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

OA 590/2019

Ex-CHME Vinod Kumar ... **Applicant**

Versus

Union of India & Ors. ... **Respondents**

For Applicant : Shri Praveen Kumar, Advocate

For Respondents : Shri Arvind Patel, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

O R D E R

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant vide the present OA makes the following prayers:-

> ***"(a) Quash and set aside the impugned letters dated 18 Jan 2018.***
> ***(b) Direct the respondents to grant disability pension @30% and rounding off the same to @50% for life as recommended by RMB to the applicant with effect from 01 Feb 2018 i.e. the date of discharge from service with interest @12% p.a. till final payment is made.***
> ***(c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case. "***

BRIEF FACTS

2. The applicant was enrolled in the Indian Navy on 06.01.1988 and was discharged from service on 31.01.2018 on expiry of engagement period. The applicant rendered 30 years and 26 days of qualifying service. The Release Medical Board held on 15.12.2017 found the applicant fit to be released in the low medical S_3A_2(P)PMT for the disability of Seizure Disorder assessed @30% for life while the net qualifying element for disability was recorded as NIL for life on account of the disability being treated as neither attributable to nor aggravated by military service.

3. The claim for the grant of disability element of pension of the applicant was adjudicated and rejected by competent authority and the same was communicated to the applicant vide letter dated 18.01.2018 with an advice that if he was not satisfied with the decision of the competent authority, he may prefer an appeal to the Appellate Committee on First Appeals (ACFA) within six months from the date of receipt of the letter. The applicant had preferred the First Appeal dated 18.05.2018 but the same has not been responded to till the date of filing of this OA, and after getting no response

to his first appeal by the competent authority, the applicant served legal notice which was rejected and communicated to the applicant on 29.03.2019. Aggrieved by this, the applicant had filed this OA. In the interest of justice, it is considered appropriate to take up the present OA for consideration, in terms of Section 21(2)(b) of the AFT, Act 2007.

CONTENTIONS OF THE PARTIES

4. Placing reliance on the judgment of the Hon'ble Supreme Court in ***Dharamvir Singh v. UOI & Ors [2013 (7) SCC 36]***, the learned counsel for the applicant submitted 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 Indian Navy at various places in different environmental and service conditions in his prolonged service and thus thereby, any disability that arose during his service has to be deemed to be attributable to or aggravated by military service.

5. The applicant placed reliance on the verdicts of the Hon'ble Supreme Court in the case of ***Deokinanadan Prasad Vs. State of Bihar AIR 1971 SC page 1409, Dharamvir Singh Vs. Union of India & Ors,*** (2013) 7 SCC

316, ***Sukhvinder Singh Vs Union of India & Ors,*** (2014) STPL (Web) 468 SC, ***Union of India Vs. Rajbir Singh*** 2015(12) SCC 264 and ***Union of India & Ors. Vs. Ram Avtar*** (Civil Appeal No. 418/2012). The applicant also placed reliance on various orders of the AFT, Principal Bench, New Delhi in TA No. 48/2009 in WP(C) No. 6324/2007 titled as ***Nakhat Bharti vs. UOI & Ors.***, in TA No. 208/2010 (WP (C) No. 9764/2009 titled as Krishna Singh Vs. UoI & Ors., in OA No. 90/2014 titled ***Ex AC (U/T) Naresh Kumar Rana vs. UOI & Ors.***, wherein similarly situated personnel were given relief. The applicant placed specific reliance on order of this Tribunal in OA 945/2019 titled as ***Ex LME Mohammed Kawish Haider (Retd.) Vs. Union of India.***

6. Per contra, the learned counsel for the respondents submitted that the sanction of disability pension at the time of discharge from service is based on fulfillment of essential conditions as laid down under Rule 101 & Rule 105-B of Navy (Pension) Regulations, 1964, wherein the disability should be either attributable to or aggravated by the Naval service and the minimum assessment for disabilities mandatorily is required to be 20% or more. The learned

counsel for the respondents further submits that since the applicant's disabilities were NANA as declared by the RMB, his claim for the grant of the disability was rejected by the competent authority and thus the applicant is not entitled to the grant of the disability pension.

