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

OA 799/2017

In the matter of :

Ex Nk Braham Parkash ... **Applicant**

Versus

Union of India & Ors. ... **Respondents**

For Applicant : Shri Naresh Ghai, Advocate

For Respondents : Shri Shyam Narayan, Advocate

CORAM:

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

O R D E R

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) By quashing the RMB opinion that disease Generalized Seizure (20%) is NANA, the Applicant be paid Disability Element of Disability Pension, duly rounded off, wef 1-10-2000 with interest @12%."***

BRIEF FACTS

2. The facts in brief are that the applicant was enrolled in the Indian Army on 02.02.1985 and was discharged from service on 30.09.2000 after rendering 15 years, 07 months

and 28 days of service on medical ground under Rule 13(3) III (iii) (v) of the Army Rules, 1954 in low medical category CEE (Permanent). The Release Medical Board (RMB) held on 13.06.2000 assessed the disability of the applicant i.e. 'Generalized Seizure' @ 20% for 5 years and held the same as 'neither attributable to nor aggravated by military service (NANA)' and based on which the applicant was denied disability pension.

3. The initial claim of the applicant for disability pension was rejected by the PCDA (P) which was communicated to the applicant vide Records JAT letter No. 3178986/DP/JR dated 22.01.2001 with an advice to prefer an appeal on such grounds as the applicant deemed fit to put forth to Records JAT within six months from 11.01.2000, if not satisfied with the decision. However, the applicant did not submit any appeal. The applicant thereafter served Appeal-cum-Legal Notice dated 06.04.2017 seeking disability pension which was rejected by the respondents vide letter No. 3178986/DP/RA/JR dated 18.04.2017 on the ground that the disability of the applicant was held to be NANA.

Aggrieved by the same, the applicant has filed the present OA.

CONTENTIONS OF THE PARTIES

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 that he was suffering from any disease at the time of entry into the military service. The learned counsel for the applicant submitted that the respondents failed to consider the prolonged period of service rendered by the applicant in different and difficult geographical and environmental conditions. The learned counsel relied upon the judgments of the Hon'ble Supreme Court in ***Dharamvir Singh Vs. Union of India and others*** [(2013) 7 SCC 316] and in ***Union of India & Ors. Vs. Rajbir Singh,*** (2015) 12 SCC 264, ***Veer Pal Vs. Union of India*** 2013(5)SLR210, ***Union of India Vs. Manjit*** 2015(3)SCT 34SC, wherein it was held that the 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, any deterioration in his health, which may have taken place, shall be presumed to be due to service conditions. The learned counsel further placed reliance on the judgment of Hon'ble Apex Court in ***Sukhvinder Singh Vs. Union of India and Ors.*** ***[2014 STPL (WEB) 468 SC]***, wherein it was held that whenever a member of the armed forces is invalided out of service, it is to be assumed that his disability was to be considered as more than 20% and the same would attract the grant of fifty percent of disability pension. Hence, the learned counsel prayed that the applicant is entitled to the disability pension.

5. *Per contra*, the learned counsel for the respondents submitted that as the applicant's disability was conceded by RMB, which is an expert body, as neither attributable to nor aggravated by military service, the applicant is not entitled to the relief claimed for. The learned counsel further stated that the reasons for rejection of the disability pension have already intimated while rejecting the representation of the applicant. He further pleaded that as per Para 173 of the Pension Regulations for the Army, 1961 (Part-I), the

applicant is not entitled to disability pension and, therefore, the OA deserves to be dismissed.

ANALYSIS

6. We have heard the learned counsel for the parties and have perused the record.

7. In the present case, the applicant was discharged from service on 30.09.2000, while the onset of disease in question occurred in the year 1990, and at the relevant time, the Guide to Medical Officers (Military Pensions) 1980 [hereinafter referred to as 'GMO (MP) 1980'] were in vogue for the purpose of determining the attributabiilty or the aggravation of a disability and accordingly we may refer to Para 36 of the GMO (MP)1980, which reads as under:-

