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

O.A. 2310 of 2022
JWO Pradip Kumar Bharti ... **Applicant**
Versus
Union of India and Ors. ... **Respondents**

For Applicant : Mr. Manoj Kr. Gupta, Advocate
For Respondents : Mr. Rajeev Kumar, Advocate

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

ORDER

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 accept the disabilities of the applicant as attributable to/aggravated by military service and grant disability pension vide Para 8 herein as under:

A. *To direct the respondents to grant Disability Element of Pension and set aside the impugned Order (Annexure A1/Colly), as disability must be either attributable to or aggravated by service as he was deemed Invalided Out in LMC on having been found medically unfit for further retention in service; and/or*

B. *Appropriate direction to extend benefit of the principle of rounding off as per the GoI, MoD Order dt 31 Jan 2001 which has been accepted & upheld by the Apex Court in Ram Avtar v. UoI & Ors; and/or*

C. *Issue an order or direction of appropriate nature to grant DE of pension in terms of Hon'ble Supreme Court judgement Ex Rect Mithilesh Kumar (Supra) Laxmanram Poonia (Supra) read with the judgement in Sukhvinder Singh (Supra) which has been followed in number of judgements including Annex-A4 and 8, to meet the ends of equity, justice and fair-play; and/or*

D. To pass such further order or orders, direction/Directions as this Hon'ble AFT may deem fit and proper in accordance with Law.

BRIEF FACTS OF THE CASE

2. The applicant was enrolled in the Indian Air Force on 19.05.1989 and discharged from service on 31.05.2021 after serving for approximately 32 years and 13 days of qualifying service. The Release Medical Board dated 05.11.2020 held that the applicant was fit to be discharged from service in composite low medical category A4G4 for the disabilities – GENERALISED EPILEPSY @ 20% for life while the qualifying element for disability pension was recorded as NIL for life on account of disabilities being treated as neither attributable to nor aggravated by military service (NANA).

3. The claim of the applicant for grant of disability pension was rejected on 08.06.2021, against which a first appeal was preferred by the applicant vide letter dated 18.08.2021, which was rejected by the competent authority on 02.08.2022 stating that the aforesaid disabilities were considered as neither attributable to nor aggravated by military service and does not fulfil the conditions. Aggrieved by the aforesaid rejection, applicant has approached this Tribunal.

SUBMISSIONS ON BEHALF OF APPLICANT

4. Placing reliance on the judgement of the Hon'ble Supreme Court in ***Dharamvir Singh v. 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 Air Force 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 Air Force service.

5. Relying on the judgement of Supreme Court in ***Sukhvinder Singh v. Union of India & Ors. [(2014) 14 SCC 364],*** and stressing on the conditions of the discharge, it is contended by the applicant that he was found unfit for further service in Indian Air Force, resultantly, his extension was denied, by which his service was cut short by 04-05 years prior to superannuation and that, since, his tenure was cut short by competent authority by denying his extension of service, thus, it is case of 'deemed invalidation' from service.

6. It is the case of the applicant that he was denied extension in service and was discharged on having being found medically unfit for further service in Indian Air Force, due to a disability detected after 29 years of service, which can be presumed that it has developed due to the stress and strain of service and makes it a case of deemed invalidation.

SUBMISSIONS ON BEHALF OF RESPONDENTS

7. Per Contra, Learned Counsel for the Respondents submits that under the provisions of Regulation 153 of the Pension Regulations for the Air Force, 1961 (Part-I), the primary condition for the grant of disability pension is invalidation out of service on account of a disability

which is attributable to or aggravated by Air Force service and is assessed @ 20% or more.

8. Relying on the aforesaid provision, Learned Counsel for respondents further submits that the case of the applicant is not a case of deemed invalidation and the aforesaid disabilities of the applicant were assessed as "neither attributable to nor aggravated" by Air Force service and not connected with the Air Force service and as such, his claim was rejected; thus, the applicant is not entitled for grant of disability pension. In fact the individual was discharged on completion of his terms of engagement.

