

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

OA 2425/2019 with MA 3307/2019

Ex JWO Rajendra Prasad Singh ... Applicant
Versus
Union of India & Ors. ... Respondents

For Applicant : Mr. VS Kadian, Advocate
For Respondents : Mr. Satya Ranjan Swain, Advocate

CORAM :

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

ORDER

MA 3307/2019

This is an application filed under section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 1184 days 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 and the reasons mentioned, the MA 3307/2019 is allowed and the delay of 1184 days in filing the OA 2425/2019 is thus condoned. The MA is disposed of accordingly.

OA 2425/2019

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant vide the present OA makes the following prayers:-

“(a) Quash and set aside the impugned letter No. Air HQ/99798/1/670939/02/17/DAV(DP/RMB) dated 15.06.2017. And/or

(b) Direct respondents to treat the disabilities as attributable to or aggravated by military service and grant him disability element of pension along with benefits of broad banding from 40% to 50%. And/or

(c) Direct respondents to pay the due arrears of disability element of pension with interest @ 12% p.a from the date of retirement with all the consequential benefits.

(d) Any other relief which the Hon’ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost of the application in favour of the applicant and against the respondents.”

BRIEF FACTS

2. The applicant was enrolled in the Indian Air Force on 15.12.1979 and discharged from the service on 28.02.2017 under the clause “on attaining the age of superannuation” after rendering 37 years and 73 days

of regular service. The Release Medical Board dated 06.04.2016 held that the applicant was fit to be discharged from service in composite low medical category A4G4 (P) for the disabilities of (i) SNHL (B/L) (Old) @ 20% for life, (ii) Diabetes Mellitus Type-II (Old) @ 20% for life (iii) Primary Hypertension @30% for life, and compositely assessed @60% for life. The applicant has already been granted disability pension in respect of disability (i) SNHL (B/L) (Old) @ 20% for life rounded off to 50% for life as per the verdict of the Hon'ble Supreme Court in the case of *Union of India Vs. Ram Avtar* (Civil Appeal No. 418/2012), decided on 10.12.2014.

3. On adjudication, the AOC AFRO upheld the recommendations of the RMB and rejected the disability pension claim vide letter no RO/3305/3/Med dated 02.05.2017. The outcome was communicated to the applicant vide letter no Air HQ/99798/1/670939/02/17/DAV /DP/RMB dated 15.06.2017 with an advice that the applicant may prefer an appeal to the Appellate Committee within six months from the date of receipt of the letter. The applicant has preferred an appeal dated 13.06.2019 for grant of the disability pension and the same was considered and accepted by appropriate authority and was communicated to the applicant vide letter no. Air HQ/99798/5/438/2019/670939/DP/AV-III (Appeals) dated 23.02.2020.

Aggrieved by the response from the respondents, the applicant has

approached this Tribunal. In the interest of justice, it is considered appropriate to take up the present OA for consideration, in terms of Section 21(2)(b) of the AFT, Act 2007.

CONTENTIONS OF THE PARTIES

4. Placing reliance on the judgment of the Hon'ble Supreme Court in ***Dharamvir Singh v. UOI & Ors [2013 (7) SCC 36]***, 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 and thus thereby, any disability during the time of his service has to be deemed to be attributable to or aggravated by military service.

5. The learned counsel for the applicant also placed reliance on the verdicts of the Hon'ble Supreme Court as under:-

- ***Union of India and others vs. Manjit Singh*** AIR 2015 SC 2114,
- Civil Appeal No 5605/2010 titled ***Sukhvinder Singh vs UOI*** decided on 25.06.2014,
- Civil Appeal No. 2904/2011 titled ***UOI vs. Rajbir*** dated 13.02.2015 and

- Civil Appeal No. 418/2012 titled *UOI vs Ram Avtar* dated 10.12.2014.

6. The learned counsel further placed reliance on the decisions of the AFT, Principal Bench, New Delhi as under:-

- OA No 171/2014 with 189/2014 titled *Naib Subedar Mani Kumar Martand vs. UOI & Ors* decided 13.01.2015 and
- OA 94/2016 titled *Ex Gunner Phad Tante Rao Anand Rao vs UOI* vide order dated 10.07.2017

wherein similarly situated persons were given relief.

7. Per contra, the learned counsel for the Respondents submits that under the provisions of Rule 153 of the Pension Regulations for the 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 disabilities as neither attributable to nor aggravated by service that does not fulfill the criteria (i) as above and hence the applicant is not entitled for grant of disability pension in accordance with prevailing rules and policies.

ANALYSIS

8. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, we find that the applicant has suffered from three disabilities viz. (i) SNHL (B/L) (Old) @ 20% for life, (ii) Diabetes Mellitus Type-II (Old) @ 20% for life (iii) Primary Hypertension (Old) @30% for life, The applicant has already been granted disability pension in respect of disability (i) SNHL (B/L) (Old) @ 20% for life rounded off to 50% for life. In so far as the disabilities of, Diabetes Mellitus Type-II (Old) @ 20% and Primary Hypertension (Old) @ 30% are concerned, the applicant was not granted the disability element of pension for the said disabilities.

