COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 903/2020

Ex LS (GS) Rakesh Kumar	.....	**Applicant**
Versus		
Union of India and Ors.	.....	**Respondents**

For Applicant	:	Mr. Ved Prakash, Advocate
For Respondents	:	Mr.Rajeev Kumar, Advocate

CORAM
HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE LT GEN P.M. HARIZ, MEMBER (A)

O R D E R

This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant, a retired LS (GS) Rakesh Kumar from the Indian Navy, who is aggrieved by the rejection of his claim for disability pension by the respondents vide order dated 24.07.2019.

2. The applicant, having been found medically and physically fit, was enrolled in the Indian Navy on 28.07.2004 and was discharged from service on 31.07.2019 after rendering 15 years and four days of qualifying service. At the time of discharge, the RMB was held on 25.01.2019 which placed the applicant in low medical category i.e. S3A2(H&P) PMT for IDs Bilateral Sensorineural Hearing loss and (ii)

Idiopathic Generalised Epilepsy. The RMB held that ID (i) Bilateral Sensorineural Hearing Loss was aggravated by military service but ID (ii) Idiopathic Generalised Epilepsy was held as being 'neither attributable to nor aggravated by military service' (NANA). The composite disability was assessed as @ 40% with net assessment @nil or life. The initial claim for disability pension of the applicant was rejected vide letter dated 24.07.2019 on grounds that although disability (i) was held as aggravated by military service, but, it was assessed @ 15-19% (less than 20%). Therefore, the applicant was not entitled for disability pension. Aggrieved by the rejection of his claim, the applicant preferred his First Appeal dated 10.09.2019 which was rejected vide letter dated 10.12.2020. Hence, this OA. In the interest of justice, in terms of Section 21 (2) (b) of the AFT Act, 2007, we take up this OA for consideration.

3. The learned counsel for the applicant submitted that law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh*** v. ***Union of India & Others*** reported in (2013) 7 SCC 316, ***Sukhvinder Singh vs. UOI*** Civil Appeal No. 5605 of 2010, The learned counsel for the

applicant has also relied on ***Union of India & Others*** v. ***Rajbir Singh*** (2015) 12 SCC 264 wherein it was held that -

> ***"15. The legal position as stated in Dharamvir Singh's case (supra) is, in our opinion, in tune with the Pension Regulations, the Entitlement Rules and the Guidelines issued to the Medical Officers. The essence of the rules, as seen earlier, is that a member of the armed forces is presumed to be in sound physical and mental condition at the time of his entry into service if there is no note or record to the contrary made at the time of such entry. More importantly, in the event of his subsequent discharge from service on medical ground, any deterioration in his health is presumed to be due to military service."***

4. Further, learned counsel submitted that as per Rule 5 of the Entitlement Rules for Casualty Pensionary Awards, 1982 a member is presumed to have been in sound physical and mental condition upon entering service except to physical disabilities noted or recorded at the time of entrance. Moreover, Regulations 101 of Navy (Pension), 1964 makes it clear that disability pension may be granted to a person who is invalidated out of service on account of disability which is attributable to or aggravated by service and is assessed as 20% or more. Rule 2 mentioned at Appendix V of Pension Regulation 1964 says that a person who is released in low medical category to that in which he was recruited will be deemed as invalided out. In this case the applicant has been released in low

medical category to that in which he was recruited and so his disability was attributable to service. As per Entitlement Rules 1982, Rule 423 and the provisions and judgments the disability of the applicant should have been attributable to service and rounded off to 50%. The applicant was deprived from his right of getting pension wrongfully release.

5. The learned counsel for the respondent submitted that as per RMB, although the disabilities, (i) Bilateral Sensorineural Hearing Loss was considered as aggravated by the Naval Service, but it was assessed @ less than 20% and (ii) Idiopathic Generalized Epilepsy was considered as neither attributable to nor aggravated by the Naval Service with composite assessment @ 40% for life. However, net assessment qualifying for disability pension was assessed as Nil. The counsel further stated that the counsel for the applicant has not pushed for the disability of (i) Bilateral Sensorineural Hearing Loss, therefore only ID(ii) should be considered.

