

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

O.A. No. 679 of 2019
with
M.A. No. 1274 of 2019

In the matter of :

Ex Hav Rishi Pal

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri Virender Singh Kadian, 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

M.A. No. 1274 of 2019 :

Vide this application, the applicant seeks condonation of 6750 days' delay in filing the OA. In view of the law laid down by the Hon'ble Supreme Court in the case of **Deokinandan Prasad Vs. State of Bihar [AIR 1971 SC 1409]** and in **Union of India & Ors. Vs. Tarsem Singh [2009 (1) AISLJ 371]**, delay in filing the OA is condoned.

MA stands disposed of accordingly.

O.A. No. 679 of 2019 :

Invoking the jurisdiction of the Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed the present OA and in Para 8 thereof, the following prayers have been made :

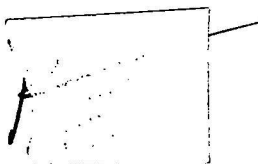
(a) Direct respondents to treat the disability as attributable to or aggravated by military service.

And/or

(b) Direct the respondents to grant disability element of pension to the applicant with benefits of rounding off/broad banding of the disability element, And/or

(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 facts and circumstances of the case along with cost of the application in favour of the applicant and against the respondents.



2. Brief facts of the case are that the applicant, having been found medically and physically fit after thorough medical examination, was enrolled in the Indian Army on 26.06.1985 and was discharged from service with effect from 30.09.2000. However, the applicant was granted service pension for life vide PPO No. S/030977/2000. The applicant was re-enrolled in the Defence Security Corps (DSC) on 01.03.2002 and was discharged from DSC on 28.02.2017 being in permanent low medical category P2(P). The Release Medical Board (RMB) held before his discharge from service in November, 2016 assessed the applicant's disability 'CEREBELLAR DEGENERATION' @ 30% for life and held the same as 'neither attributable to nor aggravated by military service' (NANA). Based on the recommendations of the RMB, the disability pension was denied to the applicant. However, he was granted second service pension vide PPO No. S/11259/2017.

3. The initial claim for grant of the disability pension was considered and rejected by the competent authority advising the applicant to prefer an appeal against rejection within six months' period. The applicant filed an Appeal-cum-

Representation dated 03.09.2018 through his counsel for grant of disability element of pension, which, according to the applicant, was not replied to till the date of filing of the present OA. Hence, this OA.

4. Learned counsel for the applicant submitted that the applicant, at the time of joining the service, was declared medically and physically fully fit and no note was made in his medical record that the applicant was suffering from any disease at that time and any medical disability contracted by him during the course of his service should be treated as attributable/aggravated by the stresses and strains of his service. Learned counsel submitted that the disability in question, which occurred in the year 2015, while being posted to HQ SFC at Delhi Cantt w.e.f. October, 2012 to January, 2017, was a consequence of the duties performed by the applicant where there was storage and workload of missile and other ammunition from which radiation generated exposure and that he had never been into smoking or drinking. Learned counsel further submitted that the applicant had served in extremely stressful and strenuous conditions and different and challenging climate and

environment, different kind of meals, heavy workload during his prolonged service and this put tremendous mental/physical pressure on the applicant and took a toll on his health causing the disability in question.

5. Learned counsel further submitted that while denying the disability pension, the respondents failed to appreciate that as per Rules 5 and 14(b) of the Entitlement Rules for Casualty Pensionary Awards, 1982 (hereinafter referred to as 'Entitlement Rules, 1982'), which provide that in case of discharge from service in low medical category, if no note is on record at the time of joining of service, the deterioration in health is to be presumed to be due to service conditions. He further relied on various provisions of the Entitlement Rules, 1982 to submit that any disease contracted during service, would be presumed to be attributable to military service.

6. Learned counsel placed reliance on the judgments of the Hon'ble Supreme Court in **Dharamvir Singh Vs. Union of India and Ors. [(2013) 7 SCC 316]** and **Union of India & Anr. Vs. Rajbir Singh [2015 (3) SLR 318]** and **Sukhvinder Singh Vs. Union of India [2014 STPL (web) 468 SC]** to submit that the respondents' action in denying

the disability pension is unjustified and unlawful, when the disability recorded by the RMB occurred during the military service and got worsened while performing military duties and it was held by the Hon'ble Supreme Court that an Army personnel shall be presumed to have been in sound physical and mental condition upon entering service except as to physical disability noted or recorded at the time of entrance and in the event of his being discharged from service on medical grounds, any deterioration in his health, which may have taken place, shall be presumed due to service conditions. Learned counsel further contended that when the individual was found medically fit at the time of joining the army but subsequently detected with a disability during service, the respondents have to provide cogent reasons for denying the disability pension and without giving any sufficient cause for denying the disability pension would be unjustified and hence in view of the law laid down by the Hon'ble Apex Court, the opinion of the RMB, the decision of the respondents may be set aside and the applicant may be granted disability pension.