> ***"36. Epilepsy***
>
> ***This is a disease which may develop at any age, but especially within the age limits of puberty and adolescence, without obvious discoverable cause. The persons who develop epilepsy while serving in the Forces are commonly adolescents with or without an ascertainable family history of the disease. The onset of epilepsy after adolescence does not exclude the constitutional idiopathic type of epilepsy, but the possibility of an organic lesion of the brain demands investigations. Epilepsy is not ordinarily aggravated by service conditions, but special consideration will have to be given to particular cases where evidence exists that the persons while on active service were subjected shortly before the onset of the disability to sudden exceptional or unusually severe physical strain***

or mental shock connected with service factors as given in para 35(a). Epilepsy which develops in definite relation to head injury (traumatic epilepsy) of service origin should be regarded as attributable to service factors. Those cases which follow damage to adolescence does not exclude the constitutional idiopathic type of epilepsy, but the possibility of an organic lesion of the brain demands investigations. Epilepsy is not ordinarily aggravated by service conditions, but special consideration will have to be given to particular cases where evidence exists that the persons while on active service were subjected shortly before the onset of the disability to sudden exceptional or unusually severe physical strain or mental shock connected with service factors, as given in para 35(a).

Epilepsy which develops in definite relation to head injury (traumatic epilepsy) of service origin should be regarded as attributable to service factors. Those cases which follow damage to the brain due to disease will require special consideration.

A man might be suffering from epilepsy for a considerable period without the fact being recognised. For working purposes a period of three months would be a reasonable test of whether or not the manifestation of the disease was due to a particular incident of stress and/or strain. In addition, consideration may be given to an individual case where the period lasted as long as six months, if there were some evidence serving to bridge the gap."

the aforesaid para provides that although onset of epilepsy does not exclude constitutional idiopathic type, however, there may be possibility of aggravation of attributabilty towards the service conditions if there is evidence of the person suffering from the disease while on active service. As per sub-Rules (a), (b) and (c) of Rule 14 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 any disease/disability was made at the time of the individual's acceptance for military service. If an Individual has been discharged from service on medical ground and the disease was accepted as having arisen in service, any deterioration in his health shall be presumed to have taken place due to military service, i.e., conditions of service, nature of duty, more particularly, stress and strain of duty and the climatic and environmental circumstances to which he might have been exposed during the period of service. For the determination of the entitlement, the evidence both direct and circumstantial, must be taken into account and the benefit of reasonable doubt, if any, shall be given to the individual. If it is established that the conditions of military service did not determine or contribute to the onset of the disease; but influenced subsequent courses of the disease, that will also fall for acceptance on the basis of aggravation. If the medical opinion does not hold with reasons that the disease could not have been detected on medical examination prior to the enrolment into service, the disease will be deemed to have arisen during service. Moreover,

neither the RMB nor the authority has made any reference to any of the provisions under the rules and regulations or the GMO (MP) 1980 in support of their finding that the disability was NANA and not connected with service. The RMB in a mechanical manner stated that the disability is not connected with service without any reasoning has been made to arrive at such a finding and a finding without reasoning is not a finding sustainable under law. As per the RMB proceedings, there was no family history of 'Generalised Seizure' and the disability was not in existence at the time when the applicant was enrolled in the army. In view of the admitted fact that the onset of the disease was in the year 1990. The RMB as well as the respondents authority ought to have granted the benefit of presumption of attributability or at least aggravation under the benefit of reasonable doubt to the applicant, particularly when there was no medical opinion on record to the effect that the disease 'Generalised Seizure' could not have been detected at the time of enrolment by the medical board. It has already been held by the Tribunal in number of cases that the armed force services have their own pressure and stress

and strain of service conditions. Hence, we find that the stress and strain caused due to the service can be attributed 'Generalised Seizure' to him and further it was aggravated during the period of remaining service till his discharge being in permanent low medical category.

8. 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.

9. The 'Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 1982', (as applicable in the instant case, in view of discharge of the applicant from service on 30.09.2000), provide vide Paras 8, 9, 13, 14 and 19 thereof as under:

"8. Attributability/aggravation shall be conceded if causal connection between death/disablement and military service is certified by appropriate medical authority.

<u>Onus of proof</u>:

9. The claimant shall not be called upon to prove the conditions of entitlement. He/she will receive the benefit of any reasonable doubt. This benefit will be given more liberally to the claimants in field/afloat service cases.

<u>Injuries</u>:

13. In respect of accidents or injuries, the following rules shall be observed:

(a) Injuries sustained when the men is 'on duty', as defined, shall be deemed to have resulted from military service, but in cases of injuries due to serious negligence/misconduct the question of reducing the disability pension will be considered.

