

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

O.A. No. 256 of 2018
With
M.A. No. 176 of 2018
and
M.A. No. 1949 of 2019

In the matter of :

Ex Nk (TS) Bhupendra Kumar

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri Virender Singh Kadian, Advocate

For Respondents : Shri V. Pattabhi Ram, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN P.M. HARIZ, MEMBER (A)

ORDER

M.A. No. 1949 of 2019 :

Counter affidavit has been filed by the respondents.

There being delay of 25 days in filing the same, the instant application has been filed by the respondent seeking condonation of delay. Delay is condoned. The counter affidavit is taken on record.

MA stands disposed of accordingly.

M.A. No. 176 of 2018 :

Vide this application, the applicant seeks condonation of 425 days' delay in filing the OA. In view of the law laid

down by the Hon'ble Supreme Court in the case of **Deokinandan Prasad Vs. State of Bihar [AIR 1971 SC 1409]** and in **Union of India & Ors. Vs. Tarsem Singh [2009 (1) AISLJ 371]**, delay in filing the OA is condoned.

MA stands disposed of accordingly.

O.A. No. 256 of 2018 :

The present application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, by the applicant who is aggrieved by the impugned orders dated 05.05.2015 and 23.11.2016 (Annexure A-1 Colly.) rejecting the first and the second appeals preferred by the applicant for grant of the disability pension for 'BIPOLAR AFFECTIVE DISORDER' from the date of his invalidment from service with the benefit of rounding off and also with arrears and interest.

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 04.03.1992 and was discharged from service on 30.06.2008 under Army Rule 13(3) (III) (i) in low medical category S2(P)H1A1P1E1. The Release Medical Board (RMB) held in September, 2011 assessed the disability of the applicant 'BIPLAR AFFECTIVE DISORDER' @ 20% for life and held the same

as 'neither attributable to nor aggravated by military service (NANA).

3. Initially, the claim for disability pension of the applicant was rejected by the respondents on the ground that the disability of the applicant was neither attributable to nor aggravated by military service. The decision was communicated to the applicant vide letter dated 20.04.2012. The applicant preferred the first appeal dated 27.06.2012 for grant of disability element of pension. The said appeal along with service documents of the applicant were forwarded to the IHQ of MoD Addl Dte Gen of Personnel Services (AG/PS-4) (Imp-II) vide CMP Records letter dated 31.08.2012. Subsequently, based on the case forwarded by AG/PS-4, the office of the DGAFMS vide letter dated 09.11.2012 accorded sanction for holding First Appeal Medical Board (FAMB) at the Base Hospital, Delhi Cantt., which was intimated to CMP Records vide AG/PS-4 letter dated 23.10.2012. The Appeal Medical Board proceedings and medical and service documents of the applicant were submitted to IHQ of MoD vide CMP Records letter dated 26.02.2013 for final decision of the Appellate

Committee on First Appeal (ACFA). The first appeal of the applicant was rejected by the ACFA on the ground that the onset of the disease was in peace station and hence the same was neither attributable to nor aggravated by military service, and the said decision was communicated to the applicant vide letter dated 22.05.2015. Against this, the applicant preferred the second appeal. The applicant was brought before the Second Appeal Medical Board (SAMB) and thereafter, the SACP examined the SAMB proceedings along with all medical and service documents of the applicant and once again held the disability as neither attributable to nor aggravated military service. Aggrieved by the same, the applicant has filed the present OA.

4. Learned counsel for the applicant submitted that since the applicant was found mentally and physically fully fit at the time of his enrolment and there was no note in his service documents with regard to suffering from any disability at that time, and at the time of discharge, the applicant was in permanent low medical category, thus his disability should be considered as attributable to military service. Learned counsel contended that, while denying the

disability pension, the respondents failed to appreciate that as per the Second Appeal Medical Board proceedings in Para V- Opinion of the Medical Board, the disability of the applicant was opined as aggravated by service with detailed justification. However, the second appeal of the applicant was arbitrarily rejected. Learned counsel further submitted that during his prolonged service tenure, the applicant had been posted in various peace and field areas and thus he had to perform duties in harsh weather, different and challenging geographical and environmental conditions and had undergone tough training and exercise, which put stress and strain on the applicant and thus he suffered from the disability. Learned counsel further submitted that the case of the applicant was squarely covered by the judgment of the Hon'ble Supreme Court in the case of **Dharamvir Singh Vs. Union of India & Ors. [(2013) 7 SCC 316]**, as the disease of the applicant is mainly due to stress and strain of military service and thus it may be considered as attributable to/aggravated by military service.

