

**COURT No. 1, ARMED FORCES TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**O.A. No. 722 of 2019**

**In the matter of :**

**Ex Sub Hans Raj Rathore**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant : Shri Virender Singh Kadian, Advocate**

**For Respondents : Shri Prabodh Kumar, Advocate**

**CORAM :**

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

**ORDER**

Invoking the jurisdiction of the 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) Quash and set aside the impugned letter No. Air HQ/99798/1/653067/DAV/DP/CC dated 15.03.2019. And/or***

***(b) Direct respondents to treat the disability CAD STE AWWMI assessed @ 30% of the applicant as attributable to or aggravated by***

**military service and grant him disability element of pension with benefits of broad banding/rounding off the same. 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."**

2. The facts of the case in brief are that the applicant, having been found medically and physically fit after thorough medical examination, was enrolled in the Indian Army on 19.08.1987 and discharged from service on 31.08.2017 being in permanent low medical category S1H1A1P2(P)E1. The Release Medical Board (RMB) held on 30.08.2017 assessed the applicant's disability 'CAD STE AWMI' @ 30% for life and the same has been considered as 'neither attributable to nor aggravated by military service' (NANA). Based on the recommendations of the RMB, the disability element of pension has been denied to the applicant.

3. The initial claim for grant of disability element of pension was rejected by the respondents vide letter dated 31.03.2018. The applicant served Appeal-cum-Representation dated 24.09.2018 for grant of disability element of pension. According to the applicant, the same was not replied to by the respondents till the date of filing the OA. Aggrieved by this, the applicant has filed the instant OA.

4. The learned counsel for the applicant submitted that the applicant at the time of enrolment was fully fit medically and physically and no note was made in his medical documents to the effect that he was suffering from any disease at that time, and thus the onset of the disability occurred due to stress and strain of the military service. The learned counsel submitted that the disability in question had occurred on 08.08.2017. The learned counsel explained about the stressful and challenging conditions of service performed by the applicant having served in various places in different environmental and geographical conditions in his prolonged service. The learned counsel also referred to Rules 5 and 14(b) of the Entitlement Rules, 1982 to submit that the deterioration of health is to be presumed to be due to service

conditions; Rule 9 regarding onus of proof which lie on the respondents; Rule 7(b) stipulates that 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 individual's acceptance of military service; Rule 19 thereof to contend that if the worsening of a condition persists till the time of discharge, aggravation is to be accepted and 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 the disability pension may be granted to the applicant.

5. In support of his contentions, the learned counsel relied upon the judgments of the Hon'ble Supreme Court including the case of **Dharamvir Singh Vs. Union of India & Ors. [2013 (7) SCC 316]** and in **Union of India & Anr. Vs. Rajbir Singh [2015 (2) SCALE 371]**, wherein the Apex Court had considered the question with regard to grant of disability pension and after taking note of the provisions of the Pension Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers and Para 423 of the

Regulations for the Medical Services of the Armed Forces, 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 disabilities noted or recorded at the time of entrance and in the event of his being discharged from service on medical grounds being in low medical category, any deterioration in his health, which may have taken place, shall be presumed to be due to service conditions. The Apex Court further held that the onus of proof shall be on the respondents to prove that the disease from which the incumbent is suffering is neither attributable to nor aggravated by military service.

6. *Per contra*, the learned counsel for the respondents submitted that the applicant is not entitled to the relief claimed since the RMB, being an expert body, found the disability of the applicant as "Neither Attributable to Nor Aggravated by Military Service" as the disability had occurred while the applicant was posted in peace area and that there was no exceptional stress and strain due to service. The learned counsel further submitted that the appeal dated

24.09.2018 of the applicant against rejection of disability claim was considered by the ACFA and ACFA in the light of the relevant rules and administrative/medical provisions as well as service/medical records of the applicant, rejected the appeal vide letter dated 29.05.2019 and the same was communicated to the applicant vide letter dated 11.06.2019 and hence the applicant is not entitled to disability element of pension. The learned counsel, therefore, prayed for dismissal of the OA.

#### **ANALYSIS**

7. We have heard the learned counsel for the parties and have gone through the records produced before us. As the disability suffered by the applicant has been assessed at 30%, the issue which needs to be considered is as to whether the disability of the applicant is attributable to and/or aggravated by military service or not.

8. It is an undisputed fact that at the time of joining the Indian Army on 19.08.1987, the applicant was found medically and physically fully fit and the onset of the present disability was on 08.08.2017 shows that the disability was

suffered by the applicant during service after a long spell of about 30 years. .

