

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

O.A No. 781 of 2017

No. 1249835 Y Ex. Sep. Bhajan Singh **Applicant**
Vs
Union of India and others **Respondents**

For Applicant : Mr. Anil Srivastava, Advocate
For Respondents : Mr. V. Pattabhi Ram, Advocate and
Col. Ajay Yadav, Officer Legal Cell

CORAM:

HON'BLE MR. JUSTICE VIRENDER SINGH, CHAIRPERSON
HON'BLE AIR MARSHAL B.B.P SINHA, MEMBER (A)

Dated: 01. October, 2019

ORDER

The applicant, Ex. Sep. Bhajan Singh, through the medium of the instant Original Application is seeking the following reliefs:

- (a) To direct the respondents to grant disability pension w.e.f. from the date of his release i.e. 01.12.2004 alongwith 9% interest on the arrears thereof.
- (b) Direct the Respondents to allow broad banding of disability pension to @75% w.e.f. the date of discharge/ invalidation from the DSC alongwith 9% interest on the arrears thereof.
- (c) That the applicant be awarded cost of the litigation @75,000/-.
- (d) To pass any such other and/or further orders as this Hon'ble Tribunal may deem fit and proper in the interest of justice and in the facts and circumstances of the case.

2. The facts of the case, in brief, are that the applicant was enrolled in the Indian Army on 13.02.1969 and was discharged from

service on 01.03.1993. Thereafter, the applicant re-enrolled in the Defence Security Corps (DSC) on 30.11.1994 and was invalided out from DSC service on 30.11.2004, in low medical category on account of amputation of left leg below knee. The Release Medical Board (RMB) held at Military Hospital, Ambala on 23.07.2004 assessed his disability **'PERIPHERAL VASCULAR DISEASE LUMBER SYMPATHECTOMY (LT) OPTD AMPUTATION BEFORE KNEE (LT) M46.2 M51.9 L92.02090'** @30% for life. However, the RMB opined that the disease of the applicant was neither attributable to nor aggravated by military service (NANA). The applicant's claim for grant of disability pension was rejected by the respondents vide order dated 25.05.2007. The applicant's first and second Appeals were also rejected by the respondents vide orders dated 26.03.2008 and 09.03.2009 respectively. Hence the instant Original Application.

3. Learned Counsel for the applicant submitted that the applicant was medically fit when he was enrolled in DSC service and any disability not recorded at the time of re-enrolment should be presumed to have been caused subsequently. The action of the respondents in denying disability pension to the applicant is illegal. In this regard, he relied on the decision of the Hon'ble Supreme Court in ***Dharamvir Singh v. Union of India and others, (2013) 7 SCC 316*** and submitted that for the purpose of determining attributability of the disease to military service, what is material is whether the

disability was detected during the initial pre-commissioning medical tests and if no disability was detected at that time, then it is to be presumed that the disability arose while in service, therefore, the disability of the applicant is to be considered as aggravated by service and he is entitled to get disability pension @ 30% for life and the same is to be broad banded to 50%.

4. On the other hand, learned counsel for the respondents has not filed the Counter Affidavit, however, submitted that though the RMB had assessed the disability of the applicant @ 30%, it opined that the disability is NANA. As such his claim for disability pension has rightly been rejected by the respondents. He submitted that the instant Original Application does not have any merit and the same is to be dismissed.

5. In this case though the Counter Affidavit has not been filed by the respondents, but the Learned Counsel for the respondents has not disputed the Release Medical Board Proceedings which have been filed by the applicant along with the Original Application. Hence, with the consent of learned Counsel for both the parties we proceed to decide the case.

6. Having heard the learned counsel for both the parties and perused the records, the only question that needs to be answered is, whether the disability of the applicant is attributable to or aggravated by military service?

7. We have noted that the only reason for which the disability has been opined as NANA by the RMB is that the disease is an idiopathic disorder, has originated in peace area and there is no close time association with Fd/ CI Ops/HAA tenure and there were no other service related aggravating factors. The disability was first detected on December 2002 whereas the applicant was re-enrolled in DSC on 30.11.1994 i.e. after about more than 07 years of DSC service. We are therefore of the considered opinion that the reasons given in RMB for declaring disease as NANA is very cryptic in nature and do not adequately explain the denial of attributability. We have also noted that the applicant was operated for his disease and after post operation infection and gangrene; his leg was amputated before knee. This disease relates to lack of adequate blood supply in the legs and in an effort to cure the problem, the operation was done. Thus considering all issues we are of the view that benefit of doubt goes to the applicant., Thus we are of the considered opinion that the disability 'PERIPHERAL VASCULAR DISEASE LUMBER SYMPATHECTOMY (LT) OPTD AMPUTATION BEFORE KNEE (LT) M46.2 M51.9 L92.02090' is to be considered as aggravated by military service because of stress and strain of military service in line with the law settled on this matter by the Hon'ble Apex Court in the case of ***Dharamvir Singh (supra)***. Additionally, the applicant will also be eligible for the benefit of rounding off to 50%, in terms of the

