

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

**OA No. 274/2019**

**Ex PO (U/CI) Birla Ram Lamba**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant : Mr. Mr. Ved Prakash, Advocate**

**For Respondents : Mr. Arvind Patel, Advocate**

**CORAM :**

**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON**

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

**ORDER**

**OA No. 274/2019**

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

- (a) *The respondents be directed to grant disability pension commensurate with the degree of disablement i.e. 20% of disablement w.e.f 31.01.2016, which is to be rounded off to 50% as per the existing instruction of broad banding the degree of disablement, alongwith consequential arrears of broad banding, as applicable, with 12% interest.*
- (b) *Any other relief (s) which this Hon'ble and proper in the interest of justice and in the facts and circumstances of the case may also be granted to the applicant."*

## **BRIEF FACTS**

2. The applicant was enrolled in the Indian Navy on 30.01.1999 and was discharged from service on 31.01.2016 on expiry of engagement. The applicant suffered from the disability namely "CA Tongue", which was assessed, by the Release Medical Board dated 08.10.2015 @20% for life and considered it neither attributable to or nor aggravated by service.

3. The claim for the grant of the disability pension was considered and the competent authority upheld the decision of the medical board and denied the disability pension in terms of letter No. PEN/600/D/LRDO/01/2014/124204H dated 31.01.2016 and apprised the applicant that he may prefer an appeal in case he is not satisfied with the decision of the competent authority.

4. The applicant preferred first appeal dated 13.02.2016 against the rejection of the claim for the grant of disability pension but the same was also rejected vide IHQ MOD(N) letter No. PN/0134/DP/947/16 dated 29.12.2016 by giving

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him the opportunity to prefer second appeal against the same. The applicant, thereafter, filed second appeal dated 06.06.2017, against the rejection of the first appeal, which was rejected vide GOI MOD letter No. PN/0134/DP/947/2ND/17 dated 09.04.2018, aggrieved of which, the applicant has filed the instant O.A. and thus, in the interest of justice, we take up the same for consideration.

### **CONTENTIONS OF THE PARTIES**

5. The learned counsel for the applicant submitted that the applicant was allotted trade 'seaman' and worked under stress and strain. The learned counsel for the applicant further submitted that the applicant joined the Indian Navy in fit medical conditions and no note of any disability was recorded at the time of enrolment.

6. The learned counsel for the applicant submitted that the applicant suffered from the disability namely "Carcinoma Tongue" while performing military duty, which was assessed, by the medical board @20% for life and considered it neither attributable to or aggravated by service.

7. The learned counsel for the applicant placed reliance on the verdict of the Hon'ble Supreme Court in **Rajbir Singh Vs. Union of India & Ors. (2015 (2) SCALE 371)**. Reliance is also placed on the verdict of the Hon'ble Supreme Court in **Dharamvir Singh Vs. Union of India & Ors. (Civil Appeal No. 4949 of 2013)** wherein it was observed in para 28, which reads 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 nonbattle casualty and is assessed at 20% or over. The question whether a disability is attributable 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 acceptance for of individual's 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."**

to contend to the effect, that 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.

8. Per Contra, the learned counsel for the respondents submitted that the applicant suffered with the said disability which was assessed by the medical board @20% for life and considered it as neither attributable to nor aggravated by service.

9. The learned counsel for the respondents submitted that there was no causal connection between the disability of the applicant and the military duty since the disability of the applicant was congenital in nature.

10. The learned counsel for the respondents submitted that the applicant's discharge from Navy was not on medical ground but he had completed his engagement period and discharged on expiry of the term of engagement. The learned counsel for the applicant further submitted that it is seen from Part V of the medical board opined the disability of the applicant has no causal connection with the military service. Hence, this makes him ineligible for the grant of disability pension.

11. The learned counsel for the respondents placed reliance on the verdict of the Hon'ble Supreme Court in **UOI Vs. Damodaran AV**, SLP(C) No. 23727/2008 wherein it was held that the opinion given by the medical authorities is entitled to be given due weight and credence.

### **ANALYSIS**

12. On the careful perusal of the material available on record and also the submissions made on behalf of the parties, we are of the view that it is not in dispute that the extent of disability assessed by the Release Medical Board dated 08.10.2015, is @20% for life and considered it to be neither attributable to nor aggravated by service.