10. However, on perusal of the medical documents, it has been observed that the applicant, on completion of service/age limit, was discharged from service on 30.08.2017. The RMB considered the disability of the applicant as NANA on the ground that the onset of the disability occurred while the applicant was posted to peace station and there was neither immediate nor prolonged exceptional stress and strain of service. However, it has been also mentioned in the RMB that the applicant was a reformed smoker, high risk factor for CAD. Besides, the summary and opinion of Sr. Adv (Medicine) & Cardiologist, Command Hospital (Central Command), Lucknow dated 18.08.2017 enclosed with the RMB proceedings as Appendix G at Part II- Clinical Assessment, also indicates the medical condition related to heart and declares the applicant to be a 'Reformed Smoker'. Although the applicant has become a reformed smoker, which means earlier he used to smoke regularly/habitually and later he quit smoking, but the

cumulative effect on his health or heart health for that matter, due to prolonged smoking, cannot be overlooked.

11. The medical aspects of smoking and heart disease and vascular disease is available in open domain, such as **NHLBI, NIH** article on <https://www.nhlbi.nih.gov/health/heart/smoking> updated on March 24, 2022, as is available on the internet, to the effect that smoking is harmful to nearly every organ in the body, including heart, blood vessels, lungs, eyes, mouth, reproductive organs, bones, bladder and digestive organs and thus smoking is a major risk factor for many diseases including heart disease; any amount of smoking, even occasional smoking, can cause damage to heart and blood vessels; smoking also increases risk for peripheral artery disease (PAD); when plaque builds up in the arteries that carry blood to the head, organs, arms, and legs and people have an increased risk for coronary heart disease, heart attack and stroke. Another medical review on the webpage of **MEDICALNEWSTODAY** published on January 6, 2023 and on the website at <https://www.medicalnewstoday.com/articles/can-smoking-cause-a-stroke>, also states:

***“Smoking increases the risk of stroke because it causes inflammation and damage to the blood vessels and can lead to a build-up of plaque in the arteries. This makes it harder for the heart to pump blood. Smoking also impacts circulation throughout the body by constricting small arteries”.....***

***“Tobacco smoke contains thousands trusted sources of toxic and cancer-causing chemicals that pass from the lungs into the bloodstream when a person inhales it. These chemicals alter and damage cells and increase the risk of stroke and other cardiovascular diseases”.***

12. Thus, in view of scientific articles in print media and internet indicate that people who are into heavy smoking are more likely to have heart attacks, high blood pressure, blood clots and other disorders of the cardiovascular system. Since there is medical evidence that smoking increases the risk of heart attacks including other diseases related to blood vessels and despite the same, if one decides to smoke out of his free will despite a statutory warning printed on the cigarette packet, we do not consider it appropriate to set aside the decision of the RMB in not conceding attributability or aggravation by service and declaring the disease of the applicant as NANA.

13. We have noted that it is nowhere denied by or on behalf of the applicant that the applicant was a smoker and now he is a reformed smoker as has been stated by the respondents. Further, there is nothing on record which goes to show that the applicant had performed such duties which could have caused the exceptional stress and strain and contributed to the attributability or aggravation of the disability in question. The armed forces personnel undergo a highly competitive selection process and then complete intensive training program that tests their physical fitness, mental fortitude etc. and thus they are well trained to combat/cope up the usual stress and strain related to service. Therefore, we of the opinion that the RMB has rightly assessed the disability of the applicant i.e. CAD STE AWMI as 'neither attributable to nor aggravated by service.'

14. Therefore, whilst considering the issue of attributability/aggravation, all the above factors cannot be overlooked by us. In this regard, we may refer to the order of the Coordinate Bench of this Tribunal in **Gp Capt Alok Goel Vs. Union of India & Ors. [O.A. No. 2361 of 2019]** decided on 21.12.2023, wherein the Tribunal have already gone into

the details on the issue of adverse effect of smoking on the heart health of a person in the case and thus the disability element of pension was declined to that applicant on that ground. In the instant case, the RMB proceedings dated 30.08.2017 also indicated smoking as the risk factor for the onset of disease. We have already explained, by way of scientific article reproduced hereinabove, the harsh and adverse effects of smoking on many organs including heart, brain, blood vessels, lungs etc. and that the people who are smokers are more likely to have heart attacks, high blood pressure, blood clots and other disorders of cardiovascular system.

15. Accordingly, after considering all related aspects, we are of the view that there is no infirmity in the opinion of the RMB considering the disability i.e. CAD STE AWMI as 'neither attributable to nor aggravated by military service'.

16. In view of our analysis hereinabove, since the disability of the applicant were considered as neither attributable to nor aggravated by service by the RMB and as we find no infirmity in the opinion of the RMB, we hold that the

applicant is not entitled to the grant of the disability element of pension for the disability 'CAD STE AWMI'.

**CONCLUSION**

17. In light of the above, OA 722 of 2019 is dismissed being devoid of merit.

18. There is no order as to costs.

Pronounced in open Court on this <sup>th</sup>5 day of August, 2024.

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**[JUSTICE RAJENDRA MENON]**  
**CHAIRPERSON**

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

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