

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

OA 783/2022

Ex LEM (P) Satish Kumar ... Applicant

Versus

Union of India &Ors. ... Respondents

For Applicant : Shri Devendra Kumar, Advocate

For Respondents : Shri Anil Gautam, Sr. CGSC

CORAM :

HON'BLE MR JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN P M HARIZ, MEMBER (A)

ORDER

The applicant vide the present O.A. 174/2020 has made the following prayers:-

- (a) *Quash the impugned Order No. PEN/600/D/LRDO 1:01/2021/213835R dated 01.07.2021.*
- (b) *Direct respondents to grant disability element of pension duly rounded off to 50% to the applicant 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.

2. The applicant was enrolled in the Indian Navy on 31.01.2006 and was discharged on 31.01.2021 on expiry of the engagement with 15 years of qualifying service and was thus sanctioned service pension. The applicant at the time of his discharge, was placed in low medical category S3A2(P) PMT for his disability viz, 'GENERALISED SEIZURE, ICD NO. G40' vide Para 33 of Chapter VI GMO (MP) 2008. The RMB had assessed the disability as 'Neither Attributable to, Nor aggravated by military service' (NANA) with composite assessment of 20% for life, but the net assessment qualifying for disability pension was recorded as NIL for life.

3. The applicant's claim for grant of disability element of pension was rejected by the competent authority vide letter no. PEN/600/D/LRDO/1:01/2021/213835R dated 01.07.2021 (Annexure A-1) with an advise to the applicant to appeal against the rejection order. The representation / first appeal dated 03.08.2021 filed by the applicant was rejected vide IHQ MoD/PDPA letter no. PN/0134/DP/1545/21 dated

20.01.2022 (Annexure R-2), stating that in the light of the relevant rules and the existing medical/administrative provisions, the applicant had been found not entitled to the disability element of pension for the ID- 'GENERALISED SEIZURE, ICD NO. G40'

4. The applicant submitted that at the time of entry into service, he had been subjected to a thorough medical examination conducted by a medical board and had been found medically fit in all aspects and even after selection he underwent a tough medical examination at the Training Centre, and was found medically fit and no note of any disability was made in respect of any disease including the present disability at the time of entry into service. The applicant submits that as per Para 33 of the GMO 2008 the factors which may trigger the seizures are sleep deprivation, emotional stress, physical and mental exhaustion, infection and pyrexia and loud noise. The applicant submits that he served the Indian Navy for a period of 15 years out of which he served onboard ships i.e. afloat (field area) for about 05 years i.e from June 2007 to May 2012 on INS Betwa and the onset of disability was in May 2014 while he was posted aboard INS CIRCARS. The applicant has further submitted that the RMB had violated the provisions of the Entitlement Rules for Casualty Pensionary Awards, 1982, as per which

vide Rule 4 thereof, the applicant ought to have been treated as invalided out and that as per Rule 5 of the said Entitlement Rules, a member of the Armed Forces is 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 that in the event of his subsequent discharge on medical grounds and any deterioration in his health which has taken place has to be due to service. The applicant further submitted that no note of any disability was noted or recorded at the time of his entry in the Indian Navy. Inter alia, the applicant submits that in terms of Rule-8 of the said Rules attributability /aggravation shall be conceded if causal connection between death/disablement and Military Service is certified by the appropriate Medical Authority.

5. Reliance was also placed on behalf of the applicant on Rule 9 of the said Rules to submit to the effect that the claimant shall not be called upon to prove the condition of entitlement and that he is entitled to receive the benefit of any reasonable doubt which has to be given more liberally to the claimant in field/afloat service cases. The applicant submitted that the disability that he suffers from has been wrongly held by the Release Medical Board to be '*neither attributable nor*

aggravated' by military service, in violation of the provisions of the Entitlement Rules for Casualty Pensionary Awards 1982. The applicant further submitted that the RMB also ignored Para 423 of the Regulations for the Medical Services of the Armed Forces 1983, as per which it has been categorically stipulated to the effect that for the purpose of determining whether the cause of a disability or death is or is 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 service/active service area or was under normal peace conditions, though it is essential to establish whether the disability or death bore a causal connection with the 'service conditions and that all evidence both direct and circumstantial, is to be taken into account therein and the benefit of a reasonable doubt, if any, is to be given to the individual. As per the said regulations, 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. The said regulations also stipulate that 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 favour, 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. It is further submitted in the said regulation that 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 cases occurring in field service/active service areas.

