

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

3.

OA 42/2019

Lt Col Dadan Chaubey (Retd.)

..... Applicant

Versus

Union of India & Ors.

..... Respondents

For Applicant : Mr. Indra Sen Singh, Advocate

Mr. Abhishek Singh, Advocate

For Respondents : Ms. Barkha Babbar, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

HON'BLE LT GEN P. M. HARIZ, MEMBER (A)

ORDER

03.07.2024

Vide our detailed order of even date, we have allowed the main OA No. 42/2019. Faced with this situation, learned counsel for the respondents makes an oral prayer for grant of leave for impugning the order to the Hon'ble Supreme Court in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007.

After hearing learned counsel for the respondents and going through our order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order, therefore prayer for grant of leave to appeal stands dismissed.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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

O.A. No. 42 of 2019

In the matter of :

Lt Col Dadan Choubey (Retd)

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri I.S. Singh, Advocate

For Respondents : Ms. Barkha Babbar, Advocate

CORAM :

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

ORDER

Invoking the jurisdiction of this 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 the respondents to treat the applicant's disabilities as "attributable to, or aggravated by the military service", for life, thereby making him entitled to grant of disability pension;

(b) Direct the respondents to pay disability pension to the applicant @ 50% w.e.f. 21.03.2001 by

rounding off the applicant's disabilities from 40% to 50% under the extant policy;

(c) Direct the respondents to pay 10% interest on the arrears of disability pension w.e.f. 21.03.2001; and

(d) Issue such other order/direction as may be deemed appropriate in the facts and circumstances of the case."

2. The facts of the case, in brief, are that the applicant, having been found medically and physically fit, was commissioned into the Indian Army (Artillery) on 21.03.1976. On 02.03.1988, during BPET practice of the regiment before annual inspection of the unit, the applicant sustained injury i.e. Tear Medial Meniscus (Rt) Knee. A Court of Inquiry (Col) was ordered to be conducted and it was opined therein that the injury was sustained by the applicant during organized training of the regiment. Thereafter, the applicant was also diagnosed with Essential Hypertension in 1989. It is the case of the applicant that because of the two disabilities and seeing no further career progression, the applicant sought for premature retirement from service, which was sanctioned by

the competent authority and the applicant retired from service w.e.f. 20.03.2001. Before his retirement, the applicant was brought before the duly constituted Release Medical Board (RMB) on 20.01.2001, which assessed the disabilities of the applicant i.e. Essential Hypertension @ 20% and 'Tear Medial Meniscus (Rt) Knee' @ 20%, with probable duration of disablement for 'Two years' for both the disabilities. The RMB held the disabilities as 'neither attributable to nor aggravated by military service'.

3. The initial claim for grant of disability pension of the applicant was not processed on the ground of his premature retirement from service as per the then extant policy. Thereafter, as per GoI MoD letter No. 16(05)/2008/D(Pension/Policy) dated 19.05.2017, benefits of disability pension were extended to pre-2006 retirees who were retained in service despite disability and retired voluntarily also. The applicant sent a letter dated 11.05.2017 for grant of disability pension, however, finding no response, the applicant filed an OA being O.A. No. 562/2018 on 12.02.2018 before the Tribunal, which was disposed of directing the respondents to treat the said OA as

an appeal and decide the same within a period of six months. It is the case of the applicant that even after lapse of eight months from the date of the said order, his appeal had not been disposed of. Aggrieved by the same, the applicant has filed the present OA.

4. Learned counsel for the applicant submitted that at the time of joining the service, the applicant was declared fully fit medically and physically and any disability notified during the service would be presumed to be attributable to or aggravated by military service. Learned counsel referred to GoI MoD Policy letter dated 19.05.2017 and the order dated 07.07.2012 passed by the AFT (PB) in **Maj (Retd.) Rajesh Kumar Bhardwaj Vs. UOI & Ors. [O.A. No. 336/2011]** and submitted that the applicant was entitled to disability pension despite being a premature retiree.

5. Learned counsel further submitted that the applicant suffered the present disabilities while in active service and even after the treatment related to his injury sustained on 02.03.1988, he continued to perform military duties inspite of his injured knee and thereafter in 1989, he was diagnosed with Essential Hypertension. Learned counsel submitted

that the RMB failed to consider that the CoI conducted had opined that the applicant had sustained the injury while participating in the organised training of the unit and held the disabilities of the applicant as NANA, which was arbitrary and unjustified.

