COURT No.3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 1583/2022

WITH

MA 2055/2022 AND MA 3079/2024

WO(T) Ramachandran (Retd) ..... Applicant
VERSUS
Union of India and Ors. ..... Respondents

For Applicant : Mr. Manoj Kr. Gupta, Advocate
For Respondents : Dr. V.S. Mahandiyan, Advocate

Date: 8th July, 2025

CORAM

HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER

MA 2055/2022

Keeping in view the averments made in the application and in the light of the decision of the Hon'ble Supreme Court in the case of *Union of India and Ors.* Vs. *Tarsem Singh* [(2009) 1 AISLJ 371], the delay in filing the OA is condoned. MA stands disposed of.

MA 3079/2024

2. This is an application filed under Rule 33 of the Armed Forces Tribunal (Practice) Rules, 2009 seeking amendment in the cause title of the OA.

3. It is submitted on behalf of the applicant that due to inadvertence the name of the applicant has wrongly been mentioned in the OA as WO BT Rama Chandran whereas as per the official records and the PPO, a copy of which has been annexed as **Annexure A1** to this application, the correct name of the applicant is 'WO Badgujar Tulshiram Ramchandra'. In view of the statement made in the application which is duly supported by an affidavit of the applicant, the MA is allowed and the office is directed to carry out necessary correction in the cause title of the OA. The amended cause title, if not filed, shall be filed. MA stands disposed of.

OA 1583/2022

4. On being denied grant of disability element of pension, the applicant has filed this application under Section 14 of the Armed Forces Tribunal Act, 2007 praying for the following reliefs:

> (a) To direct the respondents to grant the disability element of pension @ 20% broad banded to 50% for life in accordance with the applicable Rules and Law laid down by the Hon'ble Apex Court in Rakesh Pandey (Supra) and/or
>
> (b) In alternate grant disability element based on the squarely covered order of this Hon'ble AFT in Hon Capt Daya Ram (Supra) and conduct re-survey in terms of order passed in Ex Sgt V.S. Yadav and thereafter grant DE for life; and/or

(c) Grant DE relying upon rthe Entitlement Rules, 1862 (Para 423), by setting aside the impugned order and declaring the onset of ID as attributable and aggravated by Military service; and/or

(d) To direct the respondents to pay the due arrears of disability pension with interest @10% p.a. with effect from the date of retirement with all the consequential benefits; and/or

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

5. Having been found fit after detailed medical examination and physical test, the applicant was enrolled in the Indian Air Force on 4th October, 1972 and discharged from service on 31st October, 2004 after putting in approximately 32 years of service.

6. The Medical Board conducted at the time of release diagnosed the applicant with the disability **Ischaemic (RT MCA region)** assessing the same at 20% for two years but held it neither attributable to nor aggravated by military service and accordingly the applicant was denied disability element of pension vide AFRO letter dated 18th November, 2005.

7. It is the contention of the applicant that he was neither supplied with the RELEASE MEDICAL BIOARD proceedings nor the letter rejecting grant of disability element which he obtained under the RTI Act. It is further pleaded that since at the time of

his entry into service he was found in fit medical condition, any disability detected subsequently has to be presumed to have been caused during service unless proved otherwise. It is also contended that the applicant's disability is of permanent nature and has been caused due to stress and strain of service, hence it is attributable to and aggravated by military service.

8. In Support of his contentions learned counsel for the applicant has relied on the judgments of the Hon'ble Supreme Court in the cases of ***Dharamvir Singh*** Vs. ***Union of India and Ors.*** [(2013) 7 SCC 316], ***Union of India and Ors.*** Vs. ***Rajbir Singh*** ((2015) 2 Scale 371) decided on 13th February, 2015, ***Sukhvinder Singh*** Vs. ***Union of India and Ors.*** (2014 STPL (Web) 468 SC) decided on 25th June, 2014 and ***Union of India and Ors.*** Vs. ***Ram Avtar*** (CA No.438/2012) decided on 10th December 2014.

9. Negating the claim of the applicant the respondents have filed a detailed counter affidavit. It is their contention that as the Release Medical Board, after examining the case of the applicant, had conceded the disability as neither attributable to nor aggravated by Air Force Service; the applicant is not entitled to disability element of pension. It is further contended that the

applicant was initially placed in low medical category CEE (Temp) (T-24) for disability Cerebral Infarction (RT) vide AFMSF -15 dated 25th February 1977 and after being reviewed regularly was placed in medical category BEE (Permanent) vide AFMSF-15 dated 27th April, 1979. Further contention of the respondents is that merely because the disease has manifested during military service does not per se establishes that it is attributable to or aggravated by military service. They have also contended that certain constitutional and congenital diseases may manifest later irrespective of military service and thus may not be diagnosed at the time of entry into service. The learned counsel for the respondents further submitted that as the applicant was discharged after attaining the age of superannuation and his disability being considered as NANA, he is not entitled to disability pension.

10. We have heard learned counsel for the parties and have also gone through the medical board proceedings brought on record. On the careful perusal of the material available on record and also the submissions made on behalf of the parties, we are of the opinion that it is not in dispute that the extent of disability was assessed to be 20% which is the bare minimum for

grant of disability pension. The only question that arises for consideration in the above backdrop is whether the disability suffered by the applicant was attributable to or aggravated by military service.

