

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

OA 1291/2017 WITH MA 2333/2024

Ex Sgt (Dr.) Omkar Nath Katiyar

.... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Mr. B.S. Narwal, Advocate

For Respondents : Mr. R.S. Chillar, Advocate

CORAM

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

HON'BLE LT GEN SHASHANK SHEKHAR MISHRA, MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (AFT Act), the applicant has filed this application and the reliefs claimed in Para 8 read as under:

“(a) Call for the Records including the medical records based on which the disease suffered by the Applicant held as neither attributable nor aggravated by service based on which the Applicant was denied disability pension as evident from the impugned order dated 07.06.2017 and thereafter quash the same.

(b) Direct the Respondents to process the claim of the Applicant of grant of disability pension after rounding off the disability of the Applicant from 20% to 50% for life by applying the principle of broad banding and pay the same along with arrears with an interest @ 18% as expeditiously as possible from the date due till the date of realisation.

(C) Issue such other order /direction as may be deemed appropriate in the facts and circumstances of the case."

BRIEF FACTS

2. Ex SGT Omkar Nath Katiyar (hereinafter referred to as the "Applicant") was enrolled in Indian Air Force on 19.12.1986 and was discharged from service on 30.04.2002 at his own request and on compassionate ground after rendering a total of 15 years and 04 months of regular service.

3. He was subjected to a **Release Medical Board**¹ (AFMSF-16) dated 24.04.2002 which assessed his disability IDs (i) Horse Shoe Kidney (Lt) optd (Nephrectomy done) @11-19% (ii) Renal Tuberculosis with Renal Calculus (Lt) Kidney @ 11-14% and (iii) Renal Hypertension @20% (compositely 20%) for five years and recommended the same as neither attributable to nor aggravated by AF services.

4. The applicant served a legal notice dated 20.04.2017 which was replied vide letter No. Air HQ/99798/1/703864/DAV/DP/CC dated 07.06.2017 rejecting the claim of the applicant and informing that the issue is under consideration by Respondent No.1.

5. Aggrieved by the decision of the respondents, the applicant has filed the instant OA. In the interest of justice, in accordance with Section 21(1) of the AFT Act, we take up the present OA.

¹ For short, 'RMB'

CONTENTIONS OF PARTIES

5. The learned counsel for the applicant submitted that at the time of joining the service, the applicant was found mentally and physically fit for service and there is no note in the service documents that he was suffering from any disease at that time and the disability of the applicant was detected during the service, hence the same is deemed to be attributable to and aggravated by military service. The respondents therefore erred in rejecting the claim of disability pension stating that the RMB held the disability as neither attributable to nor aggravated by military service as the same does not have any casual connection with military service and had completely ignored the nature of disease.

6. The learned counsel for the applicant contended that the instant matter is squarely covered by a catena of decisions of the Hon'ble Supreme Court including *Dharamvir Singh Vs. Union of India & Ors.* [2013 (7) SCC 316] and the claim of the applicant is also supported by relevant rules.

7. *Per contra*, learned counsel for the respondent submitted that the applicant was detected with **Renal Hypertension** during routine medical examination in the year 1988, and further investigation revealed him to be having Horse Shoe Kidney with Renal Calculus and poorly functioning left half. Consequently, he was placed in lower medical category CEE (T-24) for disabilities namely Renal Calculus (Lt) with Horse Shoe Kidney (Optd) with Tuberculosis, Renal Hypertension and Herpes Zoster vide AFMSF-15 dated 26.10.1988.

8. Learned counsel for the respondents further submitted that the disability No. 1 i.e. 'Horse Shoe Kidney' is congenital in origin and has been corrected by surgery i.e. Nephrectomy, disability No. 2 i.e. 'Renal Tuberculosis' arose as a complication of the congenital defect of Horse Shoe Kidney and disability No. 3 i.e. 'Renal Hypertension' is secondary in nature and the applicant has not been exposed to any such condition which might have aggravated it. Therefore, the RMB, being an expert body, has rightly assessed it as neither attributable to nor aggravated by AF services for the aforesaid reasons.

9. It is contended that such disability could not be detected at the time of initial examination. After detection, the applicant was provided immediate medical treatment and the disability was corrected by surgical intervention. Though the applicant was placed in Lower medical category, but he continued in service for 15 years.

10. Learned counsel further averred that *Dharamvir Singh (supra)* is not applicable in this case as the said disabilities are congenital in nature and not due to service condition.

ANALYSIS

11. We have heard the learned counsel for the parties and have gone through the records produced before us. On a perusal of records, we find that it is not in dispute that the applicant at the time of joining the Indian Air Force on 19.12.1986, the applicant was found medically and physically fit and the onset of the IDs (i) Horse Shoe Kidney (Lt) optd (Nephrectomy done) @11-14%, (ii) Renal Tuberculosis with Renal

Calculus (Lt) Kidney @11-14% and (iii) Renal Hypertension @20% was in March 1988, June 1988 and October 1988 respectively.