6. The sanction of disability pension in case of a disability at the time of discharge from service is based on fulfillment of essential conditions as laid down under Rule 105-B of the Navy (Pension) Regulations, 1964 wherein the disability should be either

attributable to or aggravated by the Naval service and the minimum assessment for the disabilities mandatorily is required to be 20% or more. Moreover, as per Regulation 105B of Navy Pension Regulation 1964 the disability should be either attributable to or aggravated by the Naval service and minimum assessment for the disability is mandatory 20% or more. Hence, the competent authority rejected the disability pension claim of the applicant.

Consideration

7. During the hearing, the counsel for the applicant submitted that the prayer made in the OA, seeking the grant of disability element of pension in relation to ID (i) Bilateral Sensorineural Hearing Loss, was not being pressed. The issue whether BSHL can be assessed below 20% by a RMB, has been discussed by this Tribunal in the case of ***Ex PO ME Tajinder Singh vs Union of India and Others*** [2023 SCC OnLine AFT 4277] and the matter has been since referred to a Large Bench. The relevant extracts of the AFT(PB) order dated 18.08.2023 in the case of ***Ex PO ME Tajinder Singh*** (Supra) is reproduced below:

> ***Vide order dated 06.07.2023, it was directed as under:-***
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> ***7. On the careful perusal of the material available on record and also the submissions made on behalf of the parties, we are of the view that as per DGAFMS letter***

no.16036/RMB/IMB/DGAFMS/ MA(Pens)/02 dated 14.06.2019, it is clear that the sensor neural hearing loss can be assessed below 20%. However, as the Para 20 of 'Guide to Medical Officers (Military Pension), 2008, in the 'otherwise' category for hearing loss, the minimum assessment has to be at least 20%. The order of AFT Principal Bench in OA 128 8/2017 titled Ex HFO Jaipal Singh Vs. UOI & Ors, decided on 26 July, 2019 allowed the said O.A. and granted disability to the applicant even when the assessment was less than 20% (15 to 19%).

8. In view of the different views taken by different benches, it is recommended that the matter may be placed before the Hon'ble Chairperson for constitution of a larger bench to decide on the issue.

> ***"Whether in view of the DGAFMS letter No.16036/RMB/IMB/DGAFMS/MA(Pens)02 dated 14.06.2009, whereby it is clear that Sensoneural Hearing Loss can be assessed below 20%, it is required to be assessed at not less than 20%, in view of para 20 of the GMP (MP), 2008".***
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> ***The Principal Registrar, AFT (PB), New Delhi shall place the matter accordingly before the Hon'ble Chariperson for further directions as deemed appropriate.***

Pursuant thereto the matter was placed before the Hon'ble Chairperson and the question required to be determined to be placed before the Larger Bench has been so framed and has been uploaded on the website of the Armed Forces Tribunal. However, as has been pointed out by the learned counsel for the applicant there is an error in the date of the DGAFMS letter no. 16036/RMB/IMB/DGAFMS/MA(Pens) /02 which has been mentioned in the question framed as being of the date 14.06.2009 whereas the correct date of 14.06.2019 has already mentioned in Para 7 of the Order dated 06.07.2023 reflected hereinabove.

Though the counsel for the applicant has stated that he is not pressing for ID (ii) Bilateral Sensorineural Hearing Loss, assessed at 15-19%, since the case pertaining to this disability has been

referred to the large bench, the applicant is at liberty to seek review based on the outcome of the Large Bench judgement in this matter. Hence at this stage the only ID (ii) Idiopathic Generalised Epilepsy is being considered.

8. Having heard the rival submissions and perused the records, the question which arises for our consideration is whether the disability of the applicant can be held as attributable to or aggravated by military service which entitles the applicant for disability pension ?

9. The law of attributability is settled by the Supreme Court in the case of ***Dharamvir Singh Vs. Union of India and others*** [(2013) 7 SCC 316], which has been followed in subsequent decisions of the Hon'ble Supreme Court and in the number of orders passed by the Tribunal, wherein the Apex Court had considered the question with regard to grant of disability pension, and after taking note of the Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers(GMO), wherein 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, 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. Relevant paras are reproduced hereunder:

> ***"28. A conjoint reading various of 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 nonbattle casualty and is assessed at 20% or over. The question whether a disability is attributable or aggravated by military service to be determined "Entitlement under 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 mandatory for follow the guidelines laid down in Chapter II of the "Guide to Medical (Military Pension), 2002 "Entitlement: General Principles", paragraph 7,8 and 9 as referred to above."

10. Moreover, it has already been observed by the Tribunal in large number of cases that most of the personnel of the armed forces, during their service, work in the stressful and hostile environment, difficult weather conditions and under strict disciplinary norms. Therefore, these factors must be taken into account while deciding cases for grant of disability pension.

