

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

OA 409/2022

Hav Sajiraj R. (Retd.)

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Applicant

Versus

Union of India and Ors.

...

Respondents

For Applicant : Mr. Manoj Kr. Gupta, Advocate

For Respondents : Mr. Arvind Patel, Advocate

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HON'BLE MS. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C.P.MOHANTY, MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant filed this OA praying to direct the respondents to accept the disabilities of the applicant as attributable to/aggravated by military service and grant disability element of pension @40% rounded off to 50% with effect from the date of retirement of the applicant; along with all consequential benefits.

2. The applicant was enrolled in the Indian Army on 27.06.1996 and retired on 30.06.2020 after serving for approximately 24 years of qualifying service. The Release Medical Board dated 29.06.2020 held that the applicant was fit to be discharged from service in composite low medical category SHAPE-3x for the disability - Total Retinal

Detachment with Traumatic Cataract @ 40% for life while the qualifying element for disability pension was recorded as Nil% for life.

3. The claim of the applicant for grant of disability pension was rejected vide letter no. 1463497L/DP-4/Pen dated 28.08.2021 stating that the net assessment qualifying for disability element was Nil% for life, the disability being Neither Attributable Nor Aggravated (NANA). Subsequently, the applicant preferred the first appeal dated 17.08.2021, but the same was not replied. Aggrieved by the aforesaid inaction, the applicant has approached this Tribunal.

4. Placing reliance on the judgement of the Hon'ble Supreme Court in Dharamvir Singh V. UOI & Ors [2013 (7) SCC 36], Learned Counsel for applicant argues 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 Army at various places in different environmental and service conditions in his prolonged service that too after the disability was detected and treated, thereby, any disability at the time of his service is deemed to be attributable to or aggravated by military service.

5. Per Contra, learned counsel for the respondents submits that under the provisions of Para 53(a) of the Pension

Regulations for the Army, 2008, 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 military service and is assessed @ 20% or more.

6. Relying on the aforesaid provision, learned counsel for respondents further submits that the aforesaid disabilities of the applicant were held as NANA and as such, his claim was rejected; thus, the applicant is not entitled for grant of disability pension due to policy constraints.

7. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, we are of the opinion that it is not in dispute that the extent of disability was assessed to be 40% which is the bare minimum for grant of disability pension in terms of Regulation 53(a) of the Pension Regulations for the Indian Army, 2008. The only question that arises in the above backdrop is whether the disability is attributable to or aggravated by the military service in the instant case ?

8. On the perusal of medical records, we find that as per the undertaking by the applicant to the authorities, he sustained a head injury on 15.03.2008 while travelling with DR on two wheeler to Nagpur Railway Station. After one week, he got a black spot in his right eye but since MH

Kamptee does not have a Retina specialist, he underwent laser treatment from Civil Hospital. Furthermore, on a gradual vision of loss, he got admitted to MH Trivandrum and undertook further treatment.

9. A cursory look at the Certificate of Undertaking shows that the document is signed dated 24.06.2020, and the same has been countersigned by the Commanding Officer, which means that this undertaking has been signed at the time of conduct of Release Medical Record. It is in fact questionable on the part of the applicant as well as the respondents that even presuming the accident to be a minor one, neither the applicant has reported that he undergone the laser treatment nor the Respondents have attempted to get the same recorded in the medical records with proper documents.

10. Nevertheless, we find that the applicant was on duty at the time of injury, while travelling to Nagpur Railway Station on an official motorcycle and the disability of the applicant pertains to retina, we find it pertinent to refer to Para 24(c) of the Guide to Medical Officers, 2008:

“(c) Retinal Detachment. Retinal detachment is a degenerative disease. Degeneration is either due to lattice degeneration or myopic degeneration. Trivial trauma can produce retinal detachment in both these conditions. Physical stress of service e.g. organised games, sports activity, training, PT parade, boxing can precipitate an attack. Hence to concede aggravation is appropriate.”

11. An analysis of aforesaid paragraph makes it clear that even in case of trivial trauma leading to physical stress of service like organized games, sports activity, training, PT parade and boxing, retinal detachment can happen, and therefore, irrespective of the cause, aggravation can be conceded as an appropriate measure.

12. Noting the fact that the applicant suffered the injury in the year 2008, which could have been nothing more than a trivial trauma and that he continued to serve in the Army for around 12 more years, we are of the considered opinion that the disability of the applicant should be held as 'aggravated' by military service. Therefore, we are of the view that the applicant is entitled to disability pension on account of disability being assessed @40% as "aggravated by military service".

13. Regarding broadbanding benefits, we find that the Hon'ble Supreme Court in its order dated 10.12.2014 in Union of India Vs. Ram Avtar, [CA 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).

14. Therefore, in view of our analysis, the OA is allowed and Respondents are directed to grant benefit of disability element of pension compositely @ 40% for life, rounded off to 50% in view of judgement of Hon'ble Apex Court in *Union of India versus Ram Avtar (supra)* from the date of discharge i.e. 30.06.2020. The arrears shall be disbursed to the applicant within four months of receipt of this order failing which it shall earn interest @ 6% p.a. till the actual date of payment.

15. Consequently, the O.A. 409/2022 is allowed.

16. No order as to costs.

Pronounced in the open Court on 30 day of July, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

(LT GEN C.P MOHANTY)
MEMBER (A)

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