6. Learned counsel for the applicant further submitted that the instant matter was squarely covered by the judgments of the Hon'ble Supreme Court in **Dharamvir Singh Vs. Union of India & Ors.** [2013 AIR SCW 4236] and submitted that the respondents' action in denying the disability pension was unjustified and unlawful, when the disability recorded by the RMB occurred during the active service. He referred to Rules 5 and 14(b) of the Entitlement Rules, 1982 to submit that the deterioration of health was to be presumed to be due to service conditions; Rule 9 to submit that the onus of proof for condition of non-entitlement is not on the applicant; Rule 19 thereof to contend that if the worsening of a condition persists till the time of discharge, aggravation was to be accepted. He also referred to various rules and regulations in support of the case of the applicant. The learned counsel, therefore, prayed

that the disability in question may be held as attributable to and aggravated by military service and that disability pension may be granted to the applicant. Learned counsel further submitted that the Tribunal had already granted disability pension to many similarly situated persons and the respondents committed grave error in denying the disability pension to the applicant.

7. *Per contra*, the learned counsel for the respondents controverted the submissions made on behalf of the applicant and submitted that although RMB had assessed the disabilities of the applicant namely "Essential Hypertension" and "Tear Medial Meniscus (Rt) Knee" @ 20% for 2 years for each disability; the disabilities were considered as neither attributable to nor aggravated by service. However, it was also mentioned that 'no opinion can be given for disability No. 2 because of non-availability of the Col proceedings. The learned counsel justified the denial of disability pension to the applicant as no causal connection between the disabilities and the service had been conceded. Hence, the learned counsel for the respondents prayed for dismissal of the OA.

8. We have heard the learned counsel for the parties and have perused the records produced before us.

9. In the instant case, it is not disputed that the applicant sustained injury 'Tear Medial Meniscus (Rt) Knee' while participating in BPET training on 02.03.1988. It is also not disputed that the RMB, at Part II Opinion of the Medical Board, at Clause 2, had considered the disabilities of the applicant as NANA. However, in respect of disability no. 2 i.e. Tear Median Meniscus (Rt) Knee, it was mentioned within brackets that "no opinion can be given for dis.2 because of non-availability of C of I proceedings, which was not done ref AFMSF-15 dt. 12 Jul 88".

10. Now the issue to be decided in this case is whether the injury sustained by the applicant can be held to be attributable to or aggravated by service or not so as to hold the applicant eligible for grant of disability pension.

11. We find that the applicant has filed the Court of Inquiry (CoI) proceedings qua the injury sustained by the applicant on right knee on 02.03.1988 as Annexure A-1 to the OA. The CoI which assembled on 16.09.1988 consisted of Presiding Officer Maj BK Sharma and Member Sub V.

Subramani. The applicant has also filed statements of the three witnesses, namely, Major D Choubey, the applicant himself; Witness No. 2 Sub Maj R.S. Thambi and Witness No. 3 BHM (TA) S.S. Vijayan, all of 841 Lt Regiment and all the witnesses recorded their statements.

12. After examining the witnesses, the Col gave its findings to the effect that the applicant participated in the BPET practice in view of the forthcoming Annual Inspection. That before the practice, the applicant had no problem of his legs or knee whatsoever; that the applicant was practising crossing of 9 ft ditch; he crossed the ditch twice but when he attempted to cross the ditch for the third time, he failed to cross the ditch and sustained the knee injury; the applicant was given immediate medication by the MI Room which was approx. 50 meters away and that on subsequent examination by CH (EC) Calcutta, it was diagnosed as 'Tear Medial Meniscus. Based on the said findings, the Col was of the following opinion :

"(a) IC 36681 Y Maj D Choubey sustained the knee injury 'TEAR MEDIAL MENISCUS' under the circumstance which was beyond the controls of the individual.

(b) The above offr sustained the injury while participating in the org. trg. Of the unit and hence nobody is blamed for the occurrence."

From the aforesaid, it is clear that the injury sustained by the applicant was while participating in organised training of the unit and thus it can be considered as attributable to service.

13. As regards the disability ID Primary Hypertension, which has been assessed @ 20% as is evident from the medical record and has been held as 'neither attributable to nor aggravated by military service', the Tribunal has decided the issue of attributability in catena of orders based on the law laid down by the Hon'ble Supreme Court in the case of **Dharamvir Singh Vs. Union of India and others [(2013) 7 SCC 316]**, the Entitlement Rules for Casualty Pensionary Awards, 1982, and observations in Para 28 of the said verdict to the effect :

"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 non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable or 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 of individual's acceptance for 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."

14. Further as per Chapter VI of the 'Guide to Medical Officers (Military Pension), 1980 at Para 28, it is provided as under :

"Hypertension

28. The first consideration should be to determine whether the hypertension is primary (essential) or secondary. If secondary, entitlement considerations should be directed to the underlying disease process (eg Nephritis), and it is unnecessary to notify hypertension separately. It is better to clearly indicate whether it is a case of essential hypertension, giving the evidence in support.

