COURT No.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A No. 845/2019

Col Bhajan Singh Bisht(Retd) ... Applicant
Versus
Union of India and Ors. ... Respondents

For Applicant : Ms. Pallavi Awasthi, Advocate
For Respondents : Mr. D K Sabat, Advocate

CORAM

HON'BLE MR.JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C.P.MOHANTY, MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has sought following reliefs:

(a) To set aside the order No.B/38046A/421/2018/2018/AG/PS-4 (2nd Appeal) dated 18.03.2019 passed by the respondents.

(b) To direct the respondents to grant the disability pension @40% alongwith arrears to the applicant from the date of his discharge by treating his disability as attributable and aggravated by the military service.

(c) To direct the respondents to grant the benefit of rounding of disability of the applicant from @40% to @50% for life in terms of law settled by Hon'ble Supreme Court of India in Civil Appeal No.418/2012 titled as UOI & Ors. vs. Ram Avtar vide judgment dated 10.12.2014 as well as in a catena of judgments by this Hon'ble Tribunal.

(d) To direct the respondents to pay the due arrears of disability pension with interest @18% p.a. with effect from the date of retirement with all the consequential benefits.

(e) To pass such further order or orders, direction/Directions as this Hon'ble Tribunal may deem fit and proper in accordance with law.

2. The applicant was commissioned in the Indian Army on 11.08.1988 (PC) and retired from the Indian Army on 31.10.2014. The applicant had also rendered service in ranks from 21.09.1979 to 10.06.1988 (08 years and 264 days). At the time of retirement the applicant was found to be in Low Medical Category (LMC) for the disability of Primary Open angle Glaucoma both eyes and was brought before a duly constituted Release Medical Board (RMB) held vide AFMSF-16 dated 16.05.2014. The RMB considered his disability as neither attributable nor aggravated by service. The percentage of disability was assessed @40% for lifelong, while the disability qualifying element for disability pension was recorded as NIL.

3. The case of applicant for grant of disability pension was rejected by the competent authority vide impugned letter No.52334/IC-47812/PUNJAB/MP-6(D)/320/2014/AG/PS-4(Imp-II) dated

16.07.2014 stating that the disability was considered as neither attributable to nor aggravated by military service.

4. The applicant preferred first Appeal on 07.10.2016 against rejection of disability pension claim which was rejected by the Appellate Committee on First Appeals (ACFA) vide AG/PS-4 letter No.12681/IC-47812/T-9/MP6(B)/178/2016/Appeal/AG/PS-4 (Imp-II) dated 30.03.2017. Subsequently, the applicant preferred Second Appeal on 13.08.2018 against rejection of his disability claim which was again rejected by the Second Appellate Committee on Pension (SACP) vide AG/PS-4 letter No. B/38046A/421/2018/AG/PS-4 (2nd Appeal) dated 18.03.2019. Hence this OA has been filed.

5. Learned counsel for the applicant submits that the applicant's disability, i.e. PRIMARY OPEN ANGLE CLOSURE GLAUCOMA (BE) assessed @40% for life, was caused due to performing military duties as no note of disability was made in his service/ medical documents by the medical authority at the time of entry into service.

6. Stressing that the applicant was subjected to thorough medical examination conducted by a board of doctors and when

found medically fit at the Selection Centre in all respects, he was commissioned into the Army, Ld. Counsel submits that the disability of the applicant is required to be treated as attributable to/aggravated by the military service. Placing reliance on the judgement of the Hon'ble Supreme Court in ***Dharamvir Singh*** Vs. ***UOI & Ors*** [2013 (7) SCC 36], Ld. Counsel argues 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 military at various places in different environmental and service conditions in his prolonged service, thereby, any disability at the time of his service is deemed to be attributable to or aggravated by military service.

7. Drawing our attention to Entitlement Rules, 1982, learned counsel submits that in case a person is discharged from service in low medical category, there is codified presumption that the deterioration in health is due to service for disabilities that are contracted in service, and if the worsening of a condition persists till the time of discharge, meaning thereby that if the medical category of an individual remains at a worsened stage at the time of discharge, then aggravation is to be accepted.

8. Further, reliance was placed on the judgement of this Hon'ble Tribunal in ***Hari Singh*** Vs. ***Union of India*** [SLR-2003(5)-500] to submit that at the time of entry into service no note was ever made and the disability that led to his discharge had arisen during his service and as such was attributable to military service, therefore, he is entitled for disability pension as prayed for.

9. Per Contra, learned counsel for the Respondents submits that under the provisions of Regulation 81 of the Pension Regulations for the Indian Army, 2008 (Part-I) (henceforth, referred to as PRA), 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 military service and is assessed @ 20% or more. A Low Medical Category officer who retired on superannuation or on completion of tenure can also be granted disability element under the provision of Regulation 37 of PRA, if he fulfils the twin eligibility conditions as stated except that the percentage of disability should be 20% or more.

10. Relying on the aforesaid provision, learned counsel submits that the disability of applicant was assessed as "neither

attributable to nor aggravated" by military service and not connected with the military service and as such, the applicant's claim was rejected; thus, the applicant is not entitled for grant of disability pension due to policy constraints.

