

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

OA 1953/2019 with MA 1793/2023

Ex CH ME Dharmapada Sethi Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Ved Prakash, Advocate
For Respondents: Mr. V Pattabhi Ram, with
Mr. Saurav Kumar, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

MA 1793/2023

This is an application filed on behalf of the respondents for condonation of delay of 20 days in filing the counter affidavit. In view of the reasons explained and in the interest of justice, the delay in filing the counter affidavit is condoned. The MA is disposed of accordingly.

2. OA 1953/2019

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant vide the present OA makes the following prayers:-

- (a) *Quash the Impugned order no. PN/0134/DP/937/17 dated 16.05.2017. PN/0134/DP/937/16 dated 01.08.2016 and PEN/600/D/LRDO I:05 /2015 /167700N dated 15.07.2015.*
- (b) *Direct respondents to grant disability element of pension duly rounded off to 50% wef his date of discharge.*

(c) Direct respondents to pay the due arrears of disability element of pension with interest @ 12% p.a from the date of retirement with all the consequential benefits.

(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost of the application in favour of the applicant and against the respondents.

BRIEF FACTS

3. The applicant was enrolled in the Indian Navy on 08.05.1987 and discharged from the service on 31.05.2015 on expiry of engagement with 28 years and 24 days of regular service. The Release Medical Board approval date is 25.05.2015, held that the applicant was fit to be released from service in low medical category S2A2 (P) for the disability of Diabetes Mellitus Type-I I @ 20% for life while the qualifying element for disability was recorded as NIL for life on account of the disability being treated as neither attributable to nor aggravated by military service. The applicant was sanctioned service pension vide PPO no. 09/97/B/S/001131/2015 dated 11.06.2015.

4. The claim of the applicant for the disability pension was rejected by the competent authority and the same was intimated vide letter No. PEN/600/D/LRDO/1:05/2015/167700N dated 15.07.2015. The applicant was given an option to prefer an appeal against the rejection of disability pension within 06 months. The applicant preferred the first appeal for grant of disability pension dated 14.09.2015 which was rejected by DPA(N), New Delhi vide letter no PN/0134/DP/937/16

dated 01.08.2016 stating that the disability which the applicant suffers from is neither attributable to nor aggravated by military service. The applicant preferred the second appeal dated 15.12.2016 against rejection of his disability claim which was also rejected by the DPA(N) vide letter no. PN/0134/DP/937/17 dated 16.05.2017. Aggrieved by the response of the respondents, the applicant has thus filed the present OA. In the interest of justice thus, it is considered appropriate to take up the present OA for consideration, in terms of Section 21(1) of the AFT, Act 2007.

CONTENTIONS OF THE PARTIES

5. Placing reliance on the judgment of the Hon'ble Supreme Court in *Dharamvir Singh v. UOI & Ors.* [2013 (7) SCC 36], the learned counsel for the applicant submitted 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 Navy 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 military service.

6. The learned counsel for the applicant also placed reliance on the verdicts of the Hon'ble Supreme Court in the case of Civil Appeal No 2904/2011 titled as *UOI & Anr Vs. Rajbir Singh* decided on 13.02.2015, *Ex. Power Satyaveer Singh Vs Union Of India* (Civil

Appeal No. 7368 of 2011) and Civil Appeal No 418/2012 titled *Union of India & Ors. vs. Ram Avtar* Dated 10.12.2014, *UOI & Ors Vs. Angad Singh Titaria*, (AIR 2015 SC 1898) CA. 11208 dated 24.02.2015, wherein similarly situated personnel were given relief.

7. Per contra, the learned counsel for the respondents submits that the sanction of disability pension in case of the disability at the time of discharge from service is based on fulfillment of essential conditions as laid down under Rule 105-B of Navy (Pension) Regulations, 1964 wherein the disability should be either attributable to or aggravated by the Naval service and the minimum assessment for disabilities mandatorily is required to be 20% or more. The learned counsel for the respondents further submits that since the applicant's disability was NANA as declared by the RMB, his claim for the grant of the disability was rejected by the competent authority and thus the applicant is not entitled to the grant of the disability pension.

ANALYSIS

8. 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 @ 20% for life which is the bare minimum for grant of disability pension in terms of Rule 105-B of Navy (Pension) Regulations, 1964. The only question

that arises is whether disability suffered by the applicant was attributable to or aggravated by military service.

9. The issue of attributability of the disease is no longer *res integra* in view of the verdict of the Hon'ble Apex Court in *Dharamvir Singh v. Union of India (supra)*, wherein it is clearly spelt out that any disease contracted during service is presumed to be attributable to military service, if there is no record of any ailment at the time of commission into the Military Service.

10. Applying the above parameters to the case at hand, we are of the view that the applicant has been discharged from service in low medical category on account of medical disease/disability, the disability must be presumed to have arisen in the course of service which must, in the absence of any reason recorded by the Medical Board, be presumed to have been attributable to or aggravated by service in the Indian Navy. Furthermore, Regulation 423(a) 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 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.