ANALYSIS

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 view that it is not in dispute that the extent of disability was assessed to be 30% which is the above the bare minimum for grant of disability pension in terms of Rule 105-B of Navy (Pension) Regulations, 1964. The only question that arises is whether disability suffered by the applicant was attributable to or aggravated by military service.

8. The issue of attributability of the disease is no longer *res integra* in view of the verdict of the Hon'ble Apex Court in ***Dharamvir Singh v. Union of India (supra)***, wherein it is clearly spelt out that any disease contracted during service is presumed to be attributable to military service, if there is no record of any ailment at the time of commission into the Military Service.

9. Para 33 of the Guide to Medical Officers (Military Pensions) 2002, amendment 2008, (GMO(MP) 2008), stipulates the conditions for assessing attributability of 'Epilepsy' and is reproduced as hereunder:

> ***"33. <u>Epilepsy</u>***
>
> ***This is a disease which may develop at any age without obvious discoverable cause. The persons who develop epilepsy while serving in forces are commonly adolescents with or without ascertainable family history of disease. The onset of epilepsy does not exclude constitutional idiopathic type of epilepsy but possibility of organic lesion of the brain associated with cerebral trauma, infections (meningitis, cysticercus, encephalitis, TB) cerebral anoxia in relation to service in HAA, cerebral infraction and hemorrhage, and certain metabolic (diabetes) and demyelinating disease should be kept in mind.***
>
> ***The factors which may trigger the seizures are sleep deprivation, emotional stress, physical and mental exhaustion, infection and pyrexia and loud noise. Acceptance is on the basis of attributability if the cause is infection, service related trauma.***
>
> ***Epilepsy can develop after time lag/latent period of 7 years from the exposure to offending agent (Trauma, Infection, TB). This factor should be borne in mind before rejecting epilepsy cases.***
>
> ***Where evidence exists that a person while on active service such as participation in battles, warlike front line operation, bombing, siege, jungle war-fare training or intensive military training with troops, service in HAA, strenuous***

operational duties in aid of civil power, LRP on mountains, high altitude flying, prolonged afloat service and deep sea diving, service in submarine, entitlement of attributability will be appropriate if the attack takes place within 6 months. Where the genetic factor is predominant and attack occurs after 6 months, possibility of aggravation may be considered."

10. Furthermore, Regulation 423(a) of the Regulations for the Medical Services of the Armed Forces 2010 which relates to 'Attributability to Service' provides as under:-

"423. (a). For the purpose of determining whether the cause of a disability or death resulting from disease is or not attributable to Service. It is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a Field Area/Active Service area or under normal peace conditions. It is however, essential to establish whether the disability or death bore a causal connection with the service conditions. All evidences both direct and circumstantial will be taken into account and benefit of reasonable doubt, if any, will be given to the individual. The evidence to be accepted as reasonable doubt for the purpose of these instructions should be of a degree of cogency, which though not reaching certainty, nevertheless carries a high degree of probability. In this connection, it will be remembered that proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. If the evidence is so strong against an individual as to leave only a remote possibility in his/her favor, which can be dismissed with the sentence "of course it is possible but not in

the least probable" the case is proved beyond reasonable doubt. If on the other hand, the evidence be so evenly balanced as to render impracticable a determinate conclusion one way or the other, then the case would be one in which the benefit of the doubt could be given more liberally to the individual, in case occurring in Field Service/Active Service areas.

(emphasis supplied),

has not been obliterated.

11. The Entitlement Rules for Casualty Pensionary Awards, to the Armed Forces Personnel 2008, which take effect from 01.01.2008 provide vide Paras 6,7,10,11 thereof as under:

"6. Causal connection:
For award of disability pension/special family pension, a causal connection between disability or death and military service has to be established by appropriate authorities.

7. Onus of proof:

Ordinarily the claimant will not be called upon to prove the condition of entitlement. However, where the claim is preferred after 15 years of discharge/retirement/ invalidment/ release by which time the service documents of the claimant are destroyed after the prescribed retention period, the ouns to prove the entitlement would lie on the claimant.

