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COURT NO. 3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA 926/2018

Ex Nk Dayal Singh Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. V.S. Kadian, Advocate
For Respondents : Mr. Avdhesh Kr. Singh, Advocate

Dated: 28th August, 2025

CORAM

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

ORDER

Aggrieved with the decision of the First Appellate Committee rejecting his prayer for grant of disability element of disability pension, the applicant has invoked the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 for the relief detailed hereunder:

- (a) *Quash and set aside the impugned letter No. B/40502/112/12/AG/PS-4(Imp-II) dated 28.6.2012, and/or*
- (b) *Direct respondents to treat the disability of the applicant as attributable to or aggravated by military service and grant him disability element of pension and benefit of rounding off to 50%.*
- (c) *Direct respondents to pay the due arrears of disability element with interest @ 12% p.a. from the date of discharge 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.*

2. The facts germane to the filing of this OA are that the applicant was enrolled in the Territorial Army on 27th November, 1983 and on being discharged from service in the year 1996, he was re-enrolled in the DSC on 2nd August 1996. Being in low medical category, the applicant was discharged from the service of DSC on 31st August, 2011. The Release Medical Board conducted at the time of discharge found the applicant suffering from the disability of Carcinoma Tongue and the disability held to be neither attributable to nor aggravated by military service was assessed @ 15-19% for life. Vide letter dated 3rd October, 2011, the disability claim of the applicant was rejected on the ground that his disability has been held to be NANA. The First Appellate Authority vide the impugned letter dismissed the appeal of the applicant stating *"The ID is generally association with chronic smoking. The individual has been chronic smoker since last 20 years, hence RMB has appropriately considered the disability as neither attributable to nor aggravated by Military Service"*.

Thereafter, on 21st September, 2012 the applicant preferred the Second Appeal fate of which, as averred, was not known till the filing of the OA.

3. It is submitted on behalf of the applicant that the reason assigned for rejecting his disability claim is not correct and as per Para 9 of Guide to Medical Officers for Military Pension, for his disability Carcinoma Tongue (Cancer), the *“Precise cause of cancer is unknown. There is adequate material both scientific and statistical nature which brings into light the causative factors like radiation, chemicals and viral infections.”* It is further submitted that as per Para 12 of the GMO tobacco related cancers in smokers and tobacco users are caused due to congenital chromosomal abnormalities and, therefore, his disability Carcinoma Tongue has not been caused due to smoking. The applicant contends that due to absence of adequate quantity of fresh vegetables, fiber and fruits, which are cancer preventive agents and his posting in different environmental and climatic conditions and the stress and strain of military service, the disabilities, have been caused. It is further submitted that the applicant at the time of joining the service was in fit medical condition and there was no note to the contrary in the medical records. It is also the contention of

learned counsel for the applicant that if a person joins the military service in a fit medical condition and retires with some disability, the disability is deemed to have occurred due to military service and on that ground the individual is compensated by grant of disability pension. In terms of MoD letter dated 31st January, 2001, the applicant also claims rounding off the disability pension @ 50%.

4. In support of his contention learned counsel for the applicant has placed reliance on the judgment of the Armed Forces Tribunal, Regional Bench, Chandigarh in the case of Darshan Singh Vs. Union of India and Anr. (TA 258/2011 arising out of CWP 952/1994) decided on 20th December, 2013 and it is stated that according to Chapter II Guide to Medical Officers (Military Pensions) the Medical Boards should examine cases in the light of the scientific study of the causes of the particular disease and record their conclusions with reasons and opinion so as to enable the Sanctioning Authority to determine the question of entitlement, which is missing in this case.

5. Further reliance is placed on para 14(b) of the judgment of the Hon'ble Supreme Court in the case of Dharamvir Singh Vs. Union of India and Ors. [(2013) 7 SCC 316] to contend that

if no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge on medical ground or death will be deemed to have arisen in service. Learned counsel, however, submits that at the time of entry into service the applicant was found medically and physically fit and presence of no disease was recorded in his medical documents. Further reliance is placed on the judgment of the Hon'ble Supreme Court in the case of Union of India and Anr. Vs. Rajbir Singh [(2015) 2 Scale 371] to contend that in case the individual is discharged from service on account of medical disability, it must be presumed to have arisen during the course of service and in the absence of any reason recorded by Medical Board, it is to be held attributable to or aggravated by military service and since no such reason is recorded in the medical record, his disability be held attributable to and aggravated by military service and thus he is entitled to disability pension.

6. Learned counsel for the applicant also placed reliance on the judgment of this Tribunal in the case of Ex. Sep Jai Singh Vs. Union of India and Ors. (OA 320/2015) decided on 9th July, 2015 and Government of India, MoD letter dated 31st January, 2001 to submit that even if the disability was

assessed @ 15-19%, i.e., below the minimum percentage prescribed for grant of disability pension, the applicant is held entitled to grant of disability pension @ 50%.