6. Reliance was placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in ***Dharamvir Singh Vs UOI & Ors*** (Civil Appeal No 4949 of 2013) 2013 7 SCC 316 and the "Entitlement Rules for Casualty Pensionary Awards 1982', as shown in Appendix-II ,the Government of India, Ministry of Defence letter No. 1(1)/81/D(Pen-C) dated 20.06.1996 and "General Rules of Guide to Medical Officers(Military Pensions) 2002 and Para 423 of the Regulations for the Medical Services of the Armed Forces 1983 with specific reference to the verdict of the Hon'ble Supreme Court in ***Dharamvir Singh (Supra)*** vide Para 28 thereof to the effect:-

"28. A conjoint reading of various provisions, reproduced above, makes it clear that:

(i) Disability pension to be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable or aggravated by military service to be determined under "Entitlement Rules for Casualty Pensionary Awards, 1982" of Appendix-II (Regulation 173).

(ii) A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service. [Rule 5 r/w Rule 14(b)].

(iii) Onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally. (Rule 9).

(iv) If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service. [Rule 14(c)].

(v) If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service. [14(b)].

(vi) If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons. [14(b)]; and

(vii) It is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II of the "Guide to Medical (Military Pension), 2002 – "Entitlement : General Principles", including paragraph 7,8 and 9 as referred to above.

7. Inter alia, reliance was placed on behalf of the applicant on the observations of the Hon'ble Supreme Court in ***Sukhvinder Singh Vs UOI***, (Civil Appeal No. 5605/2010) decided on 25.06.2014, wherein, vide Para-9 thereof it has been observed to the effect:-

"We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Thirdly, there appears to be no provisions authorising the discharge or invaliding out of service where the disability is below twenty per cent and seems to us to be logically so. Fourthly, wherever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension."

8. The applicant has also placed reliance on the verdict of the Hon'ble Supreme Court in ***UOI & Ors. Vs. Angad Singh Titaria*** (AIR 2015 SC 1898) CA No.11208 to contend to similar effect, that in as much as the applicant was found medically and physically fit at the time of joining the Naval service and he being diagnosed with some disease during the service, that deterioration in his health has to be presumed

to have been caused due to service in the light of Rule 5(b), & Rules 4, 5, 9, 14 of the Entitlement Rules for Casualty Pensionary Awards, 1982, It is thus submitted on behalf of the applicant to the effect that the expert body of the Medical board simply recording the conclusion that the disability was not attributable to service, without giving reasons as to why the disease was not deemed to be attributable to service, clearly shows lack of proper application of mind by the Medical Board.

9. Inter alia, the applicant has submitted that the Regulation 101 of Navy (Pension) Regulations, 1964 makes it clear that disability pension may be granted to a person who is invalided out from service on account of disability which is attributable to or aggravated by service and is assessed at 20% or more. Regulation 101 Of Navy (Pension) Regulation, 1964 is as under:-

"Conditions for the grant of disability pension. - Unless otherwise specifically provided, a disability pension may be granted to a person who is invalided from service on account of a disability which is attributable to or aggravated by service and is assessed at twenty per cent, or over.

Explanation. (1) The question whether a disability is attributable to or aggravated by service shall be determined in accordance with the rules contained in Appendix V to these regulations.

Explanation. (2) Service rendered in aid of the civil power shall be treated as service in the Indian Navy for the purpose of this regulation".

10. It was submitted on behalf of the applicant that in terms of Rule 2 of Appendix-V of the Pension Regulations for the Navy, 1964, it is provided to the effect that a person who was released in low medical category to that in which he was recruited will be deemed as invalided out and that the applicant herein who at the time of release was placed in a low medical category is thus entitled to get disability pension.

11. Reliance was placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in ***UOI & Ors. Vs Rajbir*** in Civil Appeal No. 2904/2011, decided on 13.02.2015, to submit to the effect that vide the said verdict in C.A 1498/2011 ***Ex Sgt Suresh Kumar Sharma*** was also decided, in which case the applicant thereof who suffered from the disability of Generalized Seizure was granted the disability element of pension. The applicant further placed reliance on judgement of the Hon'ble Apex Court in ***UOI & Ors Vs Manjeet Singh*** (Civil Appeal No 4357-4358 of 2015 decided on 12.05.2015).

