

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

**O.A. No. 350 of 2019**  
**with**  
**M.A. No. 895 of 2019**

**In the matter of :**

**Ex Hav Krishan Kumar Gupta**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant : Shri Virender Singh Kadian, Advocate**

**For Respondents : Shri Aseem Kumar Sahay, Advocate**

**CORAM :**

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

**ORDER**

**M.A. No. 895 of 2019 :**

Vide this application, the applicant seeks condonation of 6020 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. 350 of 2019 :**

Invoking the jurisdiction of the Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 read as under :

**(a) Direct respondents to treat the disabilities (i) UNSPECIFIED PSHYCHOSIS-298 on 21.09.1995 at Agra (ii) INTERMITTANT WPW SYNDROME-249 & (iii) PRIMARY HYPOTHYROIDISM-243 assessed @ 60% of the applicant as attributable to or aggravated by military service and grant disability element of pension from the date of retirement of the applicant along with benefit of broad banding from 60% to 75%, and/or**

**(b) 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.**

**(c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.**

2. Briefly stated, the facts of the case are that the applicant was enrolled in the Indian Army on 26.08.1978 and was discharged from service on 31.08.2002 in low medical category S2H1A1P3E1. The Release Medical Board (RMB) held on 27.01.2002 assessed his disabilities (a) UNSPECIFIED PSYCHOSIS @ 20%; (b) INTERMITTANT WPW SYNDROME @ 15-19%; (c) PRIMARY HYPOTHYROIDISM @ 15-19% and (d) OBESITY @ 11-14%, with composite degree of disablement @ 30% for life. While the RMB conceded the disabilities ID (b) Intermittent WPW Syndrome and (c) Primary Hypothyroidism as 'Aggravated due to military service', the disabilities ID (a) Unspecified Psychosis and (d) Obesity were considered as neither attributable to nor aggravated by military service (NANA). The net assessment qualifying for disability pension with duration is 'Nil'.

3. The initial claim for disability pension was forwarded to PCDA (P) Allahabad and was rejected vide letter dated 02.03.2003 considering all the disabilities as constitutional disorders and thus NANA. Against this, the applicant preferred the first appeal dated 14.05.2003 which was forwarded by the respondents to the Appellate Medical Authority through PCDA (P) vide letter dated 10.11.2003 for consideration.

4. In the meantime, aggrieved by non-disposal of the first appeal, the applicant filed a writ petition before the High Court of Delhi being W.P. (C) No. 2562/2007, which was disposed of by the High Court vide order dated 04.04.2007 directing the respondents to dispose of the appeal of the applicant dated 14.03.2003 within a period of six months if not decided earlier. However, the first appeal of the applicant was disposed of by the DGAFAMS New Delhi letter No. 16050/AMB/DGAFMS/MA (Pers) dated 22.11.2006 received under IHQ letter No. B/40502/2029/03/AC/PS-4 (Imp-II) dated 07.12.2006 asking the applicant to be brought before

the Appeal Medical Board (AMB). Accordingly, the AMB was held on 10.06.2007 and all the disabilities were considered as neither attributable to nor aggravated by service and not connected with service.

5. The applicant again filed a writ petition being W.P. (C) No. 7213/2009 in the High Court of Delhi for setting aside the findings of the medical board held on 03.06.2007 and for grant of disability pension. After establishment of the Armed Forces Tribunal by the Government, the said writ petition was transferred to the AFT (PB) where the same was registered as TA No. 213/2009 and vide order dated 08.01.2010, the TA was disposed of setting aside the findings of the medical board and the Tribunal remitted back the case to the respondents to constitute a fresh medical board for re-examination of the applicant, and if it is found attributable to or aggravated by military service to what extent is suffered, then on that basis the disability pension should be worked out and for that purpose, three months' time was granted to the respondents.

