to nor aggravated by military service in Part - V of the RMB dated 17.12.2016 is as under: -

PART V
OPINION OF THE MEDICAL BOARD

1. Casual Relationship disability with Service conditions of otherwise.				
Disability	Attributable by service (Y/N)	Aggravated by service (Y/N)	Not connected with service (Y/N)	Reason/Cause/Specific condition and period in service
IDIOPATHIC PARKINSON'S DISEASE	NO	NO	YES	Idiopathic disorder not affected by service condition. Rby para - RO Ch-VI CIMO (Mil.pens) 2008
<p>Note :- A disability 'Not connected with service' would be neither Attributable nor Aggravated service. In accordance with instructions contained in 'Guide to Medical Officers (M. Pension) - 2008'</p>				

7. The percentage of the disablement put forth by the RMB for the disability as under Part - V, para 6 is reproduced as under: -

Disability (As numbered in Question 1, Part IV)	Percentage of disablement with duration	Composite assessment for all disabilities with duration (Max 100%) with duration	Disability Qualifying for Disability Pension with duration	Net Assessment Qualifying for disablement pension (Max 100%) with duration
IDIOPATHIC PARKINSON'S DISEASE	20% (Twenty percent) for life.	20% (Twenty percent) for life.	NIL for life.	NIL for life.

8. The posting profile of the applicant is indicated in the Part-I in the personal statement of the applicant in the RMB is as under: -

**PART I
PERSONAL STATEMENT**

Army War College

1. Give details of Service. (P= Peace OR F= Field / Operation / Sea service)									
S.No	From	To	Place/Ship	P/F	S.No	From	To	Place/Ship	P/F
(i)	Dec 1997	May 2000	4 CGSR	F	(ii)	May 2000	May 2002	Cent Comd ASSU	P
(iii)	May 2002	Oct 2004	NCCSR	F	(iv)	Oct 2004	Apr 2007	10 CASSU	P
(v)	Apr 2007	Mar 2010	1 TTR (1 STC)	P	(vi)	Mar 2010	Apr 2012	28 IDSR	F
(vii)	May 2012	May 2014	IIQ 1 Corps (Sgt)	P	(viii)	May 2014	Apr 2018	MCTE, Mhow	P

2. Give particulars of any diseases, wounds or injuries from which you are suffering.					
Illness, wound, injury	First Started		Rank of Indl	Where treated	Approximate date and periods treated
	Date	Place			
IDIOPATHIC PARKINSON'S DISEASE	02 Jun 16	Mhow (MP)	Lt Col	MH, Mhow (MP)	Jun 16 (Med cat 31H1A) wsf 02 Jun 16)

Brig
MCTE, Mhow (MP)

3. Did you suffer from any disability before joining the Armed Forces? If so give details and dates. NO

4. Give details of any incidents during your service, which you think caused or made your disability worse. NO

5. In case of wound or injury, state how they happened and whether or not.
(a) Medical Board or court of inquiry was held. - NO
(b) Injury Report was submitted. - NO

6. Any other information you wish to give about your health. NO

I certify that I have answered as fully as possible all the questions about my service and personal history and that the information given is to the best of my knowledge.

Signature of Witness: *[Signature]* Signature: *[Signature]*
(No SL-05067H Lt Col Vasanth Kumaran BK) Date: 15 Nov 2016

Service No SL-05089F Rank Lt Col Name Pawar SR

Note:- The questions should be answered in the individual own words. The statement and the data given above will be checked from official records as far as possible by the parent Unit/Ship of the individual.

9. The rejection of the first appeal of the applicant vide letter dated 15.03.2018 was on the following grounds: -

"IDIOPATHIC PARKINSON DISEASE is not normally affected by external circumstances unless it can be established that the officer had the disease for some time and has continued to serve. In the instant case, the officer had served for eleven months after the diagnosis. Hence, the ID is conceded as neither attributable to nor aggravated by military service in terms of Para 20, Chapter VI, GMO 2002/2028 and ER-2006."