9. We are of the view that it is not in dispute that the extent of the disabilities of the applicant of Diabetes Mellitus Type-II (Old) and Primary Hypertension (Old) were assessed to be @ 20% and @ 30% respectively which is the bare minimum for the grant of disability pension in terms of Regulation 153 of the Pension Regulations for the Indian Air

Force, 1961 (Part-I). The only question that arise is whether these two disabilities suffered by the applicant were attributable to or aggravated by military service.

10. The 'Entitlement Rules for Casualty Pensionary Awards, to the Armed Forces Personnel 2008, which take effect from 01.01.2008 provide vide Paras 6,7,10,11 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.

7. 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."

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 evidences 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 favor, 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.

(b). Decision regarding attributability of a disability or death resulting from wound or injury will be taken by the authority next to the Commanding officer which in no case shall be lower than a Brigadier/Sub Area Commander or equivalent. In case of injuries which were self-inflicted or due to an individual's own serious negligence or misconduct, the Board will also comment how far the disablement resulted from self-infliction, negligence or misconduct.

(c). The cause of a disability or death resulting from a disease will be regarded as attributable to Service when it is established that the disease arose during Service and the conditions and circumstances of duty in the Armed Forces determined and contributed to the onset of the disease. Cases, in which it is established that Service conditions did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, will be regarded as aggravated by the service. 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 Service in the

Armed Forces. 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.

(d). The question, whether a disability or death resulting from disease is attributable to or aggravated by service or not, will be decided as regards its medical aspects by a Medical Board or by the medical officer who signs the Death Certificate. The Medical Board/Medical Officer will specify reasons for their/his opinion. The opinion of the Medical Board/Medical Officer, in so far as it relates to the actual causes of the disability or death and the circumstances in which it originated will be regarded as final. The question whether the cause and the attendant circumstances can be accepted as attributable to/aggravated by service for the purpose of pensionary benefits will, however, be decided by the pension sanctioning authority.

(e). To assist the medical officer who signs the Death certificate or the Medical Board in the case of an invalid, the CO unit will furnish a report on :

(i) AFMSF – 16 (Version – 2002) in all cases

(ii) IAFY – 2006 in all cases of injuries.

(f). In cases where award of disability pension or reassessment of disabilities is concerned, a Medical Board is always necessary and the certificate of a single medical officer will not be accepted except in case of stations where it is not possible or feasible to assemble a regular Medical Board for such purposes. The certificate of a single medical officer in the latter case will be furnished on a Medical Board form and countersigned by the Col (Med) Div/MG (Med) Area/Corps/Comd (Army) and equivalent in Navy and Air Force.”

(emphasis supplied),___

has not been obliterated.

11. Further, with regard to the disability, Primary Hypertension, we may refer to Para 43 of Chapter VI of the 'Guide to Medical Officers (Military Pension), 2008, which reads as under:-

"43. Hypertension – The first consideration should be to determine whether the hypertension is primary or secondary. If (e.g. Nephritis), and it is unnecessary to notify hypertension separately.

As in the case of atherosclerosis, entitlement of attributability is never appropriate, but where disablement for essential hypertension appears to have arisen or become worse in service, the question whether service compulsions have caused aggravation must be considered. However, in certain cases the disease has been reported after long and frequent spells of service in field/HAA/active operational area. Such cases can be explained by variable response exhibited by different individuals to stressful situations. Primary hypertension will be considered aggravated if it occurs while serving in Field areas, HAA, CIOPS areas or prolonged afloat service."

12. Furthermore, Para 26, Chapter VI of the Guide to Medical Officers (Military Pensions), 2008 reads as under:-

"26. Diabetes Mellitus

This is a metabolic disease characterised by hyperglycemia due to absolute/relative deficiency of insulin and associated with long term complications called microangiopathy (retinopathy, nephropathy and neuropathy) and macroangiopathy.

There are two types of Primary diabetes, Type 1 and Type 2. Type 1 diabetes results from severe and acute destruction of Beta cells of pancreas by autoimmunity

brought about by various infections including viruses and other environmental toxins in the background of genetic susceptibility. Type 2 diabetes is not HLA-linked and autoimmune destruction does not play a role.

Secondary diabetes can be due to drugs or due to trauma to pancreas or brain surgery or otherwise. Rarely, it can be due to diseases of pituitary, thyroid and adrenal gland. Diabetes arises in close time relationship to service out of infection, trauma, and post surgery and post drug therapy be considered attributable.

Type 1 Diabetes results from acute beta cell destruction by immunological injury resulting from the interaction of certain acute viral infections and genetic beta cell susceptibility. If such a relationship from clinical presentation is forthcoming, then Type 1 Diabetes mellitus should be made attributable to service. Type 2 diabetes is considered a life style disease. Stress and strain, improper diet non-compliance to therapeutic measures because of service reasons, sedentary life style are the known factors which can precipitate diabetes or cause uncontrolled diabetic state.