6. Consequent to the directions dated 08.01.2010 by the AFT (PB), a second Appeal Medical Board (SAMB) of the applicant was held on 28.04.2010 at Base Hospital, Delhi Cantt and all the disabilities of the applicant were assessed as neither attributable to nor aggravated by military service with net assessment of the same as 'Nil for life'. The said decision was intimated to the applicant vide BEG Records, Roorkee letter No. Pen/D-1461912/R dated 21.09.2010. The applicant sent a legal notice dated 31.07.2018 to the respondents seeking grant of disability pension which was suitably replied to by the respondents vide letter No. Pen/D-1461912/R dated 11.08.2018. Aggrieved by the same, the applicant has filed the present OA for the said relief.

7. Learned counsel for the applicant submitted that at the time of joining the Army, the applicant was declared fully fit medically and physically and no note was made in his medical record to the effect that the applicant was suffering from any disease at that time and, therefore, any medical disability contracted by him during the course of his service should be

treated as attributable to and aggravated by the stress and strains of service. Learned counsel further submitted that the respondents erred in considering the disabilities of the applicant as neither attributable to nor aggravated by service and failed to consider the fact that he had performed duties in the stressful and difficult conditions of service during his service tenure which put tremendous mental and physical pressure on the applicant and had impacted adversely on the health of the applicant and thus in September, 1995, the applicant suffered from Unspecified Psychosis and even after having been diagnosed with the said disability, the applicant continued to perform duties and due to which his medical condition got worsened. It is further stated that in November, 2000, the applicant was diagnosed with Intermittent WPW Syndrome and Primary Hypothyroidism and was treated in the hospital from 21.11.2000 to 09.01.2001, which disabilities were held as aggravated by military service. Thereafter, in July, 2001, the applicant was diagnosed with obesity.

8. Learned counsel for the applicant further submitted that the instant matter is squarely covered by the judgment of the Hon'ble Supreme Court **Dharamvir Singh Vs. Union of India & Ors. [2013 (7) SCC 316]**, which was followed in subsequent judgments of the Apex Court in **Union of India & Anr. Vs. Rajbir Singh [2015 (2) SCALE 371]** and submitted that the respondents' action in denying the disability pension is unjustified and unlawful, when the disabilities recorded by the RMB occurred during the military service and was caused due to stress and strain of service, particularly two of the disabilities were held as aggravated by service. He drew our attention to various rules and regulations which provide that 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 the service and the conditions and circumstances of duty in Armed Forces determined and contributed to the onset of the disease.

9. In this regard, learned counsel referred to Rules 5 and 14(b) of the Entitlement Rules, 1982 to submit that when no

note was made about the disease at the time of joining the service, the deterioration of health in the course of service is to be presumed to be due to service conditions; Rule 9 to submit that the onus of proof of condition of non-entitlement is not on the claimant but on the respondents; Rule 19 thereof to contend that if the worsening of a condition persists till the time of discharge, aggravation is to be accepted and also referred to various rules and regulations in support of the case of the applicant. Learned counsel submits that the first and second Appeal Medical Boards have wrongly considered the disabilities as NANA and he, therefore, prayed that the disabilities in question may be held as attributable to and aggravated by military service and that the disability pension may be granted to the applicant.

10. *Per contra*, the learned counsel for the respondents contended that the applicant is not entitled to the relief claimed since three medical boards being expert body, after thorough examination of the applicant found the disabilities as "Neither Attributable to Nor Aggravated by Military Service"

on the ground that the same are constitutional disorders and not connected with service and that the applicant was managed without any delay. Learned counsel further submitted that the applicant's disabilities do not fulfil the necessary conditions for being eligible to get disability pension in terms of Regulation 173 of the Pension Regulations for the Army, 1961 (Part-I), thus the applicant is not entitled to disability pension and, therefore, the OA deserved to be dismissed.

11. We have heard learned counsel for the parties and have also perused the record.

12. In the present case, the applicant was diagnosed with the first disability i.e. 'Unspecified Psychosis' in the year 1995. In this regard, we may refer to Para 54 of the Guide to Medical Officers (Military Pensions) 2002 amendment 2008, which provides for details of the factors which have a bearing on attributability and aggravation of psychiatric disorders, which read as under :

#### **"54. Mental (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 and the earlier dichotomy between "neurosis" and "psychosis" is no longer valid. The relative contribution of each, of course, varies from one diagnostic category to another and from case to case.