12. We note that the applicant has restricted his prayer for the grant of disability pension with respect to third disability only i.e. **Renal Hypertension assessed @20%** which is fulfilling the first condition of the twin conditions laid down in Para 153 of the Pension Regulations for the Air Force, 1961.

13. Thus, the only question left to be adjudicated by us is whether the aforesaid disability is attributable to or aggravated by military service or not?

14. From the perusal of records, we find that the applicant was diagnosed with the aforesaid disabilities in the year 1988, i.e. merely within two years after joining the service, though the applicant went on to serve till he was ultimately released at his own request on compassionate ground on 30.04.2002.

15. On the question of attributability, we find it pertinent to refer to opinion of the Release Medical Board placed at Page 3 of the RMB wherein it has been specified to the effect: *"Disab no. 3 – The disability is secondary in nature and has not been exposed to any such condition which has aggravated. Thereby, hence, the disability is not connected and not attributable to service."*

16. It is clear from the aforesaid opinion of the RMB that the aforesaid disability was only secondary in nature as damaged kidney cannot properly regulate the blood flow, resulting in hypertension. It thus arose

as a consequence to first two disabilities namely Horse Shoe Kidney and Renal Tuberculosis, having no independent cause as such.

17. The Research Paper titled – “Tuberculosis and hypertension—a systematic review of the literature”,² reproduced as under:

“Renal TB is a common form of extrapulmonary TB, and because of its non-specific clinical presentation, the diagnosis is easily missed. Many of the case reports mentioned in this review described the regression of hypertension after either removal of a tuberculous kidney or pharmacological treatment of renal TB, suggesting that renal TB could be causing renal hypertension in these patients.”

(emphasis supplied)

reveals that the third disability of the applicant i.e. Renal Hypertension is nothing but a consequence of first and second disability, specifically, arising as a consequence of Nephrectomy, wherein the kidney of the applicant was removed, which is supported by the paper referred to herein as above.

18. We further note that the disability of ‘Horse Shoe Kidney’ is congenital in origin and in the instant case had been corrected through surgical intervention i.e. Nephrectomy, wherein the RMB has observed that there was no close temporal association of this condition with service in High Altitude Area (HAA), Field, or Counter-Insurgency (CI) Operations.

19. Thus, it can be safely concluded that with no evidence of any trauma or aggravating factor, supported by the fact that the disability has arisen within two years of the enrollment, as has been admitted by the

² Tuberculosis and hypertension—a systematic review of the literature, Seegert, Anneline Borchsenius et al. International Journal of Infectious Diseases, Volume 56, 54 - 61

applicant himself, it is highly probable that the condition may have pre-existed prior to enrollment and had not been detected during the recruitment medical examination, as the applicant had not disclosed any prior medical history.

20. Accordingly, the Release Medical Board concluded that this disability could not be considered either attributable to or aggravated by military service, as it lacked any causal connection to the applicant's brief tenure of one to two years in active service. Therefore, there is no ground to dispute the opinion of the medical board in such a case, where there is nothing concrete and substantial on record to show that the disability has any casual connection to the conditions of service.

21. We are conscious of the fact that the applicant's disability could not have been detected at the time of his initial medical examination by the Medical Board, as the medical examination at the time of enrollment is not exhaustive in nature. Detection of such ailments ordinarily requires a combination of medical history, detailed physical examination, and advanced imaging studies, which has been substantially resonated in the observations of this tribunal in OA 490/2022 titled as *Ex AC (U/T) Harishankar Vs. Union of India & Ors*, wherein this Tribunal has observed as under:-

"There is not an iota of doubt that the provisions for disability pension and invalid pension under the Pension Regulations are beneficial provisions for the service personnel of the armed forces, yet the same cannot be used as a tool to claim the benefits which do not accrue to the claimants without them rendering service enough to have casual connection to the disabilities arising out of service. It is important to observe that the primary medical examination conducted at the time of enrollment is not

a rigorous medical examination procedure as followed during the Cat/Re-Cat Medical Boards or for that matter RMB/IMB, and that any disability which can escape the initial medical examination cannot be used as a tool to claim disability/invalid pension even without rendering adequate service to showcase attributability or aggravation and therefore, cannot be held as qualified for disability or invalid pension."

(emphasis supplied)

22. In view of the aforesaid detailed analysis, including the medical literature on the subject, we are of the considered opinion that none of causes linked to the disability of the applicant, show any causal connection with the military service, and thus, the OA is devoid of merit.

23. Consequently, the OA 1291/2017 is dismissed.

24. No order as to costs.

25. Pending miscellaneous application(s), if any, stands disposed of.

Pronounced in the open Court on ⁶26th day of September, 2025.

(JUSTICE NANDITA DUBEY)
MEMBER (J)

(LT. GEN. SHASHANK SHEKHAR MISHRA)
MEMBER (A)

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