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

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OA 2176/2019

Ex JWO Krishan Kumar Tyagi	.....	Applicant
Versus		
Union of India & Ors.	.....	Respondents

For Applicant : Mr. Virender Singh Kadian, Advocate
For Respondents : Mr. Shyam Narayan, Advocate

CORAM
HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER
29.02.2024

Vide our detailed order of even date, we have allowed the main OA No.2176/2019. Faced with this situation, learned counsel for the respondents makes an oral prayer for grant of leave for impugning the order to the Hon'ble Supreme Court in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007.

After hearing learned counsel for the respondents and going through our order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order, therefore prayer for grant of leave to appeal stands dismissed.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN C.P. MOHANTY]
MEMBER (A)

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For Respondents : Mr. Shyam Narayan, Advocate with Maj Lauv Kumar, OIC Legal (Army)

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HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal; under Section 14, the applicant has filed this application and prays for grant of disability pension.

Facts of the case

2. The applicant was enrolled in the Indian Air Force on 21.09.1983 and discharged from service on 30.09.2009. The applicant submits that he has suffered from disability - Diabetes Mellitus Type-II @ 20% and B/L Simple Renal Cyst + (RT) Para Pelvic Cyst @ 15-19%, with composite assessment @20% for lifelong and held as NANA by service as is evident from the medical records. However, at the time of arguments, applicant has only pressed for grant of Disability Pension for

Diabetes Mellitus Type-II at this stage, and is not pressing for B/L Simple Renal Cyst + (RT) Para Pelvic Cyst.

Analysis

3. At this point, it is essential to observe that the prayer for the grant of the disability element of pension for the disability of 'Diabetes Mellitus' in the case of ***Ex. Power Satyaveer Singh***[1] has been upheld by the Hon'ble Supreme Court vide the verdict in ***UOI & Anr*** Vs. ***Rajbir Singh.***[2]

4. Subsequently, Hon'ble Supreme Court had the opportunity to examine the grant of disability pension for the disability of Diabetes Mellitus Type-II while adjudicating the grant of disability pension in ***Commander Rakesh Pande vs UOI & Ors.,***[3] wherein Hon'ble Supreme Court while upholding the judgement of this Tribunal in ***Cdr Rakesh Pande*** vs ***UOI & Ors.,***[4], wherein the disability pension was upheld for a period of 5 years, observed that the disability being of permanent nature, the disability pension has to be granted for life, instead of limiting it to 5 years.

5. We find it appropriate to refer to the observations made by this Tribunal in ***Cdr Rakesh Pande*** vs ***UOI & Ors., (supra)***

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[1] C.A. 7368/2011
[2] Civil Appeal 2904/2011; Date of Decision: 13.02.2015.
[3] Civil Appeal 5970/2019; Date of Decision: 28.11.2019
[4] OA 1532/2016 AFT (PB), New Delhi; Date of Decision: 06.02.2019

with respect to the grant of the disability element of pension as specified in paras 8, 9, 10, 11 and 12 thereof were upheld by the Hon'ble Supreme Court in ***Commander Rakesh Pande (supra).*** The observations in paras 8, 9, 10, 11 and 12 of the decision of the AFT (PB), New Delhi were to the effect:-