Type 2 Diabetes Mellitus will be conceded aggravated if onset occurs while serving in Field, CIOPS, HAA and prolonged afloat service and having been diagnosed as Type 2 diabetes mellitus who are required serve in these areas.

Diabetes secondary to chronic pancreatitis due to alcohol dependence and gestational diabetes should not be considered attributable to service."

13. As per the amendment to Chapter VI of 'Guide to Medical Officers(Military Pensions), 2008, Para 26 thereof Type 2 Diabetes Mellitus is to be conceded as aggravated if the onset occurs while serving in Field/ CIOPS/HAA/prolonged afloat service and having been diagnosed as 'Type II Diabetes Mellitus' who are required to serve in these areas. Furthermore, inter alia stress and strain because of service

reasons are stated therein to be known factors which can precipitate diabetes or cause uncontrolled diabetic state.

14. It is essential to observe that vide the verdict of the Hon'ble Supreme Court in Civil Appeal no. 5970/2019 titled as *Commander Rakesh Pande vs UOI & Ors.*, dated on 28.11.2019, wherein the decision of the AFT, PB granting disability pension to the applicant thereof who was suffering from **Non-Insulin Dependent Diabetes Mellitus (NIDDM) @ 20% broad banded to 50% for life** was upheld by the Hon'ble Supreme Court.

15. It has, already been observed by this Tribunal in a catena of cases that peace stations have their own pressure of rigorous military training and associated stress and strain of the service. It may also be taken into consideration that most of the personnel of the armed forces have to work in peace stations also work in the stressful conditions and under strict disciplinary norms.

16. The applicant has served in the Indian Air Force for more than 36 years, and the disability of 'Diabetes Mellitus Type-II (Old)' occurred in 2006 after 26 years of service whilst posted at Pune a peace station and the disability of 'Primary Hypertension' occurred in 2010 i.e. after 30 years of service and, whilst posted at Ambala which is also a peace station. The stress and strain of such a long service on the applicant cannot be overlooked.

17. Applying the above parameters to the case at hand, we are of the view that the applicant has been discharged from service in low medical category on account of medical disease/disability, the disabilities "Diabetes Mellitus Type-II (Old)" and "Primary Hypertension (Old)" must be presumed to have arisen in the course of Air Force service which must, in the absence of any reason recorded by the Medical Board, be presumed to have been attributable to or aggravated by air force service.

18. In view of the above consideration, we hold that the disabilities of Diabetes Mellitus Type-II and Primary Hypertension are attributable to the military service and accordingly, the applicant is entitled to the disability pension in respect of all the three disabilities i.e. SNHL (B/L) (Old) (already granted earlier), Diabetes Mellitus Type-II (Old) and Primary Hypertension (Old).

19. Regarding broadbanding benefits, we find that the Hon'ble Supreme Court in its order dated 10.12.2014 in *Union of India v. Ram Avtar, Civil Appeal No. 418 of 2012* and connected cases, has observed that individuals similarly placed as the applicant are entitled to rounding off the disability element of pension. We also find that the Government of India vide its Letter No. F.No.3(11)2010-D (Pen/Legal) Pt V, Ministry of Defence dated 18th April 2016 has issued instructions for

implementation of the Hon'ble Supreme Court order dated 10.12.2014 (supra).

CONCLUSION

20. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is held entitled for the disability element of pension in respect of the disabilities of Diabetes Mellitus Type-II assessed @ 20% for life and Primary Hypertension assessed @ 30% for life. The applicant has already been granted disability element of pension @ 20% for SNHL (B/L) (Old) . The composite assessment of all the disabilities are calculated as per MoD letter No. 16036 /RMB /IMB /DGAFMS/MA(pens) dated 14.12.2009 as under:-

Disability (i) = 30% (the disability with maximum percentage)

Disability (ii) $(100-30) = 70 \times 20/100 = 14\%$

Disability (iii) $(100-20) = 80 \times 20/100 = 16\%$

Composite Assessment of all three disabilities = $30+14+16= 60\%$

21. Therefore, the OA is allowed. We hold that the applicant is now entitled to the disability element of pension with respect to the disabilities of SNHL (B/L) (Old) @ 20%, Diabetes Mellitus Type-II @ 20% and Primary Hypertension @ 30%, with composite assessment of all the three disabilities @ 60% for life which is to be further rounded off to 75% for life in terms of the judicial pronouncement of the

Hon'ble Supreme Court in the case of *Union of India Vs. Ram Avtar* (Civil Appeal No. 418/2012), decided on 10.12.2014. Accordingly, the respondents are directed to grant the disability element of pension to the applicant @ 75% for life, after adjusting the amount qua the disability element of pension already paid to the applicant qua SNHL (B/L) (Old), @ 20% rounded of to 50% as mentioned hereinabove.

22. The respondents are thus directed to calculate, sanction and issue the necessary PPO to the applicant within a period of three months from the date of receipt of copy of this order and the amount of arrears shall be paid by the respondents, failing which, the applicant will be entitled for interest @6% p.a. from the date of receipt of copy of the order by the respondents.

23. No order as to costs.

Pronounced in the open Court on 29 August, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)