5. *Per contra*, learned counsel for the respondents, through the counter affidavit filed, submitted that since the

RMB, being an expert body, has considered the disability of the applicant as 'neither attributable to nor aggravated by military service' as the onset was in peace and there was no close time association between the disability and service. Learned counsel further submitted that the ACFA and SACP had rejected the appeals of the applicant after due examination and in light of the relevant rules and regulations. Hence, in terms of Para 173 of the Pension Regulations for the Army, 1961 (Part-I), the applicant was not entitled to disability pension. He prayed that the OA may be dismissed.

6. We have heard the learned counsel for the parties and have perused the record. The disability of the applicant has been assessed by the RMB @ 20% for life, hence, the only issue in this case which is to be decided is as to whether the disability should be held attributable to/aggravated by military service.

7. In the present case, the applicant was enrolled on 04.03.1992 and was discharged from service on 31.03.2012. As per summary and opinion of GD Spl (Psy) 166 MH, C/o 56 APO dated 14.07.2011, it is indicated that

initially the applicant came under psychiatric observations in July, 1998 when he was presented with abnormal behaviour of talking irrelevantly, being agitated and violent; he was managed as a case of non organic psychosis and he recovered and thus his medical category was upgraded to S1 in January, 2001; the applicant had a psychotic breakdown/manic episode again in August, 2001 and September, 2002 and was treated at MH Jodhpur/CH (SC) Pune. Although as per the above summary and opinion, in October, 2004, the applicant was admitted to MH Bareilly with alcohol withdrawal delirium after which he had a manic episode and was under treatment to which he responded well and thus he was placed in low medical category for Alcohol Dependence Syndrome (ADS) and Bipolar Affective Disorder. However, subsequently, he abstained from alcohol and thus was upgraded to medical category S1 for ADS. However, for Bipolar Affective Disorder, the applicant was placed in medical category S2 (P) in August, 2005.

8. In the present case, the applicant was first diagnosed as suffering from 'Bipolar Affective Disorder' in October,

2002 and he was given appropriate treatment at the military hospital. The RMB held the disability as neither attributable to nor aggravated by service and opined that 'the onset of the disease was in peace station with no close time associated with service in Fd/CI/HAA and thus assessed the same as neither attributable to nor aggravated by military service.

9. It may be useful to refer to Para 54 of the Guide to Medical Officers (Military Pensions) 2002 amendment 2008 ('GMO (MP), 2008' for short), which provides for details of the factors which have a bearing on attributability and aggravation of psychiatric disorders, which read as under :

"54. Mental & Behavioural (Psychiatric) Disorders

Psychiatric illness results from a complex interplay of endogenous (genetic/biological) and exogenous (environmental, psychosocial as well as physical) factors. This is true for the entire spectrum of psychiatric disorders (Psychosis & Neurosis) including substance abuse disorders. The relative contribution of each, of course, varies from one diagnostic category to another and from case to case.

The concept of attributability or aggravation due to the stress and strain of military service can be, therefore, evaluated independent of the diagnosis and will be determined by the specific circumstances of each case.

(a) *Attributability will be conceded where the psychiatric disorder occurs when the individual is serving in or involved in:-*

- (i) *Combat area including counterinsurgency operational area*
- (ii) *HAA service.*
- (iii) *Deployment at extremely isolated posts*

- (iv) Diving or submarine accidents, lost at sea.
- (v) Service on sea.
- (vi) MT accidents involving loss of life or Flying accidents (both as flier and passenger) in a service aircraft or aircraft accident involving loss of life in the station.
- (vii) Catastrophic disasters particularly while aiding civil authorities like earthquake, cyclone, tsunami, fires, volcanic eruptions (where one has to handle work in proximity of dead or decomposing bodies)
- (b) **Attributability will also be conceded when the psychiatric disorder arises within one year of serious/multiple injuries (e.g. amputation of upper/lower limb, paraplegia, quadriplegia, severe head injury resulting in hemiplegia of gross neurocognitive deficit which are themselves considered attributable to military service. This includes Post Traumatic Stress Disorder (PTSD).**
- (c) **Aggravation will be considered in Psychiatric disorders arising within 3 months of denial of leave due to exigencies of service in the face of:**
 - (i) Death of parent when the individual is the only Child/son.
 - (ii) Death of spouse or children.
 - (iii) Heinous crimes (e.g. murder, rape or dacoity) against members of the immediate family.
 - (iv) Reprisals or the threat of reprisals against members of the immediate family by militants/terrorists owing to the fact of the individual being a member of the Armed Forces.
 - (v) Natural disasters such as cyclones/ earthquakes involving the safety of the immediate family.
 - (vi) Marriage of children or sister when the individual is the only brother thereof and specially if their father is deceased.
- (d) **Aggravation will also be conceded when after being diagnosed as a patient of psychiatric disorder with specific restrictions of employability the individual serves in such service environment which worsened his disease because of the stress and strain involved like service in combat area including counterinsurgency**

operations, HAA, service on board ships, flying duties.

