

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

OA 1115/2019 WITH MA 1808/2019

Sep Dharamvir (Retd) ... Applicant
Versus ...
Union of India and Ors. ... Respondents

For Applicant : Mr. Virender Singh Kadian, Advocate
For Respondents : Gp Capt Karan Singh Bhati, Sr. CGSC

CORAM

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

ORDER

MA 1808/2019

Keeping in view the averments made in the application and in the light of the decision in *Union of India and others Vs. Tarsem Singh* (2009(1) AISLJ 371), the delay in filing the OA is condoned.

2. The MA stands disposed of.

OA 1115/2019

3. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant filed this OA praying to direct the respondents to consider his disability as attributable to/aggravated by military service and grant disability element of pension @20% rounded off to 50% with effect from the date of retirement of the applicant; along with all

consequential benefits.

4. The applicant was enrolled in the Indian Army on 15.06.1993 and was discharged from service on 01.10.2005 being in permanent low medical category after rendering 12 years 03 months and 16 days of service. The Release Medical Board was conducted on 08.07.2005, wherein his disability "NON CORRHOTIC PORTAL HYPERTENSION" was considered as Neither Attributable to Nor Aggravated(NANA) by Military Service and percentage of disablement was assessed @ 20% for life.

5. The initial claim for disability pension of the applicant was adjudicated by the competent authority which rejected his claim vide its letter no. G-3/85/80/3-06 dated 28.06.2006, but the service element of disability pension was granted to the applicant for life wef 01.10.2005 vide PPO No. D/010193/2006(ARMY) dated 28.06.2006, on the ground that the applicant was invalided out from service.

6. The applicant preferred an appeal dated 22.01.2007 against the rejection of disability element of pension, which was rejected by the competent authority vide their letter No. B/40502/146/07/AG/PS-4 (Imp-II) dated 08.10.2007. Subsequently, applicant preferred a legal notice No.

VSK/21/02/2019 dated 01.02.2019, wherein again his claim was rejected vide letter no. 13986356L Pen/DP Corres dated 23.02.2019. Aggrieved by the aforesaid rejection, the applicant has approached this Tribunal.

7. Placing reliance on the judgement of the Hon'ble Supreme Court in *Dharamvir Singh Vs UOI & Ors* [2013 (7) SCC 36], learned counsel for applicant 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 Army 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 the service. Further the injury sustained on duty was due to the stress and strain of service by arguing that the applicant had met with the accident while performing his duties, therefore, he is entitled to the aforesaid benefit and claim made by him in this OA.

8. Per Contra, learned counsel for the respondents submits that under the provisions of Regulation 53(a) of the Pension Regulations for the Army, 2008, (Part-I), "*an individual released/retired/dischARGE on completion of terms of engagement or on completion of service limits or an attaining*

the prescribed age (irrespective of his period of engagement), if found suffering from a disability attributable to or aggravated by military service and so recorded by Release Medical Board, may be granted disability element in addition to service pension or service gratuity from the date of retirement/discharge, if the accepted degree of disability is assessed at 20 percent or more.”

9. Relying on the aforesaid provision, learned counsel for the respondents further submits that the disability of ‘Non Cirrhotic Portal Hypertension’ of the applicant was assessed as “neither attributable to nor aggravated” by military service and not connected with the military service and as such, his claim was rejected; thus, the applicant is not entitled for grant of disability pension due to policy constraints.

10. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, we are of the view that 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 Regulation 53(a) of the Pension Regulations for the Army, 2008, (Part-I).

11. Proceeding to adjudicate on attributability, we find it pertinent to refer to the ‘Entitlement Rules for Casualty

Pensionary Awards to the Armed Forces Personnel 2008, which take effect from 01.01.2008 vide Paras 6, 7, 10, 11 thereof provide 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 onus 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 while '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 contracted prior to enrolment or during leave, the incubation period of the disease will be taken into consideration on the basis of clinical course 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. Altitudes etc.”

