

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

OA 2119/2019 with MA 3006/2019

Ex Sgt Virendra Kumar **Applicant**
Versus
Union of India & Ors. **Respondents**

For Applicant : Mr. Subhash Chandra Tomar, Advocate
For Respondents : Mr. Neeraj, Sr. CGSC with
Mr. Sanjay Pal, Advocate

CORAM

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

ORDER

MA 3006/2019

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 5015 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of *UoI & Ors Vs Tarsem Singh* 2009(1)AISLJ 371 and in *Ex Sep Chain Singh Vs Union of India & Ors* (Civil Appeal No. 30073/2017 and the reasons mentioned, the MA 3006/2019 is allowed despite opposition on behalf of the respondents and the delay of 5015 days in filing the OA 2119/2019 is thus condoned. The MA is disposed of accordingly.

OA 2119/2019

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) Order(s)/Direction (s) to set aside impugned unconstitutional and arbitrary orders vide Letter No. Air HQ/99798/5/TBS/702985/Appeal/AV-III dated 03/12/2018, & vide Letter dated No. Air HQ/99798/5/TBS/702985/Appeal/AV-III 06/08/2019 by which the respondents rejected the disability claim of the applicant.**
- (b) issuance Orders/ Directions to the respondents to grant disability pension to the applicant according to Rules and Regulations with round off 50% for life with 12% interest on the pensioner's amount from the date of dismissal from service,**
- (c) Grant any other/ Further relief which this Hon'ble Tribunal may deem, fit and proper in the facts and circumstances of the case in the interest of justice.**

2. The facts germane to the filing of this OA are that the applicant was enrolled in the Indian on 18/09/1986, 1983 and discharged from service in the year 2006, under the clause 'On fulfilling the conditions of enrolment' after rendering 20 years and 13 days of service. The Release Medical Board conducted at the time of discharge found the applicant suffering from the disability of CAD-IWMI (Patent Epicardial Coronaries) and the disability held to be neither attributable to nor aggravated by military service was assessed @ 30% for life. Vide letter dated 30/01/2006, 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 on delay of 12 years and three months. The Second Appellate authority vide letter dated 06 August, 2019 again rejected the applicant's claim citing the delay of 12 years and 3 months as same as in the first appeal.

3. It is submitted on behalf of the applicant that the reason assigned for rejecting his disability claim is not correct and the medical board proceedings has not given any reason as to why the disease of the applicant is not aggravated and attributable to the service. 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 **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.

5. The learned counsel 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.

6. *Per contra*, the learned counsel for the respondents contended that the applicant was discharged from service under the clause 'On fulfilling the conditions of enrollment' after rendering about 20 years and 13 days 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 as per the Annual Medical Examination Reports, the applicant had given history of smoking. 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 153 of the Pension Regulations for the Indian Air Force 1961 (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.

7. 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 CAD-IWMI (Patent Epicardial Coronaries) assessed @ 30% for life. The onset of the disability was in March 2005. The applicant contracted the

disability almost after nineteen years of his service in the Indian Airforce and as per the counter affidavit filed by the respondents, it is revealed that the applicant had a history of smoking 5-6 cigarettes per day. The applicant was investigated thoroughly and was diagnosed as a case of CAD-IWMI (Patent Epicardial Coronaries). It is well known and proven fact by medical science that the main causes of CAD-IWMI (Patent Epicardial Coronaries) is tobacco use (smoking and chewing). Hence the applicant's disability of CAD-IWMI (Patent Epicardial Coronaries) can be considered as a ramification of his being a chronic smoker which in no way is attributable to military service.

8. We thus hold that the disability, i.e., CAD-IWMI (Patent Epicardial Coronaries) is due to the fact of the applicant being a chronic smoker and thereby himself inviting the disability and in such a circumstance it would be grossly unjustified for us to ignore the aforesaid facts.

9. It is pertinent to mention the recent observation made by the Apex Court in the order dated 12/02/2026 in Civil Appeal No(s). 773/2024 titled ***Sarvesh Kumar Vs. Union of India***, wherein Para 2 states :-

In the instant case having perused the First Medical Report and the opinion of the Medical Board, it would leave no manner of doubt in us that the disease of "Stroke Ischemic RT MCA TERRITORY" was not attributable to service nor

aggravated on account of service and we say so for the simple reason that in both the reports, it was clearly indicated that the appellant was in the habit of smoking bidis that too ten bidis per day and it is trite position of medical law that an ischemic stroke occurs when a blood clot or fatty plaque (atherosclerosis) blocks an artery leading to brain, restricting oxygen which reduces blood flow and causing brain tissue damage and the medical opinion categorizing risk factors includes high blood pressure (hypertension), smoking, diabetes, high cholesterol, i.e., dyslipidemia, obesity and atrial fibrillation. In the instant case, the Medical Review Board has clearly opined that on account of continuous smoking, the disease of "Stroke Ischemic RT MCA TERRITORY" attributable to the appellant could have occasioned and as such Medical Board has concluded that it is neither attributable to service nor aggravated due to service conditions.

10. Applying the above parameters to the case at hand, we are of the considered view that the major reason for occurrence of the disability CAD-IWMI (Patent Epicardial Coronaries) is use of tobacco and since the applicant used to smoke about five to six cigarettes in a day 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.

11. 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. Since we have held that there is a valid and cogent reason for the onset of the disability of CAD-IWMI (Patent

Epicardial Coronaries), the judgments relied upon by the applicant are of no help to him.

12. 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.

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

Pronounced in open Court on this 24th day of February, 2026.

**[JUSTICE NANDITA DUBEY]
MEMBER (A)**

**[RASIKA CHAUBE]
MEMBER (J)**