The concept of 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. Grant of compensatory benefits related to aggravation by service factors may be considered in the following circumstances :

- (a) Psychiatric disorder arising within 6 months (extendable upto 12 months in some cases) 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).
- (b) Psychiatric disorders arising within 6 months (extendable upto 12 months in exceptional cases) of:
  - (i) CI ops tenure exceeding 2 years
  - (ii) HA tenure exceeding 18 months
  - (iii) Siachen tenure exceeding 6 months
  - (iv) Deployment of extreme isolated posts for over 6 months
  - (v) Incarceration as PW for more than 60 days
  - (vi) Being held hostage under threat of death/torture for over 30 days
  - (vii) Separation from the immediate family for 12 months or more at a stretch owing to exigencies of service, except when such separation is due to the individual being under arrest/involved in disciplinary proceedings.
- (c) 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*

**3. *Attributability may be granted under special/extraordinary circumstances associated with any of the factors enumerated in para 2 above, but the medical board must set out in writing the reasons for the same. This provision should be used sparingly/with transparent objectivity and the medical board should not allow its decision to be swayed by sympathy or other extraneous considerations.***

13. From the aforesaid, it is clear that the disability in question is a psychiatric disease caused by a complex interplay of genetic vulnerabilities and exogenous stress factors. Attributability and aggravation are conceded on the basis of factors mentioned in the aforesaid Para. In this case, there is no material to show that the applicant suffered the disability due to extraordinary circumstances associated with any of the factors mentioned in the above regulation.

14. As far as the other disabilities i.e. 'Intermittent WPW Syndrome' and 'Primary Hypothyroidism' which had occurred in November, 2000 and Obesity which was diagnosed in July, 2001 are concerned, for determining the attributability, it would be helpful to refer to the medical review/article available

in the open domain in respect of WPW Syndrome and Hypothyroidism. In respect of the WPW Syndrome, the review (ref. NIH-National Library of Medicines updated on 07.08.2023 on internet), gives the detailed explanation of the disease to suggest that the disability is a congenital abnormality that involves the presence of abnormal electrical conductive circuits between the atria and ventricles. The relevant portion of the same reads as under :

***“Wolff-Parkinson-White (WPW) syndrome is a congenital cardiac preexcitation syndrome that arises from abnormal cardiac electrical conduction through an accessory pathway that can result in symptomatic and life-threatening arrhythmias. The hallmark electrocardiographic (ECG) finding of WPW pattern or preexcitation consists of a short PR interval and prolonged QRS with an initial slurring upstroke (“delta” wave) in the presence of sinus rhythm. The term WPW syndrome is reserved for an ECG pattern consistent with the above-described findings along with the coexistence of a tachyarrhythmia and clinical symptoms of tachycardia such as palpitations, episodic lightheadedness, presyncope, syncope, or even cardiac arrest.***

***The normal heart consists of two electrically insulated units, the atria and the ventricles. These units are connected by a conduction system that allows for normal cardiac synchrony and function. The cardiac electrical potential originates from the sinoatrial node of the right atrium and propagates through the atria to the atrioventricular (AV) node. The action potential is delayed in the AV node and is then quickly transmitted through the His-Purkinje system to the ventricular myocytes allowing for rapid ventricular depolarization and synchronized contraction. Patients with WPW syndrome have an accessory pathway that***

*violates the electrical isolation of the atria and ventricles, which can allow electrical impulses to bypass the AV node. In some settings, this pathway can result in the transmission of abnormal electrical impulses leading to malignant tachyarrhythmias. The ECG findings of the WPW pattern are caused by the fusion of ventricular preexcitation through the accessory pathway and normal electrical conduction. Most patients with WPW pattern will never develop arrhythmia and will remain asymptomatic.....”*

