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

OA 96/2019

Ex Sgt Pankaj Kumar Mishra .....Applicant

VERSUS

Union of India and Ors. ....Respondents

For Applicant : Mr. Ved Prakash, Advocate
For Respondents : Mr. Y.P. Singh, Advocate
Sgt. Pradeep Sharma, DAV Incharge Legal cell

CORAM

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

ORDER

This is an application filed under Section 14 of the AFT Act for treating the disabilities of the applicant as attributable/aggravated by military service and grant of disability pension. The applicant prays for the following reliefs:-

> ***"(a) Direct respondents to treat disabilities as attributable to/aggravated by military service and grant disability element of pension rounded off to 75% w.e.f. from the date of discharge i.e. 01/06/2018.***
>
> ***(c) Direct respondents to pay the due arrears 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."***

2. The applicant was enrolled in the Indian Air Force in the year 1998 and discharged from service in low medical category in the year 2018 under the clause "On fulfilling the conditions of his enrollment" after rendering total 20 years, 08 days of regular service in low medical category. The Release Medical Board (RMB) found the disabilities 1D (i)Phobic Anxiety Disorder (Claustrophobia) @ 40% (ii) Primary Hypertension @ 40% iii) Dyslipidemia @ 1-5% iv) Impaired Glucose Tolerance @ 15-19% for life, but neither attributable to nor aggravated by military service. The composite assessment has been made @70% for life but the disability qualifying for disability pension is NIL for life. The claim put forth by the applicant for grant of disability pension was rejected on the sole grant that the disabilities were held to be NANA by the RMB. The first appeal filed by the applicant on 18/06/2018, as is evident from the record, is pending consideration with the respondents.

reliance on Rule 5 and 14 (b) of the Entitlement Rules for Casualty Pensionary Awards for the Armed Forces Personnel 1982 which read thus:

> ***"5. The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions:-***
>
> ***<u>Prior to and during service</u>***
>
> ***(a) A member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance.***
>
> ***(b) In the event of his subsequently being***

discharged from service on medical grounds any deterioration in his heath which has taken place is due to service."

14(b)

In respect of diseases, the following rule will be observed:

(a) xx
xx

(b) A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service, if no note of it was made at the time of the individual's acceptance for military service. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service."

Reliance is also placed on Rule 423 of the Regulations for Medical Services in the Armed Forces to contend that service in peace or field area has no linkage with attributability of disability.

3. 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 and Ors. Vs. Rajbir Singh [(2015) 12 SCC 264], Civil Apeal No. 418/2012 titled as Union of India & Ors. Vs. Ram Avtar and CA-605/2010 titled Sukhvinder Singh Vs. Union of India (2014 STPL9(web)468 SC) and the orders passed by this Tribunal and submitted that the respondents' action in denying him the 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 disabilities in question may be held to be attributable to/aggravated by military service and that the disability pension may be granted to the applicant.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

4. Per Contra learned Counsel for the respondents submitted that the applicant was discharged from service on fulfilling conditions of service and the disabilities have been held to be NANA and there is no close association with stress and strain of service. Further contention of the respondents is that the applicant does not meet the twin criteria has provided under Rule 153 of the Pension Regulation for the Indian Air Force 1961 Part I therefore he is no entitled to disability pension.

ANALYSIS

5. We have heard the learned counsel for the parties at length and have perused the records produced before us, it is an undisputed fact that the applicant was enrolled in the IAF on 03/12/1997 and discharged from service on 31/05/2018 "on fulfilling the conditions of enrolment" after rendering 20 years and 08 days of regular service.

8. RMB proceedings were produced before us. As the disability in question, (i)Phobic Anxiety Disorder (Claustrophobia) @ 40% (ii) Primary Hypertension @ 40% iii) Dyslipidemia @ 1-5% iv) Impaired Glucose Tolerance @ 15-19% for life, has been assessed compositely @ 70% for life, the only issue which needs to be considered in this case is as to

whether the applicant's disability is attributable to/aggravated by the military service or not.

6. The law has by now crystalized that if there is no note or report of the Medical Board at the time of entry into service that the individual suffered from any particular disease, the presumption would be that the individual got affected by the said disease because of the service conditions. Therefore, the burden of proving that the disease is not attributable to or aggravated by the service rests entirely on the employer/respondents.

7. Now considering the disabilities assessed herein, if we look upon the disabilities, individually the disabilities does not meet the twin criteria has provided under Rule 153 of the Pension Regulation for the Indian Air Force 1961 Part I. However, compositely they fall under the ambit required percentage for grant of disability element. As regards with a percentage of disablement at @ 1-5% for the disability of Dyslipidemia, the same has been assessed by the RMB @ 1-5% which is less than 20%. Thus, the twin conditions as provided under Rule 153 of the PRA (supra) are not satisfied, and thus the claim of the applicant for the said disability is not admissible, as laid down by the Hon'ble SC in the case of ***UOI & Ors. v. Wing Commander S.P. Rathore*** (Civil Appeal 108702018 decided on 11.12.2019).

8. On the medical canvas, Impaired Glucose Tolerance (IGT) as distinct clinical classifications of 'prediabetes,' representing a transitionary metabolic state characterized by glucose levels that exceed normal physiological parameters but fall below the diagnostic threshold for Type 2 Diabetes Mellitus.

9. Considering the contention raised by the learned counsel for the respondents to the effect that the applicant's disability, namely, Primary Hypertension was caused due to the applicant being overweight for which he was constantly advised. Pursuant to the direction of the Tribunal, a weight chart with regard to the applicant has been filed by the respondents giving year-wise data regarding weight of the applicant during his service period. A perusal of the weight chart produced reveals that at the time of onset of the disability, namely *Primary Hypertension* in April 2016, the applicant's actual body weight exceeded the Ideal Body Weight (IBW), from May, 2015 to December 2017 for which advise was given to him by the medical authorities. Though, he succeeded in reducing his weight, but he subsequently regained the same later on. His disregard to doctor's advise specially when he was suffering with other diseases like Dyslipidemia (*which is an outcome of lethargic lifestyle*) and Impaired Glucose Intolerance shows that the individual was cautioned towards maintaining a healthy body through regular physical exercise and a controlled dietary regimen which is a pre-requisite in a military career. Further, his career profile is that of a non-combatant logistic personnel where he was taking care of managing inventory. Hence, in view of the various facts mentioned above, the casual connection w.r.t. the stress and strain of the service does not get established.

10. The publication released by World Health Organization titled "Hypertension" dated 16.03.2023 was examined by us and which reads to the effect:-

"Hypertension (high blood pressure) is when the pressure in your blood vessels is too high (140/90 mmHg or higher). It is common but can be serious if not treated.

People with high blood pressure may not feel symptoms. The only way to know is to get your blood pressure checked.

Things that increase the risk of having high blood pressure include:

- *older age*
- *genetics*
- *being overweight or obese*
- *not being physically active*
- *high-salt diet*
- *drinking too much alcohol*

Risk factors

- *Modifiable risk factors include unhealthy diets (excessive salt consumption, a diet high in saturated fat and trans fats, low intake of fruits and vegetables), physical inactivity, consumption of tobacco and alcohol, and being overweight or obese,"*

this bulletin of WHO specifically brings out the effect of overweight/obesity on hypertension.

11. Additionally, this Tribunal, while dealing with disability pension claims for the disabilities of 'Obesity and Hypertension' in ***O.A. No. 1656/2016 titled Ex HFO Gyanendra Singh vs Union of India & Ors.***, dismissed the case on merits, which was subsequently upheld by the Hon'ble Supreme Court in Civil