(b) In cases of self-inflicted injuries white on duty, attributability shall not be conceded unless it is established that service factors were responsible for such action; in cases where attributability is conceded, the question of grant of disability pension at full or at reduced rate will be considered.

<u>Disease</u>:

14. In respect of diseases, the following rule will be reserved :-

(a) Cases in which it is established that conditions of Military Service did not determine or contribute to the onset of the disease but influenced the subsequent courses of the disease, will fall for acceptance on the basis of aggravation.

(b) 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 individual's acceptance for military service. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.

(c) If a disease is accepted 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.

19. <u>Aggravation</u>: If it is established that the disability was not caused by service, attributability shall not be conceded. However,

aggravation by service is to be accepted unless any worsening in his condition was not due to his service or worsening did not persist on the date of discharge/claim."

thus, the ratio of the verdicts in ***Dharamvir Singh*** Vs. ***Union Of India & 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, as laid down by the Hon'ble Supreme Court are the fulcrum of these rules as well.

10. In the instant case, the applicant suffered with the said disability, onset of which took place in 1990 at peace station at Firozpur, Punjab. However, it is important to note that the applicant was posted at Arunachal Pradesh which is a field posting in a mountainous and hazardous area and is also an high altitude area. The applicant served in Arunachal Pradesh from October 1986 to February 1990 which is roughly about for a period of three and a half years. The onset of the disease took place 10 months after the applicant was posted out of field area posting, at Arunachal Pradesh.

11. It is also important to note that 'Generalised Seizure' can be aggravated by service conditions when the person while on active service are subjected shortly before the onset of the disability to sudden exceptional or unusually severe physical strain or mental shock connected with service factors as given in Para 35 (a) of Guide to Medical Officers (Military Pension) 1980, the factors in Para 35 (a) of the GMO (MP)1980, are as follows:-

> ***"35. Entitlement:***
>
> ***(a) Claims usually arise in the following circumstances-***
>
> ***(i) mental disorder arising in closetime relationship to physical injury/illness.***
>
> ***(ii) mental disorder arising in closetime relationship to operation/medical treatment.***
>
> ***(iii) Prolonged overseas or field service or service afloat.***
>
> ***(iv) participation in battle, warlike frontline operations, bombing, siege, jungle warfare training or Prisoner-of-war state.***
>
> ***(v) intensive military training with troops.***
>
> ***(vi) service in high altitude areas.***
>
> ***(vii) strenuous operational duties in aid of civil power where life is in danger all the time.***
>
> ***(viii) long patrolling duties in mountainous and hazard-ous areas.***
>
> ***(ix) high altitude flying/flying over hazardous area/ territory, particularly if the plane is non-pressurized.***
>
> ***This list is not exhaustive and each case should be judged on its own merits. In every case, a careful consideration should be given as to whether the individual in question would, or would not, have been subjected to similar stress if he had not joined the service."***

12. It is important to note that as per Para 36 of GMO (MP) 1980 that a man might be suffering from 'Epilepsy' for a considerable period without the fact being recognised. For working purposes a period of three months would be a reasonable test of whether or not the manifestation of the disease was due to a particular incident of stress and/ or strain. In addition, consideration may be given to an individual case where the period lasted as long as six months, if there were some evidence serving to bridge the gap. Keeping in view the circumstances that the applicant was posted in a field area (Arunachal Pradesh) just 10 months prior to the onset of the said disability for three and a half years where he would have endured mental stress, exceptional or severe physical stress and strain or mental shock which are connected with service factors as given in Para 35 (a) of GMO (MP) 1980, and hence the said disability of the applicant is considered to be attributable to military service.

13. It is also important to note that GMO 2008, which is a revised version of GMO (MP) 2002 and 1980 wherein there is a provision that 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. Whilst this provision is not there in the GMO (MP) 1980, however, the medical science which brought out this factor in the GMO (MP) 2008 has to be seen in the correct context and such consideration should also be taken into account whilst deciding cases of personnel who are governed by GMO (MP) 1980. In view of the above, the aggravation of the applicant's disability ought to be conceded as the disability occurred within 10 months after being posted out of field area at Arunachal Pradesh.