12. The respondents, on the other hand, submitted that though routine medical examination of all the personnel is carried out at the time of entry/induction however, there are possibilities that the diseases which are congenital, hereditary, degenerative and constitutional in nature may not get detected during the routine medical

examination. It is further submitted by the respondents that the onset of the disease during service does not entail that it has to be treated as attributable to naval service unless it is clearly established that the course of the disease was adversely affected due to factors related to conditions of military service. The respondents however submitted that the applicant's case does not necessarily qualify for it to be considered under Rule 4 of the Entitlement Rules for Casualty Pensionary Awards, 1982, because despite him being in low medical category with effect from June 2007, he was allowed to continue in the Navy till completion of his term of engagement and that the said Rule 4 only pertains to those sailors whose disability becomes unsuitable to be employed by the Navy in any of the duties. The respondents further submit that in the instant case Regulation 105-B of the Navy (Pension) Regulations, 1964 would be applicable as individuals who are discharged on expiry of engagement with a disability are treated as a different category and are governed by the said Regulation.

13. The respondents further submitted that a person who retires with any disability on expiry of engagement cannot be treated as having been invalidated out from service and further submitted that Navy Order 08/2011 lays down the procedure to be followed for

retention / invalidation of sailors in low medical category. However in the instant case, the applicant despite being in a low medical category was allowed to continue in Navy till completion of his terms of engagement and was not invalidated on medical grounds but instead was discharged from service on expiry of engagement after rendering a total service of 15 years of qualifying service. The respondents further placed reliance on Rule 8 of Entitlement Rules for Casualty Pensionary Awards, 1982 and submitted that attributability / aggravation shall be conceded only if casual connection between disablement and military service is certified by the competent / appropriate medical authority.

ANALYSIS

14. On a consideration of the submissions made on behalf of either sides, it has to be observed that as laid down by the Hon'ble Supreme Court in ***Ex Cfn Narsingh Yadav*** vide observations in Para 18 thereof, each case has to be examined whether the duties assigned to the individual may have led to stress and strain leading to the disability. The applicant in the case of ***Ex Cfn Narsingh Yadav*** had enrolled in the Indian Army on **02.12.2003** and was discharged from service on **08.05.2007**, when the invaliding board had found him to be suffering from Schizophrenia which disability has been assessed to be @20% for

a period of 5 years and it had been observed vide Para-19 of the Hon'ble Supreme Court to the effect:

"The appellant was a young boy of 18 years at the time of enrolment and had been boarded within 3½ years of his service. Even if he was suffering from any mental disorder prior to enrolment, the same could not be detected as there were intervals of normality. The appellant was posted in peace station as a Vehicle Mechanic. Neither the nature of job nor the place of posting was such which could have caused stress and strain leading to disability as attributed to or aggravated by military service."

15. The facts of the instant case however are not in *pari materia* with the facts of the case of **Ex Cfn Narsingh Yadav (Supra)**. This is so in as much as the applicant herewith had been enrolled in the Indian Navy on **31.01.2006** and was discharged from service in low medical Category on **31.01.2021** after **expiry of engagement of period of 15 years of service**. The nature of duties performed by the applicant, and the postings of the applicant had been put forth in the medical board proceedings dated 22.09.2020 at Part-II to the effect:-

**PART II
PERSONAL STATEMENT**

1. Give details of the service (P=Peace OR F= Field/Operational/Sea Service)

S. No	From	To	Unit	Place/Ship	P/F (HAA/Ops/Sea Service/Mod Fd)
1	JAN 06	NOV 06	CHILKA	ODISHA	P

3	NOV 06	JUN 07	VALSURA	GUJRAT	P
5	JUN 07	MAY 12	BETWA	MAHARASHTR A	F
7	MAY 12	MAY 17	CIRCARS	ANDHRA	P
9	MAY 17	TILL TO DATE	HANSA	GOA	P

"