11. Guidelines for assessment of Epilepsy have been spelt out in the Guide to Medical Officers (Military Pension) 2008 in Para 33 thereof which reads to the effect:-

"33. 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, cysticercus,

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 Care 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.

Where evidence exists that a person while on active service such as participation in battles,

warlike front line operation, bombing, siege, jungle war-fare training or intensive military training with troops, service in HAA, strenuous operational duties in aid of civil power, LRP on mountains, high altitude flying, prolonged afloat service and deep sea diving, service in sub- marine, entitlement of aggravation will be appropriate if the attack takes place while serving in those areas."

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

"6. Causal connection:

For award of disability pension/special family pension, a casual 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 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 into 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 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 Altitude etc."

13. 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.*** **Union Of India &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.

14. Furthermore, Regulation 423 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 23 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.

(b). Decision regarding attributability of a disability or death resulting from wound or injury will be taken by the authority next to the Commanding officer which in no case shall be lower than a Brigadier/Sub Area Commander or equivalent. In case of injuries which were self- inflicted or due to an individual's own serious negligence or misconduct, the Board will also comment how far the disablement resulted from self-infliction, negligence or misconduct.

(c). The cause of a disability or death resulting from a disease will be regarded as attributable to Service when it is established that the disease arose during Service and the conditions and circumstances of duty in the Armed Forces determined and contributed to the onset of the disease. Cases, in which it is established that Service conditions did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, will be regarded as aggravated by the service. 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 the individual's acceptance for Service in the Armed Forces. 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.

(d). The question, whether a disability or death resulting from disease is attributable to or aggravated by service or not, will be decided as regards its medical aspects by a Medical Board or by the medical officer who signs the Death Certificate. The Medical Board/Medical Officer will specify reasons for their/his opinion. The opinion of the Medical Board/Medical Officer, in so far as it relates to the actual causes of the disability or death and the circumstances in which it originated will be regarded as final. The question whether the cause and the attendant circumstances can be accepted as attributable to/aggravated by service for the purpose of pensionary benefits will, however, be decided by the pension sanctioning authority.

(e). To assist the medical officer who signs the Death certificate or the Medical Board in the case of an invalid, the CO unit will furnish a report on :

(i) AFMSF-16 (Version - 2002) in all cases

(ii) IAFY-2006 in all cases of injuries.

(f). In cases where award of disability pension or reassessment of disabilities is concerned, a Medical Board is always necessary and the certificate of a single medical officer will not be accepted except in case of stations where it is not possible or feasible to assemble a regular Medical Board for such purposes. The certificate of a single medical officer in the latter case will be furnished on a Medical Board form and countersigned by the Col (Med) Div/MG (Med) Area/Corps/Comd (Army) and equivalent in Navy and Air Force."

(emphasis supplied)

15. The applicant has served in the Indian Navy for 15 years and in so far as the disability ID (ii) Idiopathic Generalised Epilepsy is concerned, as per Para 33 of the GMO (Military Pension) 2008, Epilepsy can develop after a time lag/latent period of seven years

from the exposure of the offending agent, thus the likelihood of the onset of the disability seizure of the applicant in July 2013, pursuant to the applicant having been posted on an afloat assignment onboard INS Ratnagiri from 14.01.2006 to 19.04.2009 cannot be overlooked and the disability of Seizure of the applicant thus, has to be held to be attributable to and aggravated by military service.

16. 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 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 18.04.2016 has issued instructions for implementation of the Hon'ble Supreme Court order dated 10.12.2014 (supra).

17. Therefore, in view of the above analysis, OA 903/2020 is allowed and the respondents are directed to grant the benefit of the disability element of pension compositely assessed @ 20% for life rounded off to 50% for life in view of judgment of the Hon'ble Apex Court in ***Union of India Vs. Ram Avtar*** (supra) from the date of

discharge i.e 31.07.2019. The arrears shall be disbursed to the applicant within three months of receipt of this order failing which it shall earn interest @ 6% p.a. till the actual date of payment. With regard to BSHL, the applicant is at liberty to seek a review based on the outcome of the Large Bench.

18. No order as to costs.

19. Pending miscellaneous application(s), if any, stands closed.

Pronounced in open Court on this 26 day of September 2024.

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

(JUSTICE ANU MALHOTRA)
MEMBER (J)