

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

14.

OA 271/2022 with MA 372/2022

Ex L/Nk Izhar Hussain	Applicant
Versus		
Union of India & Ors.	Respondents
For Applicant	:	Mr. Ajit Kakkar, Advocate
For Respondents	:	Mr. Prabodh Kumar, Advocate

CORAM

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

ORDER
17.09.2024

Vide our orders of even date, we have dismissed the application. Faced with the situation, learned counsel for the applicant makes an oral prayer for grant of leave to appeal under Section 31 of the Armed Forces Tribunal Act, 2007 to the Hon'ble Supreme Court. We find no question of law much less any question of law of general public importance involved in the matter to grant leave to appeal. Hence, the prayer for grant of leave to appeal is declined.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

/Priya/

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MA 372/2022

This is an application filed under Section 22 of the Armed Forces Tribunal Act, 2007, seeking condonation of delay of 1543 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of Uol & 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 372/2022 is allowed and the delay of 1543 days in filing the OA 271/2022 is thus condoned. The MA is disposed of accordingly.

OA 271/2022

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this application and the reliefs claimed in Para 8 read as under:

(a) To direct the respondents to bring all service and medical documents of the applicant including RMB on record.

(b) To grant disability pension to the applicant from the date of discharge te. 01.10.2016.

(c) To direct the respondents to grant broad handing of the disability pension we.f. 01.10.2016.

(d) To direct the respondents to have a corrigendum PPO pertaining to the disability pension and broad banding of the disability pension of the applicant.

(e) To direct the respondents to pay arrears of disability pension and broad handed disability pension along with interest 12% from the date of discharge i.e. 01.10.2016.

(f) To grant such other relief appropriate to the facts and circumstances of the case as deemed fit and proper.

2. Briefly, the facts of the case are that the applicant was enrolled in the Indian Army on 05.09.1999 and was discharged from service on 30.09.2016 in Low Medical Category(LMC) "S2(P)HAPE" in

disability "UNDIFFERENTIATED SOMATOFORM DISORDER". Applicant was assessed with "IRRITABLE BOWEL SYNDROME" via a medical board held on 09.07.2014 and was placed in P-2(T-24) medical category. Subsequently on 12.07.2014 his recategorization was conducted at Base Hospital, Delhi Cantt and he was to continue in the medical category of P-2(T-24) for "UNDIFFERENTIATED SOMATOFORM DISORDER" which was held to be not related to military service. His next re-categorization medical board was conducted on 07.01.2015 wherein he was placed in S3(T-24)HAPE(Temp) and in the subsequent re-categorization medical board held on 06.07.2015 he was placed in med category of S2(P)HAPE (Permanent) for "UNDIFFERENTIATED SOMATOFORM DISORDER". The Release Medical Board (RMB) was conducted on 20.06.2016 which assessed the disability of the applicant, i.e., "UNDIFFERENTIATED SOMATOFORM DISORDER" as neither attributable nor aggravated(NANA) by military service. The composite assessment for the disability was assessed at 11-14% for life by the RMB. The initial disability pension claim was rejected and communicated to the applicant vide letter dated 05.04.2017 as the disability was considered to be neither attributable nor aggravated by military service. Aggrieved by this, the applicant submitted the first

appeal vide dated 19.06.2021 for grant of disability pension which was rejected by letter dated 20.06.2021. Aggrieved by this, the applicant preferred the instant OA.

Contention of the Parties

3. Learned counsel for the applicant argues that after a thorough medical examination, the applicant was enrolled into the Indian Army and there was no note of any disability recorded in his service records. It is further contended that he served in the Army at various places in different environmental and service conditions in his prolonged service; therefore, any disability occurring during the period of his service is deemed to be attributable to or aggravated by the service. In support of his contentions, learned counsel relied upon the judgments of the Hon'ble Supreme Court including **Dharamvir Singh** Vs. **Union of India** [(2013) 7 SCC 316], and **Union of India & Ors.** Vs. **Ram Avtar** [Civil Appeal No.418 of 2012] decided on 10.12.2014 as well as various orders of the Tribunal to submit that since the applicant was discharged from service being in low medical category(LMC), the disability must be presumed to have arisen during service and he is therefore entitled to the disability pension and broadbanding. Learned counsel,

therefore, contended that the respondents committed an error in rejecting the claim of the applicant for disability pension to which he is entitled to.

4. *Per contra*, learned counsel for the respondents controverted the arguments put forth on behalf of the applicant and contended that the applicant is not entitled to the relief claimed since the RMB, being an expert body, found that the disability of "UNDIFFERENTIATED SOMATOFORM DISORDER" to be neither attributable nor aggravated by military service, which made him ineligible for grant of disability pension according to Para-53(a) of the Pension Regulations for the Army 2008(Part-1) which lays down the twin conditions of the disability being 20% or more and it being attributable and/or aggravated by military service. He further drew our attention to MoD letter dated 31.01.2001, which states that no disability element shall be payable for disabilities less than 20%. Hence, learned counsel prayed that the OA be dismissed.