16. The disability of 'Generalised Seizure' had its onset in May 2014 at INS CIRCARS and the applicant was treated from 20.05.2014 to 31.05.2014. The disability of the applicant detected in May 2014 continued during his release as per RMB dated 22.09.2020. The applicant was placed in low medical category S3A2(P) PMT w.e.f. 06.02.2019 for Generalised Seizure ICD No. G.40 and was excused from BPET/PPT and other duties as mentioned in appendix 'D' to NO 07/14. As per Para-33 of the Chapter-VI Clinical Aspects of Certain diseases of the Guide to Medical Officers (Military Pension) as amended w.e.f. 2008, it is provided as under:-

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, cysticerous, encephalitis, TB)

cerebral anoxia, in relation to service in HAA, cerebral infarction 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."

17. Thus, it is apparent that the onset of the disability was in May 2014 when the applicant was posted at INS CIRCARS from May 2012 – May 2017. As has been stated in Para 33 of the GMO 2008, that epilepsy can develop after a time lag/ latent period of 7 years from the exposure to offending agent i.e. trauma with the factum that prolonged field service is also cause of stress and strain which was the posting of the applicant prior to his posting at INS CIRCARS i.e while he was posted at INS BETWA from Jun 07 to May 12. Furthermore, it has, already been observed by this Tribunal in a catena of cases that peace stations have their own pressure of rigorous military training and associated stress and strain of the service. It may also be taken into consideration that most of the personnel of the armed forces have to

work in the stressful and hostile environment, difficult weather conditions and under strict disciplinary norms. The accumulated stress and strain of such a long military service on the applicant cannot be overlooked. **Thus, the disability of the applicant i.e ID-Generalised Seizure ICD No. G.40 has to be held to be attributable to and aggravated by military service in the facts and circumstances of the instant case.**

18. Furthermore, in terms of Rules- 10 & 11 of the Entitlement Rules for Casualty Pensionary Awards, 2008 which are reproduced here as under:

10. Attributability:

(a) Injuries: xxx

(b) Diseases:

(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) Diseases due to infection arising in service other 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

course 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 Altitudes etc. "

And as well as in view of the observations of the Hon'ble Supreme Court in ***Dharamvir Singh(Supra)*** adverted to herein above, that the applicant who had joined the Indian Navy in a sound, physical condition and having been subsequently discharged from service in a low medical category, the disease that has arisen during service is to be held due to circumstances of duty in military service especially as no note of any disability or disease was recorded at the time of the applicant entry into military service. Likewise, in terms of Rule 2 of Appendix-V of Pension Regulations for the Navy, 1964, a person who was released in low

medical category to that in which he was recruited is to be treated as invalided from service. As per Rule 4 of Appendix-V of the said regulations, it is provided that there must be a causal connection between disablement and Naval service for Attributability or aggravation to be conceded and as per Rule-5 thereof in deciding on the issue of entitlement all the evidence, both direct and circumstantial, will be taken into account and the benefit of reasonable doubt has to be given to the claimant and this benefit will be given more liberally to the claimant in field services.

CONCLUSION

19. In the facts and circumstances of the instant case, we thus observe that there is a causal connection between the disablement and Naval service of the applicant with the onset of disability after his afloat service from **Jun 07 to May 12**, with its onset in **May 2014** in view of the disability being likely to have been latent during the period of seven years prior to its onset expressly as the applicant was afloat during the period of onset. Thus, it is held that the applicant is held entitled to the grant of the benefit of the disability element of pension in relation to the disability of Generalised Seizure G.40 is Attributable to and aggravated by Military Service.

20. The OA is thus allowed. The applicant is thus held entitled to the grant of disability pension for life qua the disability of Generalised Seizure Disorder ICD No. G.40.9 @20% for life which in terms of the verdict of the Hon'ble Supreme Court in **UOI & Ors. vs Ramavtar** in Civil Appeal No. 418/2012 is rounded off to 50% for life , from the date of discharge i.e. 31.01.2021.

21. The respondents are thus directed to calculate, sanction and issue the necessary PPO to the applicant within a period of three months from the date of receipt of copy of this order and the amount of arrears shall be paid by the respondents, failing which the applicant will be entitled for interest @6% p.a. from the date of receipt of copy of the order by the respondents.

Pronounced in the open Court on the 17 day of September, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

/ashok/