As in the case of atherosclerosis, entitlement of attributability is never appropriate, but where disablement for essential hypertension appears to have arisen or become worse in service, the question whether service compulsions have caused aggravation must be considered. Each case should be judged on its merits taking into account particularly the physical condition on entry into service, the age, the amount and duration of any stress and whether any other service compulsion has operated."

15. The 'Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel 1982, which take effect from 01.01.1982 provide vide Paras 6,8,9, 13 and 14 thereof as under:

"6. Disablement or death shall be accepted as due to military service provided it is certified by appropriate authority that :-

- (a) the disablement is due to a wound, injury or disease which -
- (i) is attributable to military service, or
 - (ii) existed before or arose during military service and has been and remains aggravated thereby,
- This will also include the precipitating / hastening of the onset of a disability.

- (b) The death was due to or hastened by -

xxx xxx

8. **Attributability/aggravation shall be conceded if causal connection between death/disablement and**

military service is certified by appropriate medical authority.

Onus of proof

9. The claimant shall not be called upon to prove the condition of entitlement. He/she will receive the benefit of any reasonable doubt. This benefit will be given more liberally to the claimants in field/afloat service cases.

Injuries

13. In respect of accidents or injuries, the following rules shall be observed :-

- (a) Injuries sustain when the man is "on duty" as defined, shall be deemed to have resulted from military service, but in cases of injuries due to serious negligence/misconduct the question of reducing the disability pension will be considered.
- (b) In cases of self-inflicted injuriesxxx

Diseases

14. In respect of diseases, the following rule will be observed -

(a) Cases in which it is established that conditions of Military Service did not determine or contribute to the onset of the disease but influenced the subsequent courses of the disease, will fall for acceptance on the basis of aggravation.

(b) A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service, if no note of it was made at the time of the individual's acceptance for military service. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.

(c) If disease is accepted 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 are due to the circumstances of duty in military service."

16. It has already been observed by the Tribunal in a catena of cases that military services have their own pressure of rigorous military training and associated stress and strain of the service. It may also be taken into consideration that most of the personnel of the armed forces, during their service, have to perform various duties and difficult activities/exercises, tough tasks, and follow strict disciplinary norms, which put tremendous strain on the individual's physical health. Moreover, in this case, there is no note made in the applicant's medical documents that he was suffering from any disease at the time of joining the service. There is no record to show that the applicant has suffered the disability from any other reason other than service conditions.

17. Having given our thoughtful consideration to the above, we are of the considered view that in view of above judgment and the settled law on the point of attributability, there is evidence available on record to establish the nexus between the injury which resulted in the present disability of the applicant and the service. Similarly, there is a causal

connection between the stress and strain caused by the service condition and the onset of 'Hypertension'. Therefore, we hold that the applicant is entitled to the disability element of disability pension from the date of his retirement as the disabilities are held attributable to and aggravated by military service.

18. Further, with regard to the fact that the duration of disablement assessed by the RMB was for two years only, it is brought forth vide the verdict of the Hon'ble Supreme Court in the case of **Commander Rakesh Pande Vs. Union of India & Ors. [Civil Appeal No. 5970 of 2019]** decided on 28.11.2019, wherein the Hon'ble Apex Court while upholding the decision of the Armed Forces Tribunal granting disability pension for five years to the applicant, taking note of the policy letter dated 07.02.2001, granted the disability for life with the following observations :

"Para 7 of the letter dated 07.02.2001 provides that no periodical reviews by the Resurvey Medical Boards shall be held for reassessment of disabilities. In case of disabilities adjudicated as being of permanent nature, the decision once arrived at will be for life unless the individual himself requests for a review. The appellant is afflicted with diseases which are of permanent nature and he is entitled to disability pension for his life which cannot be restricted for a period of 5 years. The judgment cited by Ms. Praveena Gautam, learned counsel

is not relevant and not applicable to the facts of this case. Therefore, the appeal is allowed and the appellant shall be entitled for disability pension @ 50% for life.

[Emphasis supplied]

19. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is held entitled for the disability element of pension in respect of both the disabilities i.e. Tear Medical Miniscus (Rt) Knee @ 20% and Essential Hypertension @ 20% for life, the composite assessment of which is being calculated as under :

Disability (1) = 20%
Disability (2) $(100-20) = 80 \times 20/100 = 16\%$
Composite Assessment = $20 + 16 = 36\%$

CONCLUSION

20. Therefore, the OA is allowed and the respondents are directed to grant the disability element of pension to the applicant for the both the above disabilities @ 36% for life which is directed to be rounded off to 50% for life from the date of his retirement 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 **Union of India & Ors. Vs. Tarsem Singh [2009 (1) AISLJ 371]**, arrears will be restricted to three years prior to the date of filing of this OA i.e. 28.12.2018.

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

22. There is no order as to costs.

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

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

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

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