11. It was further stated that the ID was detected in April, 2001 at Chandimandir (Peace) during PME incidentally and the veteran himself did not offer any complaints. The applicant was placed in the low medical category and managed with topical medication. At RMB, both eyes were clear with vision 6/6 uncorrected. ID Primary open angle glaucoma is generally unaffected by service conditions; but exceptionally, an acute attack may be brought on by worry, fatigue or illness and if any of these were considered to be result of service, aggravation may be conceded. In the instant case, onset was insidious with no precipitating factor and there was no evidence of exceptional stress, fatigue or illness related to service. The applicant was managed appropriately at service hospitals with no service related worsening. Hence, ID is conceded as neither attributable to nor aggravated by military service (Para 35, Chapter VI, GMO 2002, amendment 2008)

12. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, the only point for consideration remains whether the applicant is entitled to get relief as sought for in the above mentioned OA for the reasons and grounds stated in the said Original Application.

13. It is not in dispute that the extent of disability was assessed to be above 20% which is the bare minimum for grant of disability pension in terms of the Pension Regulations for the Indian Army, 1961 (Part-I). The only question that arises in the above backdrop is whether disability suffered by the applicant was attributable to or aggravated by military service?

14. Before proceeding further it is essential to refer to Chapter VI of the 'Guide to Medical Officers (Military Pension), 2008 at para-35, which is provided as under:-

> *"35. Glaucoma.*
>
> *(a) Primary Glaucoma. May be either acute or chronic Its onset is generally speaking unaffected by service conditions; but exceptionally, an acute attack may be brought on* ***by worry, fatigue, or illness and, if any of these were considered to be the result of service, aggravation might have to be conceded.***
>
> *The onset may be insidious and it may reveal its presence for the first time as an acutely painful eye, but in the absence of evidence of* ***undue mental or physical stress occasioned by war service, it can not be***

considered that this disease is attributable to or has been aggravated by service factors.

(b) Secondary Glaucoma. This may be due to a service trauma and would be attributable. It may be caused by iritis and intraocular haemorrhage, and entitlement would, therefore, have to be considered in relation to the underlying cause. It may also be the result of an intra-ocular tumour,

In general terms it may be said that, in the great majority of cases there is a disturbance of the intra- ocular circulation to which is frequently added an obstruction to the circulation of the intraocular fluids. The factor common to all cases is the increase of intraocular pressure. In such cases, therefore, the primary condition which is responsible for these changes or sequelae must be considered in relation to entitlement and not the glaucoma per se."

(emphasis supplied)

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 evidence 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.

15. The 'Entitlement Rules for Casualty Pensionary Awards, to the Armed Forces Personnel 2008, which take effect from 01.01.2008 provide vide Paras 6, 7, 10 and 11 thereof as under:

"6. Causal Connection:

For award of disability pension/special family pension, a causal connection between disability or death and military service has to be established by appropriate authorities.

7. Onus of proof:

Ordinarily the claimant will not be called upon to prove the condition of entitlement. However, where the claim is preferred after 15 years of discharge/retirement/ invalidment/ release by which time the service documents of the claimant are destroyed after the prescribed retention period, the ouns to prove the entitlement would lie on the claimant.

10. Attributability:

(a) Injuries:

In respect of accidents or injuries, the following rules Shall be observed:

I. Injuries sustained when the individual is 'on duty', as defined, shall be treated as attributable to military service, (provided a nexus between injury and military service is established).

II. 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.

(b) Disease:

(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) Disease due to infection arising in service other than that transmitted through sexual contact shall merit an entitlement of attributability and where the disease may have been contacted prior to enrolment or during leave, the incubation period of the disease will be taken info consideration on the basis of clinical courses 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 nursing 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 Altitude etc."

Thus, the ratio of the verdicts in ***Dharamvir Singh*** Vs.***UOI & Ors*** (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 and ***UOI & Ors*** Vs. ***Manjeet Singh*** dated 12.05.2015, Civil Appeal no. 4357-4358 of 2015, as laid down by the Hon'ble Supreme Court are the fulcrum of these rules as well.

16. In view of the above, we are of the considered opinion that the disability of Open Angle Glaucoma Both Eyes (Fresh) in respect of the applicant even though it had its origin in a peace area, but the disability was due to the stress and strain of service which occurred during active service in adverse conditions which has not been refuted by the respondents.

17. Regarding broadbanding benefits, we find that the Hon'ble Supreme Court in its order dated 10.12.2014 in ***Union of India*** Vs. ***Ram Avtar,*** Civil Appeal No. 418 of 2012 and connected cases, has observed that individuals similarly placed as the applicant are entitled to rounding off of the disability element of pension. We also find that the Government of India vide its Letter No. F.No.3(11)2010-D (Pen/Legal) Pt V, Ministry of Defence dated 18th April 2016 has issued instructions for implementation of the Hon'ble Supreme Court order dated 10.12.2014 (supra).

18. Therefore, in view of our analysis, OA 845/2019 is allowed and Respondents are directed to grant the benefit of the disability element of pension @40% for life (Open Angle Glaucoma) Both Eyes (Fresh), rounded off to 50% for life in view of the judgement of Hon'ble Apex Court in ***Union of India*** Vs.

Ram Avtar (supra) from the date of discharge, i.e. 31.10.2014. However, in keeping with the law laid down in the case of ***Union of India and others*** Vs. ***Tarsem Singh*** [2008 (8)SCC 649] the arrears shall be restricted to three years prior to the date of filing of OA. [Date of filing of OA: 10.05.2019]. The arrears shall be disbursed to the applicant within four months of receipt of this order failing which it shall earn interest @ 6% p.a. till the actual date of payment.

19. No order as to costs.

20. Miscellaneous pending application, if any, stands disposed of.

Pronounced in the open Court on 24th day of September, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN C.P. MOHANTY]
MEMBER (A)

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