(emphasis supplied),__

has not been obliterated.

11. Furthermore, Para 26, Chapter VI of the Guide to Medical Officers (Military Pensions), 2008 reads as under:-

"26. Diabetes Mellitus

This is a metabolic disease characterised by hyperglycemia due to absolute/relative deficiency of insulin and associated with long term complications called microangiopathy (retinopathy, nephropathy and neuropathy) and macroangiopathy.

There are two types of Primary diabetes, Type 1 and Type 2. Type 1 diabetes results from severe and acute destruction of Beta cells of pancreas by autoimmunity brought about by various infections including viruses and other environmental toxins in the background of genetic susceptibility. Type 2 diabetes is not HLA-linked and autoimmune destruction does not play a role.

Secondary diabetes can be due to drugs or due to trauma to pancreas or brain surgery or otherwise. Rarely, it can be due to diseases of pituitary, thyroid and adrenal gland. Diabetes arises in close time relationship to service out of infection, trauma, and post surgery and post drug therapy be considered attributable.

Type 1 Diabetes results from acute beta cell destruction by immunological injury resulting from the interaction of certain acute viral infections and genetic beta cell susceptibility. If such a relationship from clinical presentation is forthcoming, then Type 1 Diabetes mellitus should be made attributable to

service. Type 2 diabetes is considered a life style disease. Stress and strain, improper diet non-compliance to therapeutic measures because of service reasons, sedentary life style are the known factors which can precipitate diabetes or cause uncontrolled diabetic state.

Type 2 Diabetes Mellitus will be conceded aggravated if onset occurs while serving in Field, CIOPS, HAA and prolonged afloat service and having been diagnosed as Type 2 diabetes mellitus who are required serve in these areas.

Diabetes secondary to chronic pancreatitis due to alcohol dependence and gestational diabetes should not be considered attributable to service."

12. The 'Entitlement Rules for Casualty Pensionary Awards, to the Armed Forces Personnel 2008, which take effect from 01.01.2008 provide vide Paras 6,7,10,11 thereof 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 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."

Thus, the ratio of the verdicts in *Dharamvir Singh vs UOI & Ors*

(Civil Appeal No. 4949/2013) (2013) 7 SCC 316, *Sukhvinder Singh vs*

UOI & Ors, dated 25.06.2014 reported in 2014 STPL (Web) 468 SC, *UOI & Ors. vs Rajbir Singh* (2015) 12 SCC 264 and *UOI & Ors* versus *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.

13. It is also essential to observe that vide the verdict of the Hon'ble Supreme Court in Civil Appeal no. 5970/2019 titled as *Commander Rakesh Pande vs UOI & Ors.*, dated on 28.11.2019, wherein the applicant thereof was suffering from **Non-Insulin Dependent Diabetes Mellitus (NIDDM) and Hyperlipidaemia**, the grant of disability pension for life @ 20% broad banded to 50% for life was upheld by the Hon'ble Supreme Court.

14. The applicant served in the Indian Navy for 28 years and 24 days and the onset of the disability 'Diabetes Mellitus Type II', occurred in May, 2012 as indicated by the Re-categorization Medical Board proceedings dated 27.11.2015 after 25 years of long service. During his entire career, the applicant has done three tenures in field areas as follows:-

- (i) INS Andaman from 30.08.1987 to 31.10.1987,
- (ii) INS Gomati from 01.05.1988 to 31.05.1994 and
- (iii) INS Jalashwa from 31.05.2010 to 20.07.2011;

All three field postings were prior to the onset of the disability 'DIABETES MELLITUS Type II' and the same cannot be overlooked, as military life being full of stress and strain in performance of day to day duties apart from hostile environmental factors, has to be considered. Even during the peace area postings, the performance of duties of the applicant had always been highly demanding and full of stress and strain. The accumulated stress and strain of such a long service on the applicant cannot be overlooked and hence the disability of the "DIABETES MELLITUS Type II" has to be conceded to be attributable and aggravated by military service.

15. Regarding broad-banding benefits, the Hon'ble Supreme Court in its order dated 10.12.2014 in *Union of India v. 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. Furthermore, the Government of India vide its Letter No. F.No.3(11)2010-D (Pen/Legal) Pt V, Ministry of Defence dated 18th April 2016 has issued instructions for implementation of the Hon'ble Supreme Court order dated 10.12.2014 (supra).

CONCLUSION

16. Therefore, in view of our analysis, the OA is allowed and the Respondents are directed to *grant the benefit of disability element of*

pension @ 20% for life for the disability of DIABETES MELLITUS Type II, rounded off to 50% for life in view of judgment of the Hon'ble Apex Court in *Union of India versus Ram Avtar (supra)* from the date of discharge i.e 31.05.2015 to the applicant. 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. However, in as much as the instant OA has been filed with delay, the arrears in view of the verdict of *UOI & Ors Vs Tarsem Singh* (supra) has to commence from the period of three years prior to institution of the present OA, instituted on 05.11.2019.

17. No order as to costs.

Pronounced in the open Court on /^a day of February, 2025.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)