7. The learned counsel for the applicant further contended that in addition to the case law referred to above, the instant matter is squarely covered by a catena of judgments of the Hon'ble Supreme Court such as Union of India and Ors. Vs. Ram Avtar (Civil Appeal 418/2012) decided on 10th December, 2014 and Sukhvinder Singh Vs. Union of India and Ors. [(2014) 14 SCC 364] and the orders passed by this Tribunal and submitted that the respondents' action in denying him grant of the disability pension is unjustified and unlawful, when the disabilities recorded by the RMB occurred during the military service and were caused due to stress and strain of service. The learned counsel, therefore, prayed that the disability in question may be held to be attributable to/aggravated by military service and disability pension may be granted to the applicant.

8. *Per contra*, the learned counsel for the respondents contended that the applicant was discharged from DSC service under the provisions of Rule 13(3) Item 111(1) after rendering about 22 years of service and was granted service pension.

Hence, the judgment in the case of *Dharamvir Singh* (supra) is not applicable. It is further contented that the applicant is not entitled to the relief claimed since the RMB, being an Expert Body, found the disabilities "Neither Attributable to Nor Aggravated by Military Service". The learned counsel further contended that the applicant had been a chronic smoker and drinker for twenty years which resulted in his disability of Carcinoma Tongue on the basis of which his First Appeal was rejected. The Second Appellate Authority also rejected applicant's second appeal upholding the decision of the RMB. While rejecting the disability element of pension to the applicant, the respondents have given valid and cogent reasons for not assessing the disability as attributable to or aggravated by military service as the applicant had no exceptional stress and strain of service and the disability was conceded as neither attributable to nor aggravated by military service. The learned counsel submitted that since the applicant's disability does not fulfill one of the twin conditions in terms of Regulation 53 (a) of the Pension Regulations for the Army 2008 (Part I) as the same was assessed neither attributable to nor aggravated by military service, therefore, the applicant is not entitled to the grant of the disability pension and the OA thus, deserves to be dismissed.

9. On going through the material on record and also the submissions made on behalf of the parties, we find that the applicant has suffered the disability Carcinoma Tongue assessed @ 15-19% for life. The onset of the disability was in June 2008. The applicant contracted the disability almost after twelve years of his service in the Indian Army and as per the counter affidavit filed by the respondents, it is revealed that the applicant had a history of smoking ten to fifteen biris per day for twenty years and was also a chronic alcohol intaker. The applicant was investigated thoroughly and was diagnosed as a case of Carcinoma Tongue. On clinical examination it was revealed that the applicant had node on the left side of the neck. During periodical review, biopsy of growth tongue was done and oral cavity, proliferative growth on the right side of the tongue was noticed. Thus, it is clear that the applicant was a chronic smoker and alcoholic. It is well known and proven fact by medical science that the main causes of carcinoma of tongue is tobacco use (smoking and chewing) and alcohol consumption and HPV infection. However, tobacco is regarded as the major risk factor of tongue cancer. Hence the applicant's disability of carcinoma Tongue can be considered as a ramification of his

being a chronic smoker and chronic alcohol taker which in no way is attributable to military service.

10. We thus hold that the disability, i.e., Carcinoma Tongue is due to the fact of the applicant being a chronic smoker and alcoholic thereby himself inviting the disability and in such a circumstance it would be grossly unjustified for us to ignore the aforesaid facts.

11. On the careful perusal of the material 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, i.e., Carcinoma Tongue was assessed to be @15-19% for life which is below the minimum percentage for grant of disability pension in terms of Pension Regulations for the Army.

12. Applying the above parameters to the case at hand, we are of the considered view that the major reason for occurrence of the disability Carcinoma Tongue is use of tobacco and consumption of alcohol and since the applicant used to smoke about ten to fifteen biris in a day and chronic alcohol taker for about twenty years and the RMB held disability as NANA below the minimum percentage prescribed to claim the benefit, we find no reason to interfere with the inference drawn by the RMB and as upheld by the First and Second Appellate Authority.

13. The applicant is thus not entitled to the grant of the disability element of disability pension for which the applicant is himself responsible due to his history of being a chronic smoker and alcoholic. Since we have held that there is a valid and cogent reason for the onset of the disability of Carcinoma Tongue, the judgments relied upon by the applicant are of no help to him.

14. In view of the aforesaid analysis, finding no infirmity in the opinion of the RMB, we hold that the applicant is not entitled to any relief and thus the OA stands dismissed.

16. Pending miscellaneous application(s), if any, stands closed.

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

[JUSTICE NANDITA DUBEY]
MEMBER (A)

[RASIKA CHAUBE]
MEMBER (J)

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