Consideration

5. We have heard respective submissions of the learned counsel for the parties and have carefully perused the records.

6. The disability "UNDIFFERENTIATED SOMATOFORM DISORDER" was assessed at 11-14 % for life being neither attributable nor

aggravated by military service by the RMB dated 20.06.2016. The said disability is covered under Para 54, Chapter VI of the GMO (Military Pension) 2008. The relevant para is extracted below:

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.

Further, assessment of Mental Behavioral Disorders is mentioned

Para 29 of Chapter VII of the GMO (Military Pension) 2008,

Assessment of Mental Behavioural (Psychiatric) Disorders.

29. There seems to be a tendency to under assess mental and behavioural (psychiatric) disorders on the part of some medical boards. As long as there is no element of malingering, the disablement should be the same as for those conditions resulting from organic causes. This is particularly important in the present era as stress related psychiatric disorders because of exposure to long tenures of duties in highly stressful environments like CI ops are common in their occurrence.

Since the brain functions as a whole, in such cases the assessment should cover all the mental conditions present, irrespective of whether or not all the conditions present are "accepted" disabilities. The Boards should also give separate assessment for each condition, as compensation would be discontinued when the total disablement falls below pensionable degree viz 20 per cent or only the "non-accepted" condition persists, whichever is earlier.

Assessment is based on the criteria of an individual's capability to look after himself and family.

(a) Person able to look after himself and interact with his family and gainfully employed :

Assessment 40% for life.

(b) Person is only able to look after himself but unable to interact with family :

Assessment 60% for life.

(c) Individual is not able to look after his basic needs:

Assessment 100% for life.

7. Further there are medical studies which indicate that "UNDIFFERENTIATED SOMATOFORM DISORDER" can be genetic.

The relevant paras are extracted below:

Approximately four to eleven percent of the population will experience this disorder at some point in their life. About fifty percent of people with this disorder are comorbid with other disorders such as anxiety or depression.

There is no sure cause of the disorder. Some studies suggest that it can be genetic. If it runs in a family, then those in that family are more likely to develop it. Other studies suggest that depression and anxiety can play a role. Also, people who give obsessive attention to minor changes or sensations in their body are also said to be likely to develop this disorder.

8. Before coming to a considered opinion, it would be pertinent to refer to the judgement of the Hon'ble Apex Court in Civil Appeal No 7672 of 2019 (Diary No 27850 of 2017), decided on 03/10/2019, in the case of **Ex Cfn Narsingh Yadav Vs UOI & Others**, wherein the Apex court had upheld the decision of AFT, Regional Bench, Lucknow in OA No. 235 of 2010 dated 23.09.2011 denying disability pension to a soldier medically boarded out with Schizophrenia. The Supreme Court was pleased to opine-

"20. In the present case, clause 14 (d), as amended in the year 1996 and reproduced above, would be

applicable as entitlement to Disability Pension shall not be considered unless it is clearly established that the cause of such disease was adversely affected due to factors related to conditions of military service. Though, the provision of grant of Disability Pension is a beneficial provision but, mental disorder at the time of recruitment cannot normally be detected when a person behaves normally. Since there is a possibility of non-detection of mental disorder, therefore, it cannot be said that Schizophrenia is presumed to be attributed to or aggravated by military service.

21. Though, the opinion of the Medical Board is subject to judicial review, the Courts are not possessed of expertise to dispute such a report unless there is strong medical evidence on record to dispute the opinion of the Medical Board which may warrant the constitution of the Review Medical Board. The invaliding Medical Board has categorically held that the appellant is not fit for further service and there is no material on record to doubt the correctness of the Report of the invaliding Medical Board.

22. Thus, we do not find any merit in the present appeal, accordingly, the same is dismissed”.

9. Moreover, the Supreme Court Judgement (supra) amplifies that mental disorders which cannot be medically detected during the enrolment process cannot be claimed to be attributable to rigours of service at a later stage, and observed as under:

“Relapsing forms of mental disorders which have intervals of normality and Epilepsy are undetectable diseases while carrying out physical examination on enrolment, unless adequate history is given at the time by the member”.

10. Regarding the issue of primacy of the Medical Board, the Supreme Court in its judgment in **UoI** Vs. **Ravinder Kumar** in Civil Appeal No. 1837/2009 decided on 23.05.2012, has explicitly held that :

"5. We are of the view that the opinion of the Medical Board which is an expert body must be given due weight, value and credence. Person claiming disability pension must establish that the injury suffered by him bears a causal connection with military service.

6. In the instant case, the Medical Board has opined as under:-

"ID. Generalised Tonic Seizure. MA opined that ID is genetic in origin, not connected with service.

Thus in view of the above, it is evident that the ailment with which respondent has been suffering from is neither aggravated nor attributable to the Army Service".