7. *Per contra*, learned counsel for the respondents contended that the applicant is not entitled to the relief claimed since the RMB, being an expert body, found the disability as "Neither Attributable to Nor Aggravated by military service". Learned counsel further submitted that the same does not fulfill one of the twin conditions in terms of Regulation 53(a) of the Pension Regulations for the Army, 1961 (Part-I) of being assessed as 'attributable to or aggravated by military service' and, therefore, the applicant is not entitled to disability pension. He prayed that the OA may be dismissed.

8. We have heard the learned counsel for the parties and have gone through the records. We find that as the disability has been assessed @ 30% for life, hence, the only issue which needs to be considered in this case is as to whether the disability of the applicant is attributable to or aggravated by military service or not.

9. It is an undisputed fact that at the time of joining the Indian Army in 1985, the applicant was found medically and physically fit and the present disability has admittedly occurred in November, 2015 and due to the same, at the

time of discharge from DSC service, the applicant was placed in permanent low medical category 'P2(P)'. The applicant has no history of any specific disease or health issue during service till 2015. Degeneration in the medical sense is the process of deterioration or a change in higher to a lower form, in the body, degeneration can refer to deterioration of cells, tissues or organs, which can be caused by number of factors like cell degeneration, cerebellar degeneration etc. As people age, their bodies and organs deteriorate and become more susceptible to diseases. Some examples of degenerative diseases that can affect the person, Osteoporosis, cognitive issue, Alzheimer etc. In this regard, it would be useful to refer to the scientific review available on the internet for ascertain the factors which may cause the cerebellar degeneration, one such being the report of National Institute of Neurological Disorders and Stroke, wherein it states that :

"What is cerebellar degeneration?"

Cerebellar degeneration is a process in which neurons (nerve cells) in the cerebellum—the area of the brain that controls coordination and balance—deteriorate and die. Diseases that cause cerebellar degeneration also can involve the spinal cord and other areas of the brain, including the medulla oblongata (which is involved in cardiac and respiratory systems), cerebral cortex (involved with thought consciousness, language, emotion, and other processes), and the brain stem.

Cerebellar degeneration may be the result of inherited genetic mutations that alter the normal production of

specific proteins that are necessary for the survival of neurons. The disease also can be acquired (non-genetic). Symptoms may include:

- **A wide-based, unsteady, lurching walk, often accompanied by a tremor in the trunk of the body**
- **Slow, unsteady and jerky movement of the arms or legs**
- **Slowed and slurred speech**
- **Rapid, small movements of the eyes (called nystagmus)**

Diseases that are specific to the brain, as well as diseases that occur in other parts of the body, can cause neurons to die in the cerebellum. Neurological diseases that feature cerebellar degeneration include:

- **Stroke, caused by a blood vessel that is either blocked or bleeding**
- **Cerebellar cortical atrophy, multisystem atrophy, and olivopontocerebellar degeneration – progressive disorders in which cerebellar degeneration is a key feature**
- **Friedreich ataxia and other spinocerebellar ataxias, which are caused by inherited genetic mutations that result in ongoing loss of neurons in the cerebellum, brain stem, and spinal cord**
- **Transmissible spongiform encephalopathies (such as Creutzfeldt-Jakob disease), in which abnormal proteins cause inflammation in the brain, including the cerebellum**
- **Multiple sclerosis, in which damage to the insulating membrane (myelin) that wraps around and protects nerve cells can involve the cerebellum**

Acquired diseases that can cause cerebellar degeneration include:

- **Chronic alcohol abuse that leads to temporary or permanent cerebellar damage**
- **Paraneoplastic disorders, in which cancer in a part of the body produces substances that cause immune system cells to attack neurons in the cerebellum.**

There is no cure for hereditary forms of cerebellar degeneration. Treatment is usually supportive and is based on the person's symptoms or on disorders that may contribute to the cerebellar degeneration."

10. Upon perusal of the record, we do not find any evidence orally or documentary which gives a reason for causing the disability in question and as has been reproduced hereinabove, we are of the view that the disability in question does not qualify to be a disease to be attributable to or aggravated by the service.

11. In view of the above, the OA 679 of 2019 stands dismissed being devoid of merit.

12. There is no order as to costs.

Pronounced in open Court on this 4 day of
September, 2024.

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

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

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