- (e) *Attributability may be granted to any psychiatric disorder occurring in recruits and results in invalidment from service only when clearly identifiable severe stressors including sexual abuse or physical abuse are present as causative factor/factors for the illness."*

10. From the aforesaid, it is clear that the disability in question is a mental disorder caused by a complex interplay of genetic vulnerabilities and exogenous stress factors. Hence, attributability of the disability in question cannot be conceded. However, as regards aggravation of the disability, it is pertinent to refer to the opinion of the Second Appeal Medical Board held in 2016, which is reproduced as under :

PART V
OPINION OF THE MEDICAL BOARD

The Second Appeal Medical Board, having perused all the relevant documents and having physically examined the individual, opines with consensus as brought out in the following paragraph :

Disability	Attributable to service	Aggravated by service	Not connected to service
BIPOLAR AFFECTIVE DISORDER	NO	YES	No
<i>Detailed justification: Onset of the individual's ID was in Jul 1998 at Amritsar (Peace). The individual initially came under psychiatric attention with the history of abnormal behaviour in the form of talking excessively and irrelevantly, sleeping less, remaining overactive and being agitated and violent. There was a history of auditory hallucinations with impaired judgment and incoherence. He was initially diagnosed as a case of other non-organic psychosis, managed with antipsychotic therapy and placed in LMC. He was thereafter posted to 15 Corps Pro Unit in Srinagar (Fd/CI Ops) wef Dec</i>			

1998 to Feb 2001. He improved on medication and was upgraded to SHAPE-I in Jan 2001. However, in Aug 2001, he relapsed with similar symptoms while on leave and was managed by a civil psychiatrist. In Sep 2002, while deployed in a fwd area in Pokharan, Rajasthan, he again developed abnormal behaviour, became hyperactive, restless and had grandiose ideation. He was referred to MH Jodhpur where he was managed as a case of Bipolar Affective Disorder. He was placed in LMC and managed with antipsychotics, mood stabilizers and psychotherapy. The individual was discharged from service on medical grounds on 30 Jun 2008. He was thereafter reinstated into service on 25 Feb 2009 (notionally wef 01 Jul 2008) and posted to 16 Corps Pro Unit at Nagrota (Fd/CI Ops) wef Feb 2009 to Mar 2012. He had another manic episode in Aug 2010 for which he was managed at 166 MH. The individual continued to serve in the same station till his discharge from service. At the time of RMB, he was in remission on medication and was discharged in LMC S2 (Pmt).

Psychiatric disorders arise out of a complex interplay of genetic/hereditary, developmental, environmental and psychosocial factors manifesting in adult life. In the absence of any symptomatology, these diseases cannot be detected at enrolment and may only manifest much later in service. Though intrinsically not attributable to service, the benefit of doubt is given to an individual in cases where service related stressors play a role in the causation or worsening of these diseases. Attributability is conceded when the onset occurs while serving in Fd/CI Ops/HAA or while participating in war/warlike operations, while participating in operations in aid to civil power during natural calamities and post traumatic stress disorder etc. Aggravation is conceded when the individual is required to serve in Fd/CI Ops or HAA following onset. In the instant case, the onset of the disability was in a peace station, with no close time association with service in Fd/CI Ops/HAA. However, following onset, the individual served on two different occasions in Fd/CI Ops from Dec 1998 to Feb 2001 at Srinagar and again from Feb 2009 to Mar 2012 at Nagrota.