10. Attributability:

(a) Injuries:

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

i) *Injuries sustained when the individual is 'on duty', as defined, shall be treated as attributable to military service, (provided a nexus between injury and military service is established).*

ii) *In cases of self-inflicted injuries white 'on duty', attributability shall not be conceded unless it is established that service factors were responsible for such action.*

(b) Disease:

(i) For acceptance of a disease as attributable to military service, the following two conditions must be satisfied simultaneously:-

(a) that the disease has arisen during the period of military service, and
(b) that the disease has been caused by the conditions of employment in military service.

(ii) Disease due to infection arising in service other than that transmitted through sexual contact shall merit an entitlement of attributability and where the disease may have been contacted prior to enrolment or during leave, the incubation period of the disease will be taken into consideration on the basis of clinical courses as determined by the competent medical authority.

(iii) If nothing at all is known about the cause of disease and the presumption of the entitlement in favour of the claimant is not rebutted, attributability should be conceded on the basis of the clinical picture and current scientific medical application.

(iv) when the diagnosis and/or treatment of a disease was faulty, unsatisfactory or delayed due to exigencies of service, disability caused due to any adverse effects arising as a complication shall be conceded as attributable.

11. Aggravation:

A disability shall be conceded aggravated by service if its onset is hastened or the subsequent

course is worsened by specific conditions of military service, such as posted in places of extreme climatic conditions, environmental factors related to service conditions e.g. Fields, Operations, High Altitude etc."

Thus, the ratio of the verdicts in ***Dharamvir Singh*** Vs. ***Union Of India &Ors*** (Civil Appeal No. 4949/2013) (2013) 7 SCC 316, ***Sukhvinder Singh*** Vs ***UOI &Ors***, dated 25.06.2014 reported in 2014 STPL (Web) 468 SC, ***UOI &Ors.*** *Vs* ***Rajbir Singh*** (2015) 12 SCC 264 and ***UOI & Ors*** Vs ***Manjeet Singh*** (supra), as laid down by the Hon'ble Supreme Court are the fulcrum of these rules as well.

12. In the instant case, although at the time of the onset of disease in 2014, the applicant was on annual leave, however, from the posting profile of the applicant as mentioned in the Personal Statement of the Medical Board Proceedings, the applicant is found to be on afloat service/ field posting prior to the onset of the disease from 10.06.2003 to 30.07.2010 onboard INS Betwa, and furthermore, he was posted to two more afloat service/ field postings during his entire service i.e. INS Vikrant and INS Gomati from 20.11.1988 to 29.04.1997 and 15.03.2001 to 12.03.2003 respectively. Therefore, on

perusal of the record, it is apparent that the applicant was diagnosed with the said disability within four years of the field posting. During such a long service of seven years of the applicant onboard INS Betwa w.e.f. 10.06.2003 to 30.07.2010 the applicant was likely to have been subjected to sleep deprivation, emotional stress, physical and mental exhaustion and loud noise which are considered to be the triggering factors for the disability of Seizure as per Para 33 of the GMO (Mil Pen) 2008 which cannot be overlooked. Also, as per Para 33 of the GMO (Mil Pen) 2008, Epilepsy can develop after a time lag/latent period of seven years from the exposure of the offending agent, thus the likelihood of the onset of the disability seizure of the applicant in September 2014 pursuant to the applicant having been posted onboard INS Betwa from 10.06.2003 to 30.07.2010 cannot be overlooked and the disability of Seizure of the applicant thus, has to be held to be attributable to military service.

13. Regarding broad-banding benefits, we find that the Hon'ble Supreme Court in its order dated 10.12.2014 in ***Union of India v. Ram Avtar, Civil Appeal 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).

CONCLUSION

14. Therefore, in view of our analysis, the OA 590/2019 is allowed and the Respondents are directed to ***grant the benefit of the disability element of pension @ 30% for life*** (for Seizure Disorder) ***rounded off to 50% for life in view of judgment of the Hon'ble Apex Court in Ram Avtar (supra) from the date of discharge i.e*** **31.01.2018.**

15. 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.

16. No order as to costs.

Pronounced in the open Court on 4 day of July, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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