Thus, concurring with the medical opinion according to the RMB we are of the opinion that the above mentioned ID "UNDIFFERENTIATED SOMATOFORM DISORDER" is neither attributable nor aggravated by military service.

11. The Hon'ble Supreme Court in its judgment in the case of **Secretary, Ministry of Defence & Others** Vs. **Damodaran A.V. (dead) through LRs. & Others** [(2009) 9 SCC 140], clearly laid down the following principles with regard to primacy of medical opinion:-

"8. When an individual is found suffering from any disease or has sustained injury, he is examined by the medical experts who would not only examine him but also ascertain the nature of disease/injury and also record a decision as to whether the said personnel is to be placed in a medical category which is lower than 'AYE' (fit category) and whether temporarily or permanently. They also give a medical assessment and advice as to whether the individual is to be brought before the release/invalidating medical board. The said release/invalidating medical board generally consists of three doctors and they, keeping in view the clinical profile, the date and place of onset of invaliding disease/disability and service conditions, draws a conclusion as to whether the disease/injury has a causal connection with military service or not. On the basis of the same they recommend (a) attributability, or (b) aggravation, or (c) whether connection with service. The second aspect which is also examined is the extent to which the functional capacity of the individual is impaired. The same is adjudged and an assessment is made of the percentage of the disability suffered by the said personnel which is recorded so that the case of the personnel could be considered for grant of disability element of pension. Another aspect which is taken notice of at this stage is the duration for which the disability is likely to continue. The same is assessed/recommended in view of the disease being capable of being improved. All the aforesaid aspects are recorded and recommended in the form of AFMSF-16. The Invalidating Medical Board forms its opinion/recommendation on the basis of the medical report, injury report, court of enquiry proceedings, if any, charter of duties relating to peace or field area and of course, the physical examination of the individual.

9. The aforesaid provisions came to be interpreted by the various decisions rendered by this Court in which it has been consistently held that the opinion given by the doctors or the medical board shall be given weightage and primacy in the matter for ascertainment as to whether or not the injuries/illness

sustained was due to or was aggravated by the military service which contributed to invalidation from the military service."

12. With regard to the issue of admissibility of disability pension when the disability is assessed at less than 20%, the Hon'ble Supreme Court in its judgment in the case of **Union of India & Ors.** Vs. **Wing Commander S.P. Rathore** [Civil Appeal No.10870/2018] decided on 11.12.2019, has held that the disability element is not admissible if the disability is less than 20%, and that the question of rounding off would not apply if the disability is less than 20%. If a person is not entitled to the disability pension, there would be no question of rounding off. Relevant Paras of the said judgment read as under :

"1. The short question involved in this appeal filed by the Union of India is whether disability pension is at all payable in case of an Air Force Officer who superannuated from service in the natural course and whose disability is less than 20%.

xxx

xxx

xxx

8. This Court in Ram Avtar (supra), while approving the judgment of the Armed Forces Tribunal only held that the principle of rounding off as envisaged in Para 7.2 referred to herein above would be applicable even to those who superannuated under Para 8.2. The Court did not deal with the issue

of entitlement to disability pension under the Regulations of Para 8.2.

9. As pointed out above, both Regulation 37(a) and Para 8.2 clearly provide that the disability element is not admissible if the disability is less than 20%. In that view of the matter, the question of rounding off would not apply if the disability is less than 20%. If a person is not entitled to the disability pension, there would be no question of rounding off.

10. The Armed Forces Tribunal (AFT), in our opinion, put the cart before the horse. It applied the principles of rounding off without determining whether the petitioner/ applicant before it would be entitled to disability pension at all.

11. In view of the provisions referred to above, we are clearly of the view that the original petitioner/applicant before the AFT is not entitled to disability pension. Therefore, the question of applying the provisions of Para 7.2 would not arise in his case. In this view of the matter, we set aside the order of the AFT and consequently, the original application filed by the Respondent before the AFT shall stand dismissed.

The appeal is allowed accordingly."

13. The Hon'ble Supreme Court in its judgment in the case of **Bachchan Prasad** Vs. **Union of India & Ors.** [Civil Appeal No.2259 of 2012] dated 04.09.2019 also held that an individual is not entitled to disability element if the disability is less than 20% as under :

"After examining the material on record and appreciating the submissions made on behalf of the parties, we are unable to agree with the submissions made by the learned Additional Solicitor General that

the disability of the appellant is not attributable to Air Force Service. The appellant worked in the Air Force for a period of 30 years. He was working as a flight Engineer and was travelling on non pressurized aircrafts. Therefore, it cannot be said that his health problem is not attributable to Air Force service. However, we cannot find fault with the opinion of the Medical Board that the disability is less than 20%. The appellant is not entitled for disability, as his disability is less than 20%."

14. In the light of the above considerations, we conclude that the applicant is not entitled to the disability element of pension.

Accordingly, the OA stands dismissed.

15. MA if any, stands disposed.

16. Pronounced in the open Court on 17 day of September, 2024.

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

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

/ashok/