ANALYSIS

9. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, it is not a matter of dispute that the disability pension is granted to those personnel who are invalided out of service. Moreover, as per Regulation 153 of the Pension Regulations for the Air Force, 1961 (Part-I), an individual who is found suffering from a disability at the time of normal discharge/superannuation which is assessed @20% or more, and has been considered as attributable or aggravated by military service, is granted disability element along with the service pension. Now, the question before us is whether disability suffered by the applicant i.e. GENERALIZED EPILEPSY which denied the applicant further extension

in his rank as JWO be treated as attributable to or aggravated by military service and disability pension be granted to him.

10. Before proceeding with the question of attributability, we find it essential to deal with the issue of 'Deemed Invalidation', as contended by the applicant, for which, we find it important to record that the doctrine of 'Deemed Invalidation' propounded by the Hon'ble Supreme Court in ***Sukhvinder Singh v. Union of India & Ors. (supra),*** comprehends that where an individual is discharged on being declared medically unfit for further service on being found suffering from an invaliding disability and his initial terms of engagement has been cut short due to such disability, the case falls in the category of 'Deemed Invalidation'.

11. Regulation 4 (c) (iii) of ER 2008 also states that:-

> ***(c) PBOR and equivalent ranks in other services who are placed permanently in a medical category other than SHAPE 1 or equivalent and are discharged because***
> ***(i) no alternative employment suitable to their low medical category can be provided, or,***
> ***(ii) they are unwilling to accept alternative employment, or,***
> ***(iii) they having been retained in alternative employment are discharged before the completion of their engagement, shall be deemed to have been invalided out of service.***

12. Hence, in the present case, it is clear that none of the above conditions existed and applicant's terms of engagement was never cut short due to any disability. Denial of extension since the individual was in low medical category is different from being discharged on medical

grounds or invalidation and in no way can be construed to be a 'Deemed Invalidation'.

13. Essentially, it is important to record that the initial terms of engagement of the applicant is 20 years as per Para 12(i)(a) of Air Force Instructions AFI 12/S/48 (as amended vide Corrigendum 15-15/79). Thereafter, in keeping with the ibid AFI, the Applicant was promoted to the rank of JWO, and was allowed to serve for 32 years and 13 days of regular service and thereafter, transferred to pension establishment otherwise than his own request. The applicant's contention that he is a case of deemed invalidation since he was not granted extension because of which his service was cut short by 4-5 years is not tenable in view of AFI 12/S/48 Para 12 (a) (ii) which clearly states that:-

> ***(ii) On completion of 20 years regular service, an airman may be allowed, at the discretion of the CAS, to extend the period of regular service by 6 years to complete 26 years' regular service. Further extension(s) of regular service may be granted for a period of 3 years at a time or such shorter period, as deemed fit, upto the age of 55 years.***
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> ***Note – Airmen serving in the period of their first extension upto 21 years of service on the date of issue of this AFI (that is, those who have been granted extension of 6 years beyond their initial engagement of 15 years) may be granted further extension for 5 years on their applying for the same in the normal course before completion of their extended service, subject to fulfilling the conditions for such extensions.***

14. Had the applicant's service been terminated prior to his completion of the terms of engagement as JWO and IMB would have been conducted and it would have been a case of invalidment. In this case, RMB was conducted which is done in case of all personnel discharged post completion of his terms of engagement. Being

discharged in Low Medical Category post completion of his terms of engagement after 32 years in neither invalidation nor can be the case of deemed to be invalidation which is laid down in Regulation 4 (c) of Entitlement Rules, 2008. Hence the applicant's case is not a case of Disability pension but in case his disease of 'Generalised Epilepsy' which is found to be 20% but NANA can be considered to be attributable to service then the applicant would have a case for Disability element of pension as per Regulation 4 (a) of Entitlement rules, 2008 which says:

> ***(a) Disability element will also be admissible to personnel who retire or are discharged on completion of terms of engagement in low medical category on account of disability attributable to or aggravated by military service, provided the disability is accepted as not less than 20%.***