decision of Hon'ble Supreme Court in ***Union of India and others v. Ram Avtar*** (Civil Appeal No 418 of 2012 dated 10.12.2014).

8. Resultantly, the O.A. is allowed. The impugned orders are set aside. The applicant's disability '**PERIPHERAL VASCULAR DISEASE LUMBER SYMPATHECTOMY (LT) OPTD AMPUTATION BEFORE KNEE (LT) M46.2 M51.9 L92.02090**' @30% for life, is to be considered as aggravated by military service and his disability is to be rounded off from 30% to 50% for life. The applicant is entitled to disability pension from DSC. Considering the fact that the O.A has been admitted after condoning the delay and laches, therefore, in view of the decision of the Hon'ble Supreme Court in *Shiv Dass vs. Union of India and others*(2007 (3) SLR 445), the arrears of disability pension will be restricted up to a period of three years preceding the date of filing of the O.A. The date of filing of this O.A is 25.04.2017. Ordered accordingly. To be implemented by the respondents within four months from the date of receipt of a copy of this order. Default will invite interest @ 8% per annum.

9. No order as to costs.

(VIRENDER SINGH)
Chairperson

(B.B.P SINHA)
Member (A)

RA 3/2023

The present RA has been filed under Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008, seeking review of the order dated 01.10.2019 in OA 781/2017. The applicant in the OA was enrolled in the Army on 13.02.1969 and was discharged on 01.03.1993 having served for 24 years. He then joined DSC on 30.11.1994 and was medically invalided out on 30.11.2004 on account of amputation of this left leg below the knee. The RMB had assessed his disability at 30% for life and held that it was neither attributable nor aggravated by military service, and thus the applicant was not granted disability pension. This Tribunal vide its order dated 01.10.2019 held that the disability of the respondent (applicant in OA) to be considered as aggravated by military service and had directed the applicants (respondents in OA) to pay disability pension @ 50% for life to the respondent and this was to be implemented within a period of four months from the date of the receipt of a copy of the order, failing which the applicant in the OA was held entitled to interest @ 8% per annum. The Order at Para 7 & 8 reads as under:

7. We have noted that the only reason for which the disability has been opined as NANA by the RMB is that the disease is an idiopathic disorder, has originated in peace area and there is no close time association with Fd/ CI

Ops/HAA tenure and there were no other service related aggravating factors. The disability was first detected on December 2002 whereas the applicant was re-enrolled in DSC on 30.11.1994 i.e. after about more than 07 years of DSC service. We are therefore of the considered opinion that the reasons given in RMB for declaring disease as NANA is very cryptic in nature and do not adequately explain the denial of attributability. We have also noted that the applicant was operated for his disease and after post operation infection and gangrene; his leg was amputated before knee. This disease relates to lack of adequate blood supply in the legs and in an effort to cure the problem, the operation was done. Thus considering all issues we are of the view that benefit of doubt goes to the applicant., Thus we are of the considered opinion that the disability 'PERIPHERAL VASCULAR DISEASE LUMBER SYMPATHECTOMY (LT) OPTD AMPUTATION BEFORE KNEE (LT) M46.2 M51.9 L92.02090' is to be considered as aggravated by military service because of stress and strain of military service in line with the law settled on this matter by the Hon'ble Apex Court in the case of Dharamvir Singh (supra). Additionally, the applicant will also be eligible for the benefit of rounding off to 50%, in terms of the decision of Hon'ble Supreme Court in Union of India and others v. Ram Avtar (Civil Appeal No 418 of 2012 dated 10.12.2014).