14. The Tribunal in many cases including O.A. No. 174 of 2020 titled ***Ex SEA 1 (UW Anil Kumar Vs. UOI & Ors.*** decided on 01.05.2023 and O.A. No. 590 of 2019 titled ***Ex CHME Vinod Kumar Vs. UoI & Ors.*** decided on 04.07.2024, have taken into consideration the factors which could trigger the disease like sleep deprivation, emotional stress, physical and mental exhaustion etc. while holding that the disability can be held to be attributable to and aggravated by military service. Even

the scientific articles available on the open domain (one such as ***Mayo Clinic:https://www.mayoclinic.org/diseases-conditions/epilepsy/ symptoms - causes –published on 14.10.2023)*** also suggest certain additional factors which are part of the causes for the disability which are as under:

> ***"Seizure triggers***
>
> ***Seizures can be triggered by things in the environment. Seizure triggers don't cause epilepsy, but they may trigger seizures in people who have epilepsy. Most people with epilepsy don't have reliable triggers that always cause a seizure. However, they often can identify factors that make it easier to have a seizure. Possible seizure triggers include:***
>
> - ***Alcohol.***
> - ***Flashing lights.***
> - ***Illicit drug use.***
> - ***Skipping doses of antiseizure medicines or taking more than prescribed.***
> - ***Lack of sleep.***
> - ***Hormone changes during the menstrual cycle.***
> - ***Stress.***
> - ***Dehydration.***
> - ***Skipped meals.***
> - ***Illness."***

15. In the present case, the respondents have also failed to establish that the applicant had a family history or any reason otherwise that could have caused the disease. Even after having suffered the disease, the applicant continued to serve in the army with tough service conditions while he was posted to Pooh, a field area posting from 23.09.1992

to 24.081995 and CI Ops (J & K) area from 27.08.1998 till his discharge from the military service, and this could have led to aggravation of the disease while in service. In view of the aforesaid discussion and relevant provisions of the rules and regulations, we are of the view that benefit of doubt is to be given to the applicant and his disability is to be held as attributable to and aggravated by military service. Hence, the disability of seizure is held as attributable to or aggravated by service in the instant case.

16. As regards the fact that RMB had assessed the duration of disablement of the applicant for five year only, it is important to refer to the judgment of Hon'ble Supreme Court in the case of ***Commander Rakesh Pande Vs. Union of India & Ors.*** ***[Civil Appeal No. 5970 of 2019]*** decided on 28.11.2019, wherein the Hon'ble Apex Court while interfering with the decision of the Armed Forces Tribunal granting disability pension for five years to the applicant, granted the disability for life and observed as under:-

> ***"Para 7 of the letter dated 07.02.2001 provides that no periodical reviews by the Resurvey Medical Boards shall be held for reassessment of disabilities. In case of disabilities adjudicated as being of permanent nature, the decision once arrived at will be for life unless the individual***

himself requests for a review. The appellant is afflicted with diseases which are of permanent nature and he is entitled to disability pension for his life which cannot be restricted for a period of 5 years. The judgment cited by Ms. Praveena Gautam, learned counsel is not relevant and not applicable to the facts of this case. Therefore, the appeal is allowed and the appellant shall be entitled for disability pension @ 50% for life.

[Emphasis supplied]

it is pertinent to mention here that the Tribunal has followed the aforesaid judgment of the Hon'ble Apex Court in numerous cases where the duration of disablement was for a particular period, but adjudicated it to be considered to be for life, if the disability was of permanent nature.

17. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is held entitled for disability element of pension in respect of disability i.e 'Generalized Seizure' @ 20% for life.

CONCLUSION

18. Therefore, the OA 799/2017 is allowed. The respondents are directed to grant the disability element of pension for the disability of **'Generalized Seizure'** to the applicant @ 20% for life rounded off to 50% for life in view of judgment of the Hon'ble Apex Court in ***Union of India*** versus ***Ram Avtar*** (Civil Appeal No. 418/2012), decided

on 10.12.2014. Accordingly, the respondents are 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. The amount of arrears however are directed to commence to run from a period of three years prior to the institution of the present OA, in terms of the verdict of the Hon'ble Supreme Court in ***Tarsem Singh (supra)*** which 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.

19. There is no order as to costs.

Pronounced in open Court on this 20th day of December, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

/nmk/