10. Subsequently, the applicant preferred second appeal dated 23.02.2018 for grant of disability element which was adjudicated and rejected vide order dated 31.08.2018 on the following grounds: -

“ID 'Idiopathic Parkinson's Disease' was detected in Jun 2016 at Mhow (Peace) when the veteran presented with tremulousness of left upper limb especially at rest, slowness of movements leading to increased time in dressing, bathing, shaving and other daily routine activities. The symptoms had slowly progressed over the last one year. There was no history of fever, weight loss, head injury, loss of consciousness, toxin of drug exposures. He was managed by a neurologist and placed in LMC. He was symptomatically better at RMB. ID 'Idiopathic Parkinson's Disease' is a chronic degenerative disease of the central nervous system. Since it is idiopathic, the drugs, toxins and infections as causative agents are ruled out. Repeated trauma to the head (as seen among boxers) has not been documented in this case. The disease is not normally affected by external circumstances unless it can be established that the veteran officer had the disease for some time and had continued to serve in Fd/CI Ops/HAA. In the instant case, the onset of ID was in peace station and the veteran officer continued to serve in the same station till retirement. Hence, ID is conceded as neither attributable to nor aggravated by military service (Para 20, Chap VI, GMO 2002, amendment 2008).”

11. Aggrieved by the decision of the respondents, the applicant has filed the instant OA. In the interest of justice, in accordance with Section 21(1) of the AFT Act, we take up the present OA.

CONTENTIONS OF THE PARTIES

12. The learned counsel for the applicant submitted that the applicant, at the time of joining the service, was declared fully fit medically and physically and no note was made in his medical record that the applicant was suffering

from any disease at that time. The learned counsel submitted that during his service period, the applicant was posted to various places across the country having different geographical and environmental conditions and difficult service conditions, which put tremendous pressure on the applicant and thus due to the stress and strain of service, he was diagnosed with the disease 'IDIOPATHIC PARKINSON'S DISEASE' in May, 2015. The Re-Categorization Board was held in December 2016 and the applicant was recommended to be released in Low Medical Category (LMC) 'S1H1A1P2E1' due to the disability of 'IDIOPATHIC PARKINSON'S DISEASE' and composite assessment for disability @ 20% for life.

13. The learned counsel placed reliance on the judgments of the Hon'ble Supreme Court in *Dharamvir Singh Vs. Union of India and Ors. [(2013) 7 SCC 316]*, which has been considered and taken note of by the Hon'ble Apex Court in many judgments, wherein the Hon'ble Supreme Court had considered the question with regard to grant of disability pension and after taking note of the provisions of the Pension Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers and Para 423 of the Regulations for the Medical Services of the Armed Forces, it was held by the Hon'ble Supreme Court *that an Army personnel shall be 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 and in the event of his being discharged from service on medical grounds, any deterioration in his health, which may have taken place, shall be presumed due to service conditions. The Apex Court further held that the onus of proof shall be on the respondents to prove that the disease from which the incumbent is suffering is neither attributable to nor aggravated by military service. Referring to Rule 9 of the Entitlement Rules for Casualty Pensionary Awards, 1982, the learned counsel for the applicant submitted that the applicant should have been given the benefit of doubt and the disability should have been conceded as aggravated by service only. The learned counsel further submitted that the Tribunal has already granted disability pension to many similarly situated persons.

14. The learned counsel also placed reliance on the judgment of the Hon'ble Supreme Court in *UOI v. Rajbir Singh (Civil Appeal No. 2904/2011)* whereby it was held that the disability must be presumed to have been arisen in the course of service which must, in the absence of any reason recorded by the Medical Board, be presumed to have been attributable to or aggravated by military service. The learned counsel submitted that there is admittedly neither any note in the service records of respondents at the time of the applicant's entry into service nor have any reasons been recorded by the Medical Board to suggest that the disease which the applicant was found to be suffering from

could not have been detected at the time of his entry into service, *and UOI and Other v. Ram Avatar (C.A. No. 418/2012 dated 10 December 2014)*, whereby the benefit of rounding off of the disability pension was granted.