The only question remains to be answered is whether the said disability is attributable to or aggravated by military service?

13. In so far as the attributability or aggravation is concerned which was considered to be NANA by the medical board, In the instant case the applicant suffered from the said disability of 'Carcinoma Tongue' in January, 2013 when he

was posted at Mumbai. The Guide to Medical Officer (Military Pension), 2008 enumerates provision for the said disability. Para 12 of the GMO (Military pension), 2008 is reproduced below:

**“10. Malignancies Considered Attributable to Service**

**(a) Due to Occupational Hazards:**

(i) Any cancer in those personnel working or exposed to radiation source in any forms:

- (aa) Acute leukaemia (aa) Acute
- (ab) Chronic lymphatic leukaemia
- (ac) Astrocytoma
- (ad) Skin Cancers

(ii) Any cancer in those exposed to chemical especially Petroleum products or other chemicals:-

- (aa) Carcinoma bladder
- (ab) Renal cell carcinoma
- (ac) Carcinoma of Renal Pelvis

(iii) Any cancer in those exposed to coal dust, asbestos, silica & iron

- (aa) Bronchogenic Carcinoma
- (ab) Pleural Mesothelioma

**(b) Due to Viral Infection:**

- (i) Hepato-cellular carcinoma (HV B&C)
- (ii) (11) Ca nasopharynx (EB virus)
- (iii) Hodgkin's disease (EB virus)
- (iv) Non-Hodgkin's Lymphoma (Viruses)
- (v) ( Acute Leukaemia (HTLV1)
- (vi) Ca anal canal (HTLV 1)
- (vii) Any cancer due to HIV infection (contracted out of blood transfusion/needle stick injury in service)
- (viii) Ca Cervix (HPV)

11. Blank

**12. Malignancies Not Attributable and Not Aggravated**

Tobacco related cancers in smokers and tobacco users e.g. carcinoma lung, carcinoma oral cavity, carcinoma bladder. Cancers due to congenital chromosomal abnormalities e.g. CML where Ph chromosome identified.\*

The applicant suffered from the disability of carcinoma tongue which forms part of carcinoma oral cavity stated to

be considered as neither attributable to nor aggravated by service if the personnel is a tobacco user. In the instant case it is pertinent to mention herein that the respondents rejected the second appeal of the applicant dated 09.04.2018 whilst giving reasons that the applicant was the case of a known tobacco user. To which, a specific court query on 21.03.2024, the respondents were directed to produce and bring on record appropriate document on an affidavit to establish the fact that the applicant was a tobacco user. Subsequently, in pursuance of the order dated 21.03.2024 the respondents produced the original file based on which the second appeal of the applicant was rejected and filed the affidavit in relation thereto, which states that the applicant was a 'known case of tobacco user'. However, the medical documents or any other document produced by the respondents could not establish that the applicant was a tobacco user.

14. It is pertinent to mention herein that there are several reasons by which the applicant could have contracted the

said disability. Reliance, in this regard, is placed on the publication which was published by <https://www.mayoclinic.org> on 16.06.2023 and accessed on 29.05.2024 on the subject namely Tongue Cancer: Overview" which specifies various causes, for the occurrence of tongue cancer, some of which are use of tobacco, consumption of alcohol, exposure to HPV, being Male, trouble in maintaining oral hygiene and weak immune system. It is, therefore, safe to say that, these may be the plausible reasons which could have led to the said disability of the applicant and which thereby have no connection whatsoever to the military duty.

15. The applicant has, also, failed to bring on record that the disability caused to the applicant was due to performance of military duty. In view of the issues brought out in Para 14 above, we do not find any error in the medical board proceedings which considered the said disability as neither attributable to nor aggravated by service.

## CONCLUSION

16. We, thus, hold that the disability 'Carcinoma Tongue' has no causal connection with military duty and therefore, there is no merit in the case, the OA 274/2019 is thus dismissed.

Pronounced in the open Court on this day of <sup>4<sup>th</sup></sup> July, 2024.

(JUSTICE RAJENDRA MENON)  
CHAIRPERSON

(REAR ADMIRAL DHIREN VIG)  
MEMBER (A)