> *"8. On the merits of the case, the respondents submit that the medical disability NIDDM is considered as a metabolic disorder resulting from a diversity of aetiologies, both genetic and environmental, acting jointly. It is characterized by hyperglycemia and often associated with obesity and improper diet. Diabetes Mellitus Type 2, as per Para 26 of Amended Guide to Medical Officers (Medical Pensions) 2008 can be conceded as aggravated while serving in field, CI operations, high altitude areas and prolonged afloat service. However, the same is not relevant in the applicant's case as he was serving in shore duties in New Delhi, Mumbai and Goa prior to onset of the disease. As regards the disability Hyperlipidaemia, respondents submit that associated high cholesterol levels are also a result of metabolic disorder caused due to genetic causes or dietary indiscretion and there can be no service causes that can be considered responsible for predisposition and onset of the disability. Thus, respondents contend that the RMB was just and correct in assessing that the disability was neither attributable nor aggravated by military service.*
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> *9. Further, the respondents aver that the RMB had granted the medical disability only for five years and the same period has expired on 30.04.2006. The applicant made no effort whatsoever to present himself before a Resurvey Medical Board after expiry of the medical disability period. Respondents contend that the contents of Govt. of India (MoD) Circular dated 07.02.2001 can, in no way, be taken to imply that the applicant's disability period would automatically be extended 'for life' even without reference to the medical authorities for reassessment of medical disability on conclusion of the said period.*
>
> *Consideration :*
>
> *10. Having given careful consideration to the arguments on both sides, we find that the basic issue before us is whether the applicant, a naval officer who contracted NIDDM and*

Hyperlipidaemia after about 17 years of service, and was assessed @ 20% composite for these two diseases for a period of 5 years by the RMB three years later, on his taking premature retirement, can be granted disability element of pension despite the fact that (a) the applicant has approached the respondents and the Tribunal about 15 years after his premature retirement from service, and (b) the RMB assessed his disabilities (composite @ 20% for five years) as neither attributable nor aggravated (NANA) by military service.

11. In the first instance, we have considered the delay of about 15 years by the applicant in forwarding his representation against non-grant of disability element of pension and filing his OA thereafter. We have examined the averments in M.A. No. 566 of 2019 explaining the delay and, in the interests of justice, condoned the delay, relying upon the judgment dated 13.08.2008 of the Hon ble Supreme Court in the matter of Union of India Vs. Tarsem Singh (2009) (1) AISIJ 371.

12. With regard to the merits of the OA, we find that the applicant's case is squarely covered by the judgments in the case of Dharamvir Singh (supra) and Rajbir Singh (supra), whereby the Hon'ble Apex Court had observed to the effect that, unless cogent reasons are given to the contrary by the medical authorities, attributability or aggravation will be conceded in cases where military personnel contract medical disabilities during the course of the service based on the grounds that military personnel are put through thorough medical examination at the time of their entry into service, and are not enrolled or commissioned unless they are found fully fit medically."

(emphasis supplied)

6. It is essential to observe that para-28 of the verdict of the Hon'ble Supreme Court in ***Dharamvir Singh v. Union of India & Ors.***[5] lays down the guiding canons which are to the effect:-

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

[5] Dharamvir Singh v. Union of India & Ors. [(2013) 7 SCC 316]

(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."

7. It is essential to observe the verdict of the Hon'ble Supreme Court in ***UOI & Ors. vs Rajbir Singh***[6] vide Para 15 is to the effect:-

"15. The legal position as stated in Dharamvir Singh's case (supra) is, in our opinion, in tune with the Pension Regulations,

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Appeal 2904/2011; Date of Decision: 13.02.2015.

the Entitlement Rules and the Guidelines issued to the Medical Officers. The essence of the rules, as seen earlier, is that a member of the armed forces is presumed to be in sound physical and mental condition at the time of his entry into service if there is no note or record to the contrary made at the time of such entry. More importantly, in the event of his subsequent discharge from service on medical ground, any deterioration in his health is presumed to be due to military service. This necessarily implies that no sooner a member of the force is discharged on medical ground his entitlement to claim disability pension will arise unless of course the employer is in a position to rebut the presumption that the disability which he suffered was neither attributable to nor aggravated by military service. From Rule 14(b) of the Entitlement Rules it is further clear that if the medical opinion were to hold that the disease suffered by the member of the armed forces could not have been detected prior to acceptance for service, the Medical Board must state the reasons for saying so. 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. The burden to establish such a disconnect would lie heavily upon the employer for otherwise the rules raise a presumption that the deterioration in the health of the member of the service is on account of military service or aggravated by it. A soldier cannot be asked to prove that the disease was contracted by him on account of military service or was aggravated by the same. The very fact that he was upon proper physical and other tests found fit to serve in the army should rise as indeed the rules do provide for a presumption that he was disease-free at the time of his entry into service. That presumption continues till it is proved by the employer that the disease was neither attributable to nor aggravated by military service. For the employer to say so, the least that is required is a statement of reasons supporting that view. That we feel is the true essence of the rules which ought to be kept in view all the time while dealing with cases of disability pension."