15. It was further submitted by the learned counsel for the applicant that *the disability pension is entitled in such circumstances and the same is to be rounded off in terms of Govt letter dated 31 Jan 2001* and stated that the same was held by the Kolkata Bench of the Hon'ble Tribunal in the case of *Manoj Kumar vs. Union of India in TA No 50/2011* decided on 17 July 2013.

16. *Per contra*, the learned counsel for the respondents submitted that the applicant is not entitled to the relief claimed since the RMB, being an expert body, found the disability of the applicant as "Neither Attributable to Nor Aggravated by Military Service" for the reason that the same are constitutional in origin and are not connected/precipitated by service. The learned counsel submitted that the applicant was discharged from service on attaining the age of superannuation. The learned counsel submitted that the entitlement to disability pension are governed by the eligibility conditions enumerated in **Regulation 81 of Pension Regulations for the Army (PFA), 2008 Part – 1** (henceforth referred to as PRA) which stipulates that unless otherwise specifically provided, a disability pension consisting a service element and disability element may be granted to an officer who is invalided out of

service on account of a disability which is either attributable to or aggravated by military service in non – battle casualty cases and the disability is assessed at 20% or more and added that an LMC officer who retires on superannuation or on completion of tenure can also be granted disability pension under the provision of Regulation 37 of PRA, subject to completion of twin eligibility conditions as stated except that the percentage of disability should be 20% or more. The learned counsel for the respondent submitted that since the applicant does not fulfill the twin conditions as manifested in Regulation 81 of the PRA 2008, Part-1, the instant O.A. may be dismissed.

ANALYSIS

17. We have heard the learned counsel for the parties and have gone through the records produced before us. We find that the disability suffered by the applicant has been assessed at 20%. The issues which need to be considered are of two folds:

- a) whether the disability of the applicant is attributable to or aggravated by military service or not? And,
- b) Whether the applicant is entitled for the benefit of rounding off of the disability element of disability pension?

18. It is an undisputed fact that at the time of joining the Indian Army on 14.07.1975, the applicant was found medically and physically fit and the onset of the present disability is from May 2015 onwards i.e., after rendering around 40 years of service and due to the disability, the applicant was placed in low medical category S1H1A1P2E1.

19. The law on the issue of attributability of a disability is already settled by the Hon'ble Supreme Court in the case of *Dharamvir Singh Vs. Union of India [(2013) 7 SCC 316]*, which has been followed in subsequent decisions of the Hon'ble Supreme Court and in a catena of orders of this Tribunal, wherein the Apex Court had considered the question with regard to grant of disability pension and after taking note of the provisions of the Pension Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers and Para 423 of the Regulations for the Medical Services of the Armed Forces, it was held by the Hon'ble Supreme Court that an Army personnel shall be 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 and in the event of his being discharged from service on medical grounds, any deterioration in his health, which may have taken place, shall be presumed due to service conditions. The Apex Court further held that the onus of proof shall be on the respondents to prove that the disease from which the

incumbent is suffering is neither attributable to nor aggravated by military service.

The guidelines laid down vide the verdict in *Dharamavir Singh (supra)* are as under:

"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."*

20. The Hon'ble Supreme Court in the case of *Union of India & Ors. Vs. Rajbir Singh [Civil Appeal Nos. 2904 of 2011]* decided on 13.02.2015, after considering the case in *Dharamvir Singh (supra)* upheld the decision of this Tribunal granting disability pension and observed as under:

"15. Last but not the least is the fact that the provision for payment of disability pension is a beneficial provision which ought to be interpreted liberally so as to benefit those who have been sent home with a disability at times even before they completed their tenure in the armed forces. There may indeed be cases, where the disease was wholly unrelated to military service, but, in order that denial of disability pension can be justified on that ground, it must be

affirmatively proved that the disease had nothing to do with such service.....”