Further, during the course of his 1st appeal, this Dte Gen had recommended acceptance of the appeal on the grounds that the individual had served in Fd/CI Ops following onset. Accordingly, the individual was brought before a 1st AMB on 18 Feb 2013. The AMB held the ID as aggravated by service on the same grounds quoting Para 54 Chap VI, GMO 2002, amendment 2008 in support and recommended a disablement of 40% for life. However, the 1st appeal was rejected by the ACFA in May 2015 on the grounds that the onset of the ID was in a peace station. We had again clarified that though the onset of the individual's ID was in a peace station, following onset the individual served in CI Ops, due to which the ID merited being conceded as

aggravated by service. However, the same was not taken into consideration while rejecting the 1st appeal. It is reiterated that the ID Bipolar Affective Disorder is conceded as aggravated by service in terms of Para 54(d), Chap VI, GMO 2002, amendment 2008. In view of the facts brought out vide supra, the administrative authority may decide as deemed fit in the instant case.

Sd/-
Member
Major General
Sr. Consultant (Med)
O/o DGAFMS, M-Block
Ministry of Defence,
New Delhi -01

Sd/-
Member
Lt General
DG (Org & ___)

Sd/-
President
Lt Gen
DGHS (AF)
O/o DGAFMS
(___ ineligible___)"

[Emphasis supplied]

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11. In the above opinion, the Second Appeal Medical Board had clearly opined that the applicant's ID is considered as aggravated by service and sufficient justification has also been given therein for assessing so. Besides, the percentage of disablement has been assessed @ 40% for life with net assessment @ 40% for life, by the Second Appeal Medical Board. We also find from the posting profile of the applicant on record that from 10.12.1995 to 23.12.1998, the applicant was posted in an Inf Div Pro Unit at Amritsar and from 24.12.1998 to 17.02.2000, he was posted at 15 Corps Pro Unit at Srinagar, a field area. As per the SAMB, the applicant was initially diagnosed as a case of other non-organic psychosis and was managed with antipsychotic

therapy and was placed in low medical category. While the applicant had suffered with the mental disorder as referred to above, he was posted to a field station with difficult geographic and environment at Srinagar from 24.12.1998 to 17.02.2000 and thus the applicant had served in a field/CI Ops area following the onset of the disease.

12. In the said opinion, it is also stated that the First Appeal Medical Board had also held the disability of the applicant as aggravated by service on the same grounds stipulating Para 54 of the Chapter VI, GMO, 2002, amendment 2008 and assessed the disability @ 40% for life. However, the ACFA did not consider the same and rejected the first appeal of the applicant. In this regard, we may refer to the judgment of the Hon'ble Supreme Court in the case of **Ex Sapper Mohinder Singh Vs. Union of India & Ors.** [Civil Appeal No. 104 of 1993] decided on 14.01.1993, which has been followed by the Tribunal in large number of orders, wherein the Apex Court has observed that without physical medical examination of the individual, the administrative authority/higher formation cannot sit over the opinion of a medical board.

13. The Second Appeal Medical Board reiterated that despite the onset of the disability being in a peace station, the same is conceded as aggravated as the applicant had served in CI Ops. area following the onset in terms of Para 54(d), Chapter VI, GMO, 2002, amendment 2008. In this regard, we again refer to clause (d) of the aforesaid Para 54, which has already been reproduced hereinabove, which reads as under :

“(d) Aggravation will also be conceded when after being diagnosed as a patient of psychiatric disorder with specific restrictions of employability the individual serves in such service environment which worsened his disease because of the stress and strain involved like service in combat area including counterinsurgency operations, HAA, service on board ships, flying duties.”

In view of the above, we are in agreement with the opinion of the Second Appeal Medical Board, as reproduced herienabove. The First Appeal Medical Board of the applicant is not available on record. The respondents have not placed on record the First Appeal Medical Board and nor have they controverted the opinion of the First Appeal Medical Board. Even the counter affidavit filed by them is silent on this point. In view of the aforesaid facts and circumstances, the benefit of doubt can very well be given to the applicant and,

therefore, we do not hesitate to hold that the disability of the applicant was aggravated by the military service. Accordingly, the applicant is entitled to disability element of pension with the benefit of rounding-off to 50% for life from the date of discharge.

14. Therefore, the OA is allowed. The respondents are directed to grant the disability element of pension to the applicant @ 40% for life which is directed to be rounded off to 50% for life from the date of discharge 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. However, as the applicant has approached the Tribunal after a considerable delay, in view of the law laid down in *Tarsem Singh's case (supra)*, arrears will be restricted to three years prior to the date of filing of this OA i.e. 24.01.2018.

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

16. All pending MAs stand closed accordingly. There is no order as to costs.

Pronounced in open Court on this 7th day of
March, 2024.

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

**[LT GEN P.M. HARIZ]
MEMBER (A)**

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