15. Additionally, since Hypothyroidism relates to an underactive Thyroid, a condition in which the Thyroid gland does not produce enough of certain crucial hormones, therefore, the disease can happen at any stage of life and normally tends to happen more towards middle age. Thyroid related disease is the common cause for obesity in the people. These diseases are very common and normally relate to lifestyle and congenital. In support of this, the medical review (page ref. **healthline**) in relation to the primary hypothyroidism is referred to as under :

**“What causes primary hypothyroidism ?**

*The most common cause of primary hypothyroidism is Hashimoto’s thyroiditis. This is an autoimmune disease that causes your immune system to mistakenly attack your thyroid.*

*You might also develop primary hypothyroidism for a number of other reasons.*

*If you had hyperthyroidism (or overactive thyroid), your treatment may have left you with hypothyroidism. A common treatment for hyperthyroidism is radioactive iodine. This treatment destroys the thyroid. A less common treatment for hyperthyroidism involves the*

***surgical removal of part or all of the thyroid. Both can result in hypothyroidism.***

***If you had thyroid cancer, your doctor would have surgically removed your thyroid, or part of it, to treat the cancer.***

***Other possible causes of hypothyroidism include:***

- ***insufficient dietary iodine***
- ***a congenital disease***
- ***certain drugs***
- ***viral thyroiditis***

***In some cases, a woman might develop hypothyroidism after giving birth. According to the National Institutes of Health, the disease is most common in women and people over 60 years old.***

16. The applicant was thoroughly examined by the first Appeal Medical Board and thereafter by the second Appeal Medical Board, and both the medical boards were of the same opinion in respect of the assessment of the disabilities suffered by the applicant. Although the RMB had conceded the disabilities Intermittent WPW Syndrome and Primary Hypothyroidism as aggravated by military service due to dietary habits, however, in the first and second appeal medical boards, after due medical examination of the applicant and the records, held all the disabilities as neither attributable to nor aggravated by military service. The dietary habits which was indicated by the RMB as reason for conceding the disabilities as aggravated might be due to the applicant's psychological problem from

which he was suffering from. There is no evidence, direct or circumstantial, available on record of the case to suggest that all the diseases or any one of them was caused due to stress and strain or any circumstances or reasons related to the military service. Thus, there being no causal connection between the disabilities of the applicant and the military service, we find no reason to interfere with the opinion of the first and second AMBs.

17. Furthermore, we find that in order to become entitled to disability pension, one of the twin requirements of Para 173 of the Pension Regulations for the Army, 1961 which has to be met is that the disability must be assessed @ 20% or more. In the present case, the instant disabilities i.e. Intermittent WPW Syndrome, Primary Hypothyroidism and Obesity, have been assessed at less than 20% by the RMB as well as both the AMBs. So far as the claim of the applicant for grant of disability pension with regard to these disabilities assessed at less than 20% (11-14%) is concerned, the same do not fall within the ambit of disabilities assessed @ 20% and do not

qualify the twin conditions provided in the relevant para of the pension regulations of being assessed @ 20% or more. In this connection, we may refer to the judgments rendered by the Hon'ble Supreme Court in **Union of India & Ors. Vs. Wing Commander S.P. Rathore [Civil Appeal No. 10870/2018]** dated 11.12.2019 and in **Bachchan Prasad Vs. Union of India & Ors. [Civil Appeal No. 2259 of 2012]** dated 04.09.2019, wherein the Apex Court held that an individual is not entitled to disability element if the disability is less than 20%. Relevant portions of the judgment in *Bachchan Prasad (supra)* read 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 element, as his disability is less than 20%.”***

From the above considerations, we hold that the applicant is not entitled to grant of disability pension.

18. In view of the aforesaid, the original application stands dismissed being devoid of merits.

19. There is no order as to costs.

Pronounced in open Court on this 19 day of July,  
2024.

**[JUSTICE RAJENDRA MENON]  
CHAIRPERSON**

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

/ng/