21. The ‘Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel 2008’, which take effect from 01.01.2008 provide vide Paras 6,7,10 and 11 thereof as under:

“6. Causal connection:

For award of disability pension/special family pension, a causal connection between disability or death and military service has to be established by appropriate authorities.

Onus of proof:

Ordinarily the claimant will not be called upon to prove the condition of entitlement. However, where the claim is preferred after 15 years of discharge/retirement/invalidment/ release by which time the service documents of the claimant are destroyed after the prescribed retention period, the onus to prove the entitlement would lie on the claimant.

10. Attributability:

(a) Injuries:

In respect of accidents or injuries, the following rules shall be observed:

i) Injuries sustained when the individual is ‘on duty’, as defined, shall be treated as attributable to military service, (provided a nexus between injury and military service is established).

ii) In cases of self-inflicted injuries while ‘on duty’, attributability shall not be conceded unless it is established that service factors were responsible for such action.

(b) Disease:

(i) For acceptance of a disease as attributable to military service, the following two conditions must be satisfied simultaneously: -

(a) that the disease has arisen during the period of military service, and

(b) that the disease has been caused by the conditions of employment in military service.

(ii) Disease due to infection arising in service other than that transmitted through sexual contact shall merit an entitlement of attributability and where the disease may have been contracted prior to enrolment or during leave, the incubation period of the disease will be taken into consideration on the basis of clinical courses as determined by the competent medical authority.

(iii) If nothing at all is known about the cause of disease and the presumption of the entitlement in favour of the claimant is not rebutted, attributability should be conceded on the basis of the clinical picture and current scientific medical application.

(iv) when the diagnosis and/or treatment of a disease was faulty, unsatisfactory or delayed due to exigencies of service, disability caused due to any adverse effects arising as a complication shall be conceded as attributable.

11. Aggravation:

A disability shall be conceded aggravated by service if its onset is hastened or the subsequent course is worsened by specific conditions of military service, such as posted in places of extreme climatic conditions, environmental factors related to service conditions e.g.

Fields, Operations, High Altitude etc.”

Thus, the ratio of the verdicts in *Dharamvir Singh Vs. Union of India & Ors.* [(2013) 7 SCC 316] and *Union of India Vs. Rajbir Singh* [(2015) 12 SCC 264],

as laid down by the Hon'ble Supreme Court are the fulcrum of these rules as well.

22. Furthermore, Regulation 423 of the Regulations for the Medical Services of the Armed Forces 2010 which relates to 'Attributability to Service' provides as under: -

"423. (a) For the purpose of determining whether the cause of a disability or death resulting from disease is or not attributable to Service. It is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a Field Area/Active Service area or under normal peace conditions. It is, however, essential to establish whether the disability or death bore a causal connection with the service conditions. All evidence both direct and circumstantial will be taken into account and benefit of reasonable doubt, if any, will be given to the individual. The evidence to be accepted as reasonable doubt for the purpose of these instructions should be of a degree of cogency, which though not reaching certainty, nevertheless carries a high degree of probability. In this connection, it will be remembered that proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. If the evidence is so strong against an individual as to leave only a remote possibility in his/her favour, which can be dismissed with the sentence "of course it is possible but not in the least probable" the case is proved beyond reasonable doubt. If on the other hand, the evidence be so evenly balanced as to render impracticable a determinate conclusion one way or the other, then the case would be one in which the benefit of the doubt could be given more liberally to the individual, in case occurring in Field Service/Active Service areas.

O.A., there is nothing on the medical record of the applicant about family history of the disease.

