

COURT No.2  
ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

A.

OA 600/2020

Ex LEM (R) Jaideep ..... Applicant  
VERSUS  
Union of India and Ors. .... Respondents

For Applicant : Mr. Ved Prakash, Advocate  
For Respondents : Mr. Ankush Kapoor, proxy for  
Mr. Satya Ranjan Swain, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)  
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER  
29.05.2024

Vide our detailed order of even date we have allowed the OA 600/2020. Learned counsel for the respondents makes an oral prayer for grant of leave to appeal in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007 to assail the order before the Hon'ble Supreme Court. After hearing learned counsel for the respondents and on perusal of the order dated 29.05.2024 in OA 600/2020, 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 to grant leave to appeal. Therefore, the prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)  
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)  
MEMBER (A)

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**HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)**  
**HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)**

**ORDER**

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 the Impugned Letter No. PEN/600/D/LRDO I:07/2019/210711R dated 16.07.2019.*
- (b) *Direct respondents to grant the disability element of pension to the applicant duly rounded off to 50% w.e.f. his date of discharge.*
- (c) *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.*
- (d) *Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost of the application in favour of the applicant and against the respondents.*

## **BRIEF FACTS**

2. The applicant, Ex LEM (R) Jaideep, was enrolled in the Indian Navy on 22.07.2004 and was discharged from the Naval service on 31.07.2019 in Low Medical Category S3A2 (P). The Release Medical Board dated 11.04.2019 held that the applicant was fit to be discharged from service in low medical category S3A2 (P) for the disability of Seizure Disorder assessed @ 20% 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 of the applicant for the disability pension was adjudicated and rejected by the competent authority vide letter No. PEN/600/D/LRDO/1:07/2019/210711R dated 16.07.2019 with an advice that if he was not satisfied with the decision of the Competent Authority, he may prefer a first appeal against the rejection within six months from the date of receipt of the letter. The applicant preferred the First Appeal dated 20.08.2019 against rejection of his claim for grant of the disability element of pension which was rejected vide letter No. PN/0134/DP/1321/19 dated 27.07.2020 after institution of the OA 600/2020 on 24.02.2020 which was filed by the respondents pursuant to order dated 23.11.2023. Aggrieved by the rejection of his claim for disability pension by the respondents, the applicant has filed the present

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 also placed reliance on various verdicts of the Hon'ble Supreme Court in the case of ***Union of India v. Rajbir Singh*** 2015(12) SCC 264, in ***Civil Appeal No 418/2012*** titled ***Union of India vs. Ram Avtar***, in C.A No. 1498/2011 ***Ex Sgt Suresh Kumar Sharma Vs. Union of India***, in ***Union of India & Ors Vs. Angad Singh Titaria*** (AIR 2015 SC 1898) CA No. 11208 and in CA 5605/2010 titled ***Sukhvinder Singh Vs. UoI*** (2014 STPL (web) 468 SC) decided on 25.06.2014 to submit that therein similarly situated personnel were given relief.
6. Per contra, the learned counsel for the respondents submitted that the sanction of disability pension in case of a disability at the time of

discharge from service is based on fulfillment of essential conditions as laid down under Regulation 101 and Regulation 105-B of the Navy (Pension) Regulations, 1964 wherein for getting the disability pension, the disability should be held to be either attributable to or aggravated by the Naval service and the minimum assessment for the disabilities mandatorily is required to be 20% or more. The learned counsel for the respondents further submits that since the applicant's disability was 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, it is apparent that it is not in dispute that the extent of disability was assessed 20% which is the bare minimum for grant of disability pension in terms of Regulation 105-B of Navy (Pension) Regulations, 1964. The only question that arises thus is whether the 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 entering into the Military Service.

9. Applying the above parameters to the present case, we are of the view that the applicant has been discharged from service in low medical category on account of medical disease/disability, the disability must be presumed to have arisen in the course of service which must, in the absence of any reason recorded by the Medical Board, be presumed to have been attributable to or aggravated by Air Force service.

10. 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 onus 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 while '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 contracted 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 *DharamvirSingh vs UOI&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** dated 12.05.2015, Civil Appeal no. 4357-4358 of 2015, as laid down by the Hon'ble Supreme Court are the fulcrum of these rules as well.

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

**“33. Epilepsy**

*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.”*

12. In the instant case, although at the time of the onset of disease, the applicant was on annual leave in New Delhi, 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 29.07.2011 to 01.11.2011 onboard INS Shakti, and furthermore, he was posted to two more afloat service/ field postings during his entire service i.e. INS Nirrekshak and INS Jyoti from 13.11.2005 to 11.05.2008 and 12.05.2008 to 30.06.2010 respectively. Therefore, on perusal of the record, it is apparent that the applicant was posted onboard INS Shakti, i.e. a field posting just 9 days prior to the onset of the said disability. That during the posting of the applicant onboard INS Shakti, he 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 August 2011 pursuant to the applicant having been posted onboard INS Shakti from

29.07.2011 to 01.11.2011 cannot be overlooked and the disability of Seizure of the applicant thus, has to be held to be attributable to military service.

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.

13. Regarding broadbanning benefits, it is essential to advert to the verdict of the Hon'ble Supreme Court vide its order dated 10.12.2014 in ***Union of India v. Ram Avtar, Civil Appeal No. 418 of 2012*** and connected cases, whereby observed individuals similarly placed as the

applicant have been held entitled to rounding off the disability element of pension. Further the Government of India vide its Letter No. F.No.3(11)2010-D (Pen/Legal) Pt V, Ministry of Defence dated 18<sup>th</sup> April 2016 has issued instructions for implementation of the said verdict of the Hon'ble Supreme Court dated 10.12.2014.

### **CONCLUSION**

14. Therefore, in view of our analysis, the OA 600/2020 is allowed and the Respondents are directed to *grant the benefit of the disability element of pension @20% for life* (for Seizure Disorder) *rounded off to 50% for life in view of judgment of the Hon'ble Supreme Court in Union of India versus Ram Avtar (supra) from the date of discharge i.e 31.07.2019.*

15. The corrigendum PPO <sup>be to P</sup> issued by the applicant accordingly and the arrears shall be disbursed to the applicant within three months of receipt of this order failing which it shall earn interest @ 6% p.a. till the actual date of payment.

16. No order as to costs.

Pronounced in the open Court on day 29<sup>th</sup> of May, 2024.

[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)

[JUSTICE ANU MALHOTRA]  
MEMBER (J)

/nmk/