15. We find it pertinent to refer to Guidelines for assessment of Psychiatric Disorder have been spelt out in the Guide to Medical Officers (Military Pension), 2002 (as amended in 2008) which elaborates in detail the factors which impinge on Attributability and Aggravation of Psychiatric Disorders in Para 54 which are reproduced below:

> ***54.*** **Mental & Behavioural (Psychiatric) Disorders**
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> ***Psychiatric illness results from a complex interplay of endogenous (genetic/biological) and exogenous (environmental, psychosocial as well as physical) factors. This is true for the entire spectrum of psychiatric disorders (psychosis & Neurosis) including substance abuse disorders. The relative contribution of each, of course, varies from one diagnostic category to another and from case to case.***
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> ***The concept of attributability or aggravation due to the stress and strain of military service can be, therefore, evaluated independent of the diagnosis and will be determined by the specific circumstances of each case.***

(a) Attributability will be conceded where the psychiatric disorder occurs when the individual is serving in or involved in :-

(i) Combat area including counterinsurgency operational area
(ii) HAA Service
(iii) Deployment at extremely isolated posts
(iv) Diving or submarine accidents, lost at sea
(v) Service on sea
(vi) MT accidents involving loss of life or Flying accidents (both as flier and passenger) in a service aircraft or aircraft accident involving loss of life in the station
(vii) Catastrophic disasters particularly while aiding civil authorities like earthquake, cyclone, tsunami, fires, volcanic eruptions (where one has to handle work in proximity of dead or decomposing bodies)

(b) Attributability will also be conceded when the psychiatric disorder arises within one year of serious/multiple injuries (e.g. amputation of upper/lower limb, paraplegia, quadriplegia, severe head injury resulting in hemiplegia of gross neuro cognitive deficit which are themselves considered attributable to military service. This includes Post Traumatic Stress Disorder (PTSD).

(c) Aggravation will be considered in Psychiatric disorders arising within 3 months of denial of leave due to exigencies of service in the face of:

(i) Death of parent when the individual is the only child/son
(ii) Death of spouse or children
(iii) Heinous crimes (e.g. murder, rape or dacoity) against members of the immediate family
(iv) Reprisals or the threat or reprisals against members of the immediate family by militants/terrorists owing to the fact of the individual being a member of the Armed Forces
(v) Natural disasters such as cyclones/earthquakes involving the safety of the immediate family.
(vi) Marriage of children or sister when the individual is the only brother thereof and specially if their father is deceased.

(d) Aggravation will also be conceded when after being diagnosed as a patient of psychiatric disorder with specific restrictions of employability the individual serves in such service environment which worsened his disease because of the stress and strain involved like service in combat area including counterinsurgency operations, HAA, service on board ships, flying duties.

(e) Attributability may be granted to any psychiatric disorder occurring in recruits and results in invalidment from service only when clearly

identifiable severe stressors including sexual abuse or physical abuse are present as causative factor/factors for the illness.

16. From the material placed on record, there is no evidence to find even a remote causal link to any service-related trauma which can be considered to be a contributory factor to the mental condition of the Applicant. However, we do find that the Part II- Clinical Assessment as a part of Summary of the Case and Opinion dated 03.12.2018 clearly records that the applicant has a history of substance abuse, being a tobacco chewer and an alcohol consumer, which do constitute as a modifiable risk factor, for development of the disability, which in a way, makes it clear that by his own commission, he has contributed towards the growth of disability. It is no denial that this disability being a behavioural disorder can go undetected, and might remain dormant, meaning thereby, it can always escape the detection by the Initial Medical Board, conducted at the time of enrolment.

17. With respect to reliance placed by the applicant on the judgement of Delhi High Court in ***UoI & Ors. V. Ex LME Chandan Kumar Rai [2025:DHC:3177-DB],*** we find that the applicant in that case was granted benefit of disability pension for Seizure Disorder, because there was no contributory factor such as substance abuse meaning consumption of tobacco and alcohol, which is not the case here in the instant case, since it is clearly recorded in the Clinical Assessment that the applicant was consuming tobacco and alcohol and was advised

against it since it exacerbate the disability of seizure disorder he was suffering from.

18. Reliance placed by the applicant on the judgements of Hon'ble Supreme Court in ***Sukhvinder Singh v. Union of India & Ors. (supra), Rajbir Singh v. Union of India & Ors. [(2015) 2 SCC 264] and Manjeet Singh v. Union of India & Ors. [(2015) 12 SCC 275],*** we find two contrasting observations from the instant case. First, while in the abovementioned cases, applicants were invalided out, the applicant in the instant case has been discharged on attaining the age of superannuation. Secondly, in the none of the aforementioned cases, there has been contributory factors responsible for the development of the disability, which is not the case here, wherein the tobacco and alcohol were found to be the contributory factors for the development of the disability, and thus, reliance placed on aforementioned judgements do help the case of the applicant.

19. Furthermore, it would be pertinent to refer to the judgement of the **Hon'ble Apex Court in Civil Appeal No 7672 of 2019 (Diary No 27850 of 2017), decided on 03/10/2019, in the case of Ex Cfn Narsingh Yadav Vs UOI & Others**, wherein the Apex court had upheld the decision of **AFT, Regional Bench, Lucknow in OA No. 235 of 2010 dated 23.09.2011** denying Disability Pension to a soldier medically boarded out with Schizophrenia. The Supreme Court was pleased to opine-

"20. In the present case, clause 14 (d), as amended in the year 1996 and reproduced above, would be applicable as entitlement to Disability Pension shall not be considered unless it is clearly established that the cause of such disease was adversely affected due to factors related to conditions of military service. Though, the provision of grant of Disability Pension is a beneficial provision but, mental disorder at the time of recruitment cannot normally be detected when a person behaves normally. Since there is a possibility of non-detection of mental disorder, therefore, it cannot be said that Schizophrenia is presumed to be attributed to or aggravated by military service.

21. Though, the opinion of the Medical Board is subject to judicial review, the Courts are not possessed of expertise to dispute such a report unless there is strong medical evidence on record to dispute the opinion of the Medical Board which may warrant the constitution of the Review Medical Board. The invaliding Medical Board has categorically held that the appellant is not fit for further service and there is no material on record to doubt the correctness of the Report of the invaliding Medical Board.

22. Thus, we do not find any merit in the present appeal, accordingly, the same is dismissed".

20. Moreover, the Supreme Court Judgement in ***Cfn Narsingh Yadav (supra)*** amplifies that mental disorders which cannot be medically detected during the enrolment process cannot be claimed to be attributable to rigours of service at a later stage, and observed as under:

"Relapsing forms of mental disorders which have intervals of normality and Epilepsy are undetectable diseases while carrying out physical examination on enrolment, unless adequate history is given at the time by the member".

21. Regarding the issue of Primacy of the Medical Board, the Supreme Court in its judgement in **UoI & Ors. vs Ravinder Kumar in Civil Appeal No. 1837/2009 decided on 23.05.2012,** has explicitly viewed that :

"5. We are of the view that the opinion of the Medical Board which is an expert body must be given due weight, value and credence. Person claiming disability pension must establish that the injury suffered by him bears a causal connection with military service.

6. In the instant case, the Medical Board has opined as under:-
"ID. Generalised Tonic Seizure. MA opined that ID is genetic in origin, not connected with service.
Thus in view of the above, it is evident that the ailment with which respondent has been suffering from is neither aggravated nor attributable to the Army Service".

22. Applying the above parameters to the case at hand, we find no infirmity in the opinion of the Medical Board and are of considered opinion that the disability GENERALISED EPILEPSY @ 20% cannot be attributed to service and hence, the relief asked for is not sustainable.

23. Therefore, in our considered view, the OA is devoid of merits.

24. Consequently, the O.A. 2310/2022 is dismissed.

25. No order as to costs.

26. Pending miscellaneous application(s), if any, are disposed off.

Pronounced in the open Court on 4th day of December, 2025.

(JUSTICE NANDITA DUBEY)
MEMBER (J)

(MS. RASIKA CHAUBE)
MEMBER (A)