24. Qua the disability of Idiopathic Parkinson's Disease, it is essential to advert to Para 20 of Chapter-VI of the GMO, 2008 which is as under: -

"20. Chronic Degenerative Diseases of CNS. Diseases like motor neuron disease, chorea, athetosis, Alzheimer's disease are grouped under this category. A variety of possible causes including viral infection, trauma, exposure to toxins and electric shock have been postulated for motor neuron disease but no factual evidence exists to support any of these in typical cases. In case of chorea the majority falls in Huntington's disease but other causes include post-drug therapy (L Dopa, phenothiazines), viral encephalitis, rheumatic chorea and hyperthyroidism. The exact cause of parkinsonism is not known, however repeated trauma e.g. punch drunk syndrome in boxers, encephalitis (Japanese B Encephalitis, lethargica), certain drugs like reserpine, phenothiazine and carbon dioxide poisoning, exposure to certain toxic agents, can lead to parkinsonism. Alzheimer's disease of presentile onset is insidious and often in middle life. Genetic factors play a predominant role in genesis of presentile Alzheimer's disease.

Attributability will be appropriate if there is antecedent history of infection, trauma and exposure to drug therapy.

The diseases are not normally affected by external circumstances unless it can be established that the individual had the disease for some time and continued serving. In other words, the course of the disease may be held to be hastened by stress and strain of service in

an individual with an established disease by conceding the benefit of reasonable doubt.”

25. The Applicant has not been exposed to any repeated trauma or toxic agents as per the records produced before us. There is also no antecedent history of infection, trauma and exposure to drugs in the case of the applicant. Moreover, the onset of the applicant's disability is in June, 2016 and he superannuated on 31.05.2017, *i.e.*, within a short period of one year after the onset of the disability. The onset has also taken place in a peace posting. It can therefore be deduced that there are no factors on which attributability or aggravation of the disease on military service can be established in the case of the applicant.

26. In this regard, we may also refer to an order dated 21.12.2023 passed by this Tribunal in O.A. No. 1504 of 2019, wherein the disability of the applicant therein *i.e.*, Parkinson's disease which was held neither attributable to nor aggravated by service conditions as the onset of the disability was in peace posting and there was no infection nor any trauma, nor any injury, which is a causative factor for Parkinson's Disease and the prayer made by the applicant was not granted. Relevant Para 21 of the aforesaid order reads as under:

“21. the onset of the disability was in October, 2017 at Lucknow, a peace station and, as has been rightly opined by the RMB there was no infection nor any trauma nor any injury, which was a causative factor for the said disability. The disability of Idiopathic Parkinson's Disease, apparently in terms of Para-20 of the Chapter-VI of GMO(MP), 2008, is a disability which is not normally affected by external circumstances unless it can be established that the individual had the disease for some time and has continued serving and it has been stipulated in the said GMO itself that the course of the disease may be held to be hastened by stress and strain of service in an individual with an established disease by conceding the benefit of reasonable doubt. In the instant case, the disability of the applicant of Idiopathic Parkinson's Disease had its onset in 2017 and there is nothing to indicate in the previous annual medical examination that the applicant had been suffering from the said disability which continued to fall within the ambit of Para-20 of Chapter-VI of GMO(MP), 2008. In these circumstances, the prayer made by the applicant for the grant of a disability element of pension in relation to the disability of Idiopathic Parkinson's Disease cannot be granted.”


27. In view of the aforesaid judicial pronouncements and the parameters referred to above, the prayer of the applicant for the grant of disability element for the Idiopathic Parkinson's Disease is hereby denied and the applicant is not entitled for the disability element of pension in respect of the disability 'Idiopathic Parkinson's Disease'.

CONCLUSION

28. Therefore, we find no error in the opinion of the Release Medical Board which has rightly assessed the disability as 'Neither Attributable to Nor Aggravated by Military Service' (N.A.N.A.) and therefore, there is no infirmity in the proceedings. Thus, the O.A. 2098/2018 is dismissed, being devoid of merit.

29. There is no order as to costs.

Pronounced in the open Court on this 5^H day of August, 2024


[REAR ADMIRAL DHIREN VIG]
MEMBER (A)


[JUSTICE RAJENDRA MENON]
CHAIRPERSON

/Parik/