8. At this point, we find it pertinent to the refer to the two judgements relied upon by the Respondents, with first being ***Ex***

Sub M Vijayakannan Vs. Union of India & Ors[7] and second being, ***Sub (AEC) Murgesan (Retd.) v. Union of India and Ors.***[8].

9. On an examination of first judgement, ***Ex Sub M Vijayakannan Vs. Union of India & Ors (supra),*** relied upon by the Respondents, we find that neither judgement rendered in ***Ex. Power Satyaveer Singh*** (supra) as has been upheld by the Hon'ble Supreme Court vide the verdict in ***UOI & Anr*** Vs. ***Rajbir Singh (supra)*** has been considered, nor the judgement of Hon'ble Supreme Court in ***Commander Rakesh Pande vs UOI & Ors., (supra)*** wherein Hon'ble Supreme Court has upheld the judgement of this Tribunal in ***Cdr Rakesh Pande*** vs ***UOI & Ors., (supra)*** for grant of disability pension for the disability of Diabetes Mellitus, by which the issue pertaining to grant of disability pension for the disability of Diabetes Mellitus has been settled, unless a distinction is made on the basis of factual matrix, which we find has not been done in the aforesaid case. Therefore, in our considered view, the decision in ***Ex Sub M Vijayakannan Vs. Union of India & Ors (supra)*** is limited to the facts of that case, and cannot be held to be a binding precedent.

10. As far as the opinion of this Tribunal in the case of ***Sub (AEC) Murgesan (Retd.) v. Union of India and Ors. (supra)*** is

[7] OA No.121/2021 AFT Regional Bench, Chennai; Date of Decision: 11.09.2023
[8] OA 834/2022 AFT Principal Bench, New Delhi; Date of Decision: 06.02.2024

concerned, we find that a distinction has been made on the basis of the applicant in the aforesaid case being overweight. However, in the instant case, we find that the applicant is within permissible weight as per the policy, and thus, the aforesaid case is of no help to the applicant.

Conclusion

11. Keeping in view the consistent stand taken by this Tribunal based on the law laid down by the Hon'ble Supreme Court in the case of ***Dharamvir Singh (supra)*** wherein it is clearly spelt out that any disease contracted during service is presumed to be attributable to military service, if there is no record of any ailment at the time of enrollment into the military Service, we see no reason not to allow the prayer of the applicant with regard to the aforesaid disability.

12. Accordingly, we allow this application and direct the respondents to grant disability element of pension to the applicant @ 20% for life which be rounded off to 50% for life from the date of retirement i.e. 30.09.2009 in terms of the judicial pronouncement of the Hon'ble Supreme Court in the case of ***Union of India Vs. Ram Avtar***[6] However, the arrears will be restricted to three years from the date of filing of this OA

ɪeal No. 418/2012; Date of Decision: 10.12.2014.

(07.11.2019) in view of the law laid down in the case of *Tarsem Singh.*[10]

13. Accordingly, the respondents are directed to calculate, sanction and issue necessary PPO to the applicant within four months from the date of receipt of copy of this order, failing which, the applicant shall be entitled to interest @ 6% per annum till the date of payment.

14. No order as to costs.

Pronounced in the open Court on this day of 29 February, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN C. P. MOHANTY]
MEMBER (A)

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OA 2176/2019

[10] Union of India and others Vs. Tarsem Singh [2008 (8)SCC 649]