

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

OA 665/2019

Ex Sgt MD Asghar Ali

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri Rakesh Kumar Singh, Advocate

For Respondents : Dr. Vijendra Singh Mahndiyan, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIPERSON
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) To direct the respondents to grant the applicant with the 75% disability from the date of discharge i.e. 01.06.2017.

(b) To direct the respondents to pay arrears from the date of discharge i.e. 01.06.2017 along with interest @12% per annum till its payment to the applicant.

(c) Pass any other or such further order or orders as deemed fit to this Hon'ble Tribunal in order to secure the ends of justice in favour of the applicant."

BRIEF FACTS

2. The applicant was enrolled in the Indian Air Force on 03.05.1994 and discharged from the military service

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on 31.05.2017 under the clause "on transfer to pension establishment other than request (extension denied or airman not attained rank)" after rendering 23 years and 28 days of service. The Release Medical Board (RMB hereinafter) dated 14.12.2016 found the applicant fit to be released in the low medical category A4G4 (P) for the disabilities (i) Bipolar Affective Disorder (Old) @ 40% for life, (ii) Obesity (Old) @ Nil% and (iii) Impaired Fasting Glucose (Old) @ 15-19% for life, compositely assessed @50% for life while the net qualifying element for disability was recorded as NIL for life on account of all the disabilities being treated as neither attributable to nor aggravated by military service

3. On adjudication, the competent authority upheld the recommendations of RMB and rejected the disability pension claim of the applicant which was communicated to the applicant vide letter No. Air HQ/99798/1/75144/05/17/DAV (DP/RMB) dated 08.06.2017 with an advice that he may prefer an appeal to the Appellate Committee within six months from the date of receipt of the letter. The applicant submitted the First Appeal dated 08.11.2017 and the same was rejected and communicated to the applicant vide letter

dated 15.11.2019. Applicant's representation dated 11.09.2017 was replied to rejecting his claim for disability pension vide letter dated 02.07.2018. Thereafter, a second appeal is stated to have been filed on 07.12.2018, which has till date not been responded to by the respondents till the time of filing of this OA. Aggrieved by this, the applicant has filed the instant OA. In the interest of justice, in terms of Section 21(2) of the AFT Act, 2007, we take up the same for consideration.

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 Air Force 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. It is further submitted on behalf of the applicant that the prayers made in the present OA are confined to the grant of

disability element of pension in relation to the disability of Bipolar Affective Disorder (Old) @ 40% for life only and the prayer made for grant of disability element of pension in relation to disabilities (ii) Obesity (Old) @ Nil% and (iii) Impaired Fasting Glucose (Old) @ 15-19% for life, is not pressed.

5. On behalf of the applicant, reliance was also placed on the verdicts of the Hon'ble Supreme Court in the case of **Union of India and Others Vs. Ram Avtar** Civil Appeal No. 418/2012, **Union of India Vs. Rajbir Singh** 2015(12) SCC 264 and **Dharamvir Vs Union of India**, in Civil Appeal No. 4949/2-13 and further reliance is placed on the order of the Armed Forces Tribunal (RB) Lucknow in O.A. No. 389/2012 titled **Shyam Kant Pandey Vs. Union Of India & Ors.**, and on the order of the AFT, Principal Bench, New Delhi in OA No. 68/2010 titled **Subedar Raj Bahadur Singh vs. UOI & Ors.**, wherein similarly situated personnel were given relief.

6. *Per contra*, learned counsel for the respondents submits that under the provisions of Rule 153 of the Pension Regulations for the Indian Air Force, 1961 (Part-1), 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 Indian Air Force service and is assessed 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 having heard 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 40% which is the more than bare minimum for grant of disability pension in terms of Rule 153 of the Pension Regulations for the Indian Air Force, 1961 (Part-1). The only question that arises is whether disability suffered by the applicant was attributable to or aggravated by military service.

8. At the outset, it may be useful to refer to Para 54 of the Guide to Medical Officers (Military Pensions) 2002 as amended in 2008, which provides for details of the factors

which have a bearing on attributability and/or aggravation of mental/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.*

9. There are various factors given in order to assess the attributability and aggravation of the disability as per Para 54 of GMO 2008. In this case, there is no material placed on record to show that the applicant suffered the disease because of any factors related to the service conditions or any factors mentioned in Para 54 of the GMO, 2008. Since the disability of the applicant is of a personality/psychiatric nature and could not have been detected at the time of enrolment, we do not find any reason to hold the same as attributable to or aggravated by military service.

10. The Hon'ble Supreme Court in the case of Ex Cfn Narsingh Yadav Vs. Union of India & Ors. [(2019) 9 SCC 667], held has under :

“Though, the provision of grant of disability pension is a beneficial provision but, mental disorder at the time of recruitment cannot normally be detected when a person behaves normally. Since there is a possibility of non-detection of mental disorder, therefore, it cannot be said that Schizophrenia is presumed to be attributed to or aggravated by military service.

Further, it was held that :

“.....Relapsing forms of mental disorders which have intervals of normality, unless adequate history is given at the time by the member. The Entitlement Rules itself provide that certain diseases ordinarily escape detection including Epilepsy and Mental Disorder, therefore, we are unable to agree that mere fact that Schizophrenia, a mental disorder was not noticed at the time of enrolment will lead to presumption that the disease was aggravated or attributable to military service.”

11. The Hon'ble Supreme Court in the case of Union of India Vs. Ex. Sep. R. Munusamy [2022 SCC OnLine SC 892] held that :

“25. ...what exactly is the reason for a disability or ailment may not be possible for anyone to establish. Many ailments may not be detectable at the time of medical check-up, particularly where symptoms occur at intervals. Reliance would necessarily have to be placed on expert medical opinion based on an in depth study of the cause and nature of an ailment/disability including the symptoms thereof, the conditions of service to which the soldier was exposed.”

12. From the above, it is clear that the disability of the applicant does not fall within the scope of attributability to or aggravation by military service and hence the RMB has rightly considered the disability as neither attributable to nor aggravated by service. We, therefore, do not find any infirmity in its proceedings.

CONCLUSION

13. In view of the aforesaid analysis and the parameters referred to above, there being no infirmity in the opinion of the RMB, the OA 665/2019 stands dismissed being devoid of merits.

14. There is no order as to costs.

Pronounced in the open Court on this day 10th of
December, 2024.

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

**[REAR ADMIRAL DHIREN VIG]
MEMBER (A)**

/nmk/

OA NO. 665/2019
Ex Sgt MD Asghar Ali

IN THE ARMED FORCES TRIBUNAL, (PB), NEW DELHI

O. A. No. ⁶⁶⁵.....OF 2019

IN THE MATTER OF:

Ex SGT MD ASGHAR ALI (751441-L) ... APPLICANT

VERSUS

UNION OF INDIA & ORS ... RESPONDENTS

MEMO OF PARTIES

MD ASGHAR ALI (Ex SGT Sr. No. 751441-L) S/o Md. Yusuf
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..... Applicant

Versus

1. Union of India
Through its Secretary,
Ministry of Defence,
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2. The Chief of Air Staff,
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3. Directorate of Air Veteran,
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4. Jt. CDA (P)

Subroto Park, New Delhi Respondents