11. We may also note that in the first instance the Release Medical Board granted disability element of pension @ 20% to the applicant only for two years. Neither the Respondents have produced any document nor do we find any document on record evidencing that the applicant was ever asked or put before the Resurvey Medical Board after two years for reassessment of his disability. The onus to call the applicant for reassessment after expiry of two years is on the respondents and not on the applicant.

12. It is common ground that at the time of joining the Indian Air Force the applicant was found medically and physically fit and was discharged from service after the age of superannuation. The present disability has admittedly been diagnosed on 7th May 1975, and as a result thereof the applicant was placed in low medical category (Permanent) at the time of discharge.

13. In view of the settled position of law on attributability, we find that the Release Medical Board has denied attributability to the applicant only by endorsing that the disability is neither attributable to nor aggravated by military service it being constitutional. This reasoning of Release Medical Board is not convincing and doesn't reflect the complete truth on this matter. The applicant was enrolled into the Indian Air Force in the year 1972 and the onset of the disability as per the medical documents available on record is in the year 1976. The law on the issue of attributablity of the disease has already been settled by the Supreme Court in the case of ***Dharamvir Singh*** (Supra) wherein the Apex Court, considering the question with regard to grant of disability pension, after taking note of the provisions of the Pension Regulations, Entitlement Rules for Casulity Pensionry Award 1982 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, held that an Army Personnel shall be presumed to have been in sound physical and medical condition upon entering into service expect any physical disability 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 due to service conditions. The Hon'ble Supreme Court further held that the onus of proof shall be on the respondents to prove that the disease from which the individual is suffering is neither attributable to nor aggravated by military service. The relevant extract of the judgment reads as under:

> *"31. In the present case it is undisputed that no note of any disease has been recorded at the time of the appellant's acceptance for military service. The respondents have failed to bring on record any document to suggest that the appellant was under treatment for such a disease or by hereditary he is suffering from such disease. In the absence of any note in the service record at the time of acceptance of joining of the appellant it was incumbent on the part of the Medical Board to call for records and look into the same before coming to an opinion that the disease could not have been detected on medical examination prior to the acceptance for military service, but nothing is on the record to suggest that any such record was called for by the Medical Board or looked into it and no reasons have been recorded in writing to come to the conclusion that the disability is not due to military service. In fact, non-application of mind of Medical Board is apparent from clause (d) of Para 2 of the opinion of the Medical Board, which is as follows:*
>
> *"(d) In the case of a disability under © the Board should state what exactly in their opinion is the cause thereof.*
>
> *YES*
>
> *Disability is not related to military service"*
>
> *xx xx xx*
>
> *33. In spite of the aforesaid provisions, the Pension Sanctioning Authority failed to notice that the Medical Board had not given any reason in support of its opinion,*

particularly when there is no note of such disease or disability available in the service record of the appellant at the time of acceptance for military service. Without going through the aforesaid facts the Pension Sanctioning Authority mechanically passed the impugned order of rejection based on the report of the Medical Board. As per Rules 5 and 9 of the Entitlement Rules for Casualty Pensionary Awards, 1982, the appellant is entitled for presumption and benefit of presumption in his favour. IN the absence of any evidence on record to show that the appellant was suffering from "generalized seizure (epilepsy)" at the time of acceptance of his service, it will be presumed that the appellant was in sound physical and mental condition at the time of entering the service and deterioration in his health has taken place due to service.

34. As per Rule 423(a) of the General Rules for the purpose of determining a question whether the cause of a disability or death resulting from disease 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 under normal peace conditions. "Classification of diseases" have been prescribed at Chapter IV of Annexure I; under Para 4 post-traumatic epilepsy and other mental changes resulting from head injuries have been shown as one of the diseases affected by training, marching, prolonged standing, etc. Therefore, the presumption would be that the disability of the appellant bore a causal connection with the service conditions."

It is thus proved beyond all reasonable doubts that at the time the applicant entered into military service, the type of disease/disability with which the applicant was discharged did not exist.

14. We, therefore, are of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant and the disability of the applicant should be considered as attributable to and aggravated by military service.

15. In so far as the disability of the applicant which was considered to be of permanent nature but assessed for a particular period, i.e., two years is concerned, it is important to refer the judgment of the Hon'ble Supreme Court in the case of Cdr *Rakesh Pande* Vs. *Union of India and Ors.* (Civil Appeal No.5970/2019 decided on 28th November, 2019) wherein the Hon'ble Supreme Court while interfering with the decision of 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."*

16. In view of the aforesaid judicial pronouncements and parameters referred herein above the applicant is held entitled for disability element of pension in respect his disability, i.e., *Ischaemic* (RT MCA Region) assessed by the Release Medical Board @ 20% for life long.

17. The OA thus deserves to be allowed, hence allowed. The disability of the applicant i.e. **Ischaemic** (RT MCA Region) is to be considered as attributable to and aggravated by Air Force service. The respondents are directed to grant disability element of pension to the applicant @20% for life which in view of Hon'ble Supreme Court judgment in the case of **Ram Avtar** (supra) would stand rounded off from 20% to 50% for life. The respondents are directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 6% per annum till actual payment. However, the arrears shall be restricted to three years prior to the date of filing of this OA in view of the judgment of the Hon'ble Supreme Court in the case of ***Tarsem Singh*** (Supra).

18. No order as to costs.

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

Pronounced in open Court on this 8th day of July, 2025.

(JUSTICE NANDITA DUBEY)
MEMBER (J)

(RASIKA CHAUBE)
MEMBER (A)

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