8. Resultantly, the O.A. is allowed. The impugned orders are set aside. The applicant's disability 'PERIPHERAL VASCULAR DISEASE LUMBER SYMPATHECTOMY (LT) OPTD AMPUTATION BEFORE KNEE (LT) M46.2 M51.9 L92.02090' @30% for life, is to be considered as aggravated by military service and his disability is to be rounded off from 30% to 50% for life. The applicant is entitled to disability pension from DSC. Considering the fact that the O.A has been admitted after condoning the delay and laches, therefore, in view of the decision of the Hon'ble Supreme Court in Shiv Dass vs. Union of India and others (2007 (3) SLR 445), the arrears of disability pension will be restricted up to a period of three years preceding the date of filing of the O.A. The date of filing of this O.A is 25.04.2017. Ordered accordingly. To be implemented by the

*respondents within four months from the date of receipt of a copy of this order.
Default will invite interest @ 8% per annum.*

2. The applicants in the RA, namely, the Union of India, have now urged before us that in the present case, the respondent (applicant in OA) had neither completed 15 years of service nor was he invalidated/ deemed to be invalidated out of service. Instead, he was discharged from DSC on completion of terms of engagement under the provisions of Army Rule 13 (3) Item III (i) and therefore he is not entitled to the service element of disability pension in terms of existing Govt Policies; hence he could only have been granted disability element of pension and not disability pension itself as it consists of both the service element as well as the disability element. The applicants further stated that the respondent had not fulfilled the requisite qualifying service of 15 years as given in Para 47 of Pension Regulations for the Army 2008 (Part-I) (Para 132 of the Pension Regulations for the Army, 1961) and prayed that the order dated 01.10.2019 passed in OA 781/2017 be modified accordingly. The counsel for the respondent (the applicant in the OA) stated that he had no objection to this, and prayed that the dues be paid at the earliest to the

applicant who is the widow of the original applicant in the OA and it's been more than four years.

3. It is pertinent to place on record the fact that AFT (RB) Jaipur in OA 86/2011 and OA 14/2020, had examined the admissibility of service element of disability pension to DSC personnel who were discharged from service in DSC after completing their terms of engagement and were entitled to disability element.

4. In OA No 86/2011, the original applicant was discharged after 10 years and 23 days of service in DSC being a LMC, with his composite disability assessed at 20%, initially for five years and thereafter for life in the subsequent Medical Board. In a similar manner, the applicant in OA No 14/2020, was discharged after 10 years and 18 days of service, being a LMC, with his disability assessed at 30% for life and held as NANA. Both the applicants were accordingly granted only the disability element of pension, and were not granted the service element. Having examined the cases, the Bench vide its order dated 19.07.2022 referred the matter to a Large Bench. Relevant portion of this order is reproduced below.

"7. In view of the above, it is clear that there is no ambiguity in the eligibility criteria for Service Element of Disability Pension for DSC Personnel who have not

rendered minimum pensionable service and Regulation 179 of Pension Regulation cannot be uniformly applied to personnel of DSC as Regulation 280 is clearly inconsistent with it keeping in view the fact that the individuals are already in receipt of a Service Pension for the former Service rendered in the Army.

8. It is also pertinent to highlight that the Applicants have fulfilled the contractual period of 10 years and further extension of service is regulated by numerous eligibility criteria in which medical category is only one of them. It is clear that the Applicants were discharged from Second Service after completing their mandated terms of engagement and cannot by any stretch of imagination be deemed to be medically boarded out of Service.

9. In view of the myriad issues involved in this case, it is considered appropriate that the case be heard by a Larger Bench of the Principal Bench of AFT for a suitable and appropriate decision.

10. The Applications be decided based on the decision of the Larger Bench of the Principal Bench of Armed Forces Tribunal."

5. The matter has since been referred to a Large Bench vide order of the Hon'ble Chairperson dated 19.07.2022 , with the question '*Whether the applicants are eligible to service element of the disability pension for their second service spell in Defence Service Corps (DSC), even when they are already being granted service pension for their first service in the Army?*'

6. Vide our order dated 17.07.2023 it was held that:

" In view of the issue being pending before the Larger Bench in relation to the grant of the service element of pension for those not completing the qualifying length of service in the second spell of service, the matter is directed to be re-notified on 25.10.2023."

7. Vide our Order dated 11.07.2024 it was held that:

"On behalf of the applicant of the OA 781/2017 has been submitted copy of letter dated 10.05.2023, submitting to the effect that it has been stated therein that there is no condition of minimum qualifying service for the grant of disability pension. In the instant case OA 781/2017 was disposed of vide order dated 01.10.2019 with directions vide Para 8 thereof to the effect:

"8. Resultantly, the O.A. is allowed. The impugned orders are set aside. The applicant's disability 'PERIPHERAL VASCULAR DISEASE LUMBER SYMPATHECTOMY (LT) OPTD AMPUTATION BEFORE KNEE (LT) M46.2 M51.9 L92.02090' @30% for life, is to be considered as aggravated by military service and his disability is to be rounded off from 30% to 50% for life. The applicant is entitled to disability pension from DSC. Considering the fact that the O.A has been admitted after condoning the delay and laches, therefore, in view of the decision of the Hon'ble Supreme Court in Shiv Dass vs. Union of India and others (2007 (3) SLR 445), the arrears of disability pension will be restricted up to a period of three years preceding the date of filing of the O.A. The date of filing of

this O.A is 25.04.2017. Ordered accordingly. To be implemented by the respondents within four months from the date of receipt of a copy of this order. Default will invite interest @ 8% per annum.

9. No order as to costs."

2. RA 3/2023 has been filed by the respondents arrayed to the OA 781/2017 on 12.12.2022 seeking a review and modification of the order dated 01.10.2019 in OA 781/2017 submitting to the effect that the applicant had not completed the requisite qualifying length of service of 15 years in terms of Para 132 of PRA 1961, (Part-I) and Para 47 of PRA 2008 (Part-I) and that the said aspect has not been taken into account. The said issue is also pending sub judice before the Larger Bench in OA 88/2016. On behalf of the applicant it is submitted that the applicant is in a dire state and that at least the disability element of pension till disposal of the RA 3/2023 may be granted.

3. Time is sought on behalf of the respondents seeking presence of the arguing counsel.

4. The matter be re-notified for hearing on 16.07.2024."

8. In view of the plea made by counsel for the applicant that at least the disability element of the disability pension be granted until disposal of this RA 3/2023, and the fact that the respondents have prayed that the applicant in the original OA could only have been granted disability element

of pension and not disability pension, the order of this Tribunal dated 01.10.2019 in OA 781/2017 is modified to the extent that 'disability pension' is replaced by 'disability element'. Thus:-

For

8. Resultantly, the O.A. is allowed. The impugned orders are set aside. The applicant's disability 'PERIPHERAL VASCULAR DISEASE LUMBER SYMPATHECTOMY (LT) OPTD AMPUTATION BEFORE KNEE (LT) M46.2 M51.9 L92.02090' @30% for life, is to be considered as aggravated by military service and his disability is to be rounded off from 30% to 50% for life. The applicant is entitled to disability pension from DSC. Considering the fact that the O.A has been admitted after condoning the delay and laches, therefore, in view of the decision of the Hon'ble Supreme Court in Shiv Dass vs. Union of India and others (2007 (3) SLR 445), the arrears of disability pension will be restricted up to a period of three years preceding the date of filing of the O.A. The date of filing of this O.A is 25.04.2017. Ordered accordingly. To be implemented by the respondents within four months from the date of receipt of a copy of this order. Default will invite interest @ 8% per annum.

The same be read as :-

8. Resultantly, the O.A. is allowed. The impugned orders are set aside. The applicant's disability 'PERIPHERAL VASCULAR DISEASE LUMBER SYMPATHECTOMY (LT) OPTD AMPUTATION BEFORE KNEE (LT) M46.2 M51.9 L92.02090' @30% for life, is to be considered as aggravated by military service and his disability is to be rounded off from 30% to 50% for life. The applicant is entitled to **disability element** from DSC. Considering the fact that the O.A has been admitted after condoning the delay and laches, therefore, in view of the decision of the Hon'ble Supreme Court in Shiv Dass vs. Union of India and others(2007 (3) SLR 445), the arrears of disability pension will be restricted up to a period of three years preceding the date of filing of the O.A. The date of filing of this O.A is 25.04.2017. Ordered accordingly. To be implemented by the respondents within four months from the date of receipt of a copy of this order. Default will invite interest @ 8% per annum.

9. In view of the above and the fact that the issue of admissibility of service element is pending decision by the Larger Bench, we therefore direct the following:-

(a) The disability of applicant in the original OA 781/2017 for 'PERIPHERAL VASCULAR DISEASE LUMBER SYMPATHECTOMY (LT) OPTD AMPUTATION BEFORE KNEE (LT) M46.2 M51.9 L92.02090' @30% for life, be considered as aggravated by military service and he be granted disability element rounded off from 30% to 50% for life.

(b) Subject to the outcome of the Larger Bench the original applicant in OA 781/2017, and the applicants in RA 3/2024 are both granted liberty to pursue their respective cases afresh.

10. RA 3/2023 is accordingly presently disposed of with the above directions.

11. No orders to cost

Pronounced in open Court on this ²⁵ day of September, 2024.


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


JUSTICE ANU MALHOTRA
MEMBER (J)

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