(emphasis supplied)

12. A cursory look at the aforesaid para would make it clear that for causal connection to be established between the disability and the military service, it has to be proved that the conditions of employment in military service have led to the causation of disability. To ascertain the same, we find it pertinent to refer to Medical literature, wherein we find that an article titled, *A Narrative Review on Non-Cirrohatic Portal Hypertension: Not All Portal Hypertensions Mean Cirrhosis*¹ details about the aforesaid disability as under:

Non-cirrhatic portal hypertension (NCPH) is a rare disease characterized by portal hypertension, splenomegaly, hypersplenism, and pancytopenia. It is not associated with cirrhosis on liver histology or other known liver diseases. The condition was initially described in 1889 by an Italian pathologist named Banti, and it has been referred to by different names over time such as non-cirrhatic portal fibrosis, hepatportal sclerosis, and non-cirrhatic portal hypertension. NCPH is diagnosed after excluding other causes of portal vein or hepatic venous outflow tract obstruction. The disease progresses through different phases with symptoms ranging from splenomegaly and anemia to ascites and life-threatening complications such as gastrointestinal bleeding”

13. With respect to the causes, we find it essential to refer to a Research Paper titled, *“Causes and Management of Non-*

¹Fiordaliso M, Marincola G, Pala B, Muraro R, Mazzone M, Di Marcantonio MC, Mincione G. A Narrative Review on Non-Cirrohatic Portal Hypertension: Not All Portal Hypertensions Mean Cirrhosis. *Diagnostics* (Basel). 2023 Oct 20;13 (20):3263. doi: 10.3390/diagnostics13203263. PMID: 37892084; PMCID: PMC10606323.

cirrhotic Portal Hypertension”,² wherein, the causes have been detailed herein as under:

Principal causes of non-cirrhotic portal hypertension (NCPH)

Pre-sinusoidal	Sinusoidal	Post-sinusoidal
Porto-sinusoidal vascular disease (PSVD)	Drug-induced	Budd-Chiari syndrome
Portal vein obstruction (neoplastic and non-neoplastic)	Alcoholic liver damage	Veno-occlusive disease
Schistosomiasis	Non-alcoholic steatohepatitis	Primary vascular malignancies
Arteriovenous fistulas	Viral hepatitis	Hypervitaminosis A
Polycystic disease	Amyloidosis	Epithelioid hemangio-endothelioma and angiosarcoma
Congenital hepatic fibrosis	Infiltrative diseases	
Biliary diseases (primary biliary cirrhosis; primary sclerosing cholangitis)	Acute fatty liver of pregnancy	

14. A detailed analysis of aforesaid medical literature, we find that the none of causes linked to the disability of the applicant, show any causal connection with the military service. Furthermore, the onset of the disability is with in two years of the enrollment in service with no field posting till then.

15. Applying the above parameters to the case at hand, we are of the view with respect to disability of Non-cirrhotic Portal Hypertension, there is no denial from the fact that no causal

² Gioia S, Nardelli S, Ridola L, Riggio O. Causes and Management of Non-cirrhotic Portal Hypertension. *Curr Gastroenterol Rep.* 2020 Sep 17;22(12): 56. doi: 10.1007/s11894-020-00792-0. PMID: 32940785; PMCID: PMC7498444.

connection has been established between the disability and the military service rendered by the applicant herein, and thus, cannot be allowed to garner benefit of such beneficial schemes and provisions. Therefore, the applicant is not entitled for disability pension for the disability of Non-cirrhotic Portal Hypertension.

16. In view of the aforesaid analysis, the present OA is devoid of merits and hence, liable to be dismissed.

17. Consequently, the OA 1115/2019 is dismissed.

18. No order as to costs.

19. Pending miscellaneous applications, if any, pending stand closed.

Pronounced in the open Court on 3rd day of April, 2025.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

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