

COURT NO. 1, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 2530 of 2023

Ex Nk Ashok Lakra **... Applicant**
Versus
Union of India & Ors. **... Respondents**

For Applicant : Shri Raj Kumar, Advocate
For Respondents : Shri R.S. Chhillar, Advocate

CORAM:

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

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

- "(a) To quash the Impunged Order No. 428233P1/DP/NE dated 01.09.2022.**
- (b) To direct the respondents to grant Disability element of pension @100% and grant him Constant Attendant Allowances w.e.f. his date of discharge.**
- (c) To pass any other Order(s) or/and direction(s) in favour of the applicant which may deem just and proper under the facts and circumstances of the case in the interest of justice."**

BRIEF FACTS

2. The applicant, having been found mentally and physically fit after thorough medical examination, was enrolled in the Army on 20.06.2002 and discharged from

service on 24.06.2022 on completion of 19 years 10 months and 28 days of regular service. At the time of discharge from service, the applicant was placed in permanent low medical category S1H1A1P5(P)E1 for the disability 'Chronic Kidney Disease (IgA Nephropathy). The Release Medical Board held on 18.05.2022 assessed the applicant's disability 'Chronic Kidney Disease (IgA Nephropathy)' @100% for life while the qualifying element for the disability was recorded as NIL for life on account of disability being treated as neither attributable to nor aggravated by military service.

3. The initial claim of the applicant for grant of the disability pension was rejected by the competent authority and the said decision was communicated to the applicant vide letter dated 01.09.2022 with an advice that in case, the applicant is not satisfied with the decision of the respondents, he may prefer an appeal to the Appellate Committee within six months from the date of receipt of the letter. The applicant preferred his first appeal on 14.10.2022, however, the same has not been replied to by the respondents till the date of filing this OA. Aggrieved by this, the applicant has filed the present OA

on 28.08.2023. In the interest of justice, it is considered appropriate to take up the present OA for consideration, in terms of Section 21(2) of the AFT, Act 2007.

CONTENTIONS OF THE PARTIES

4. The learned counsel for the applicant submitted that the applicant, at the time of joining the service, was declared fully fit mentally and physically and no note of disability was made in his medical record at the time of entering the service and any medical disability contracted by him during the course of his service should be treated as being attributable and aggravated by the stress and strain of his service. The learned counsel explained about the stressful and challenging conditions of service undertaken by the applicant during his entire service tenure. The learned counsel submitted that the applicant was posted at various stations (Peace and Field) and had served in tough and different weather and environmental conditions in his career and discharged all assigned duties with utmost dedication in a well-disciplined and professional manner and thereby, any disability that arose during his service has

to be deemed to be attributable to or aggravated by military service.

5. The learned counsel for the applicant further contended that the instant matter is squarely covered by a catena of judgments of the Hon'ble Supreme Court such as **Dharamvir Singh Vs. Union of India & Ors. (2013) 7 SCC 316**, **Union of India Vs. Rajbir Singh (2015) 12 SCC 264**, in Civil Appeal No. 11208/2011 titled as **Union of India & Ors vs. Angad Singh Titaria**, in Civil Appeal No. 5605/2010 titled as **Sukhvinder Singh vs. Union of India & Ors. (2014 STPL (web) 468 SC)**, and in the case of **D.S. Nakara vs. Union of India (AIR 1983 SC 130)**; and also on the judgment of the Hon'ble High Court of Punjab and Haryana in CWP No. 7277/2013 titled **Ex Naik Umed Singh Vs. Union of India**, decided on 14.05.2014. The applicant also placed specific reliance on order of the AFT, Principal Bench, New Delhi in OA No. 1288/2023 titled **Ex Nk Ranjit Kumar Ray vs. UOI & Ors.**, wherein similarly situated personnel were given relief.

6. *Per contra*, the learned counsel for the respondents contended that the applicant is not entitled to the relief

claimed. While rejecting the disability element of pension to the applicant, the respondents have given detailed reasons for not assessing the disabilities as attributable to or aggravated by military service as the said disability of the applicant is an immunologically induced nephropathy. The learned counsel submitted that since the applicant's disability does not fulfill one of the twin conditions in terms of Regulation 173 and Para 53(a) of Pension Regulations for the Army, 1961, Part-I as the same were assessed as neither attributable to nor aggravated by military service, and therefore, the applicant is not entitled to the grant of the disability pension and the OA thus, deserved to be dismissed.

ANALYSIS

7. 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 100% which is the highest limit for the grant of disability pension in terms of Regulation 173 of Pension Regulations for the Army, 1961, Part-I. The only question that arises is whether disability

suffered by the applicant was attributable to or aggravated by military service or not.

8. Para 70 of the Guide to Medical Officers (Military Pensions) 2002, Amendment 2008, (GMO (MP) 2008), stipulates the conditions for assessing attributability of 'Chronic Kidney Disease' and is reproduced as hereunder:

"70. Chronic Renal Failure.

Chronic renal failure in syndrome resulting progressive and irreversible destruction of nephrons. This syndrome is considered when azotaemia lasts for more than 3 months.

The causes are:

(a) Chronic glomerulonephritis i.e. end stage of glomerular diseases with infection end stage central of pathogenesis e.g. post streptococcal GN, MPGN, Focal sclerosing glomerulonephritis.

(b) Chronic pyelonephritis

(c) Calculus

(d) Hypertension

(e) Diabetes mellitus.

Recovery is poor the disease is progressive irrespective of the cause and the course is unpredictable.

Attributability/Aggravation can be awarded taking into account the cause and also service profile which would have adversely affected the course of disease."

9. In the instant case, the disability of 'Chronic Kidney Disease (IgA Nephropathy)' had its onset in May 2019 after 16 years of service. As per Para 70 of the Guide to Medical Officers (Military Pensions) 2002, Amendment 2008, (GMO (MP) 2008), the causes for the said disability is (a) Chronic Glomerulonephritis, (b) Chronic Pyelonephritis

(c) Calculus (d) Hypertension and (e) Diabetes Mellitus and there is nothing on record to show that the applicant suffered from the above conditions/diseases which caused him 'Chronic Kidney Disease (IgA Nephropathy)'. It is essential to mention that the onset of the disability 'Chronic Kidney Disease (IgA Nephropathy)' is not related to factors like High Altitude Area or service in difficult operational areas as it an autoimmune illness and also the applicant has not submitted anything on record to show that the said disability has been caused to him due to any service related conditions.

10. This Tribunal finds no merit in the applicant's contention that his service in different stations including peace and field areas and serving in different climatic conditions aggravated his medical condition, however, it was indeed a progression of his auto immune disorder. We find merit in the decision of the respondents and find no reason to interfere in their decision. Therefore, the disability of 'Chronic Kidney Disease (IgA Nephropathy) of the applicant cannot be considered as attributable to or aggravated by military service.

11. Thus, in view of the circumstances of the instant matter, we do not find any infirmity in the opinion of the Release Medical Board denying the disability element of pension to the applicant for the said disability being neither attributable to nor aggravated by military service and the applicant thus is not entitled to the grant of the disability element of pension.

CONCLUSION

12. In view of the aforesaid analysis and the parameters referred to above, there being no infirmity in the opinion of the RMB, the OA 2530/2023 stands dismissed being devoid of merits.

13. There is no order as to costs.

Pronounced in the open Court on this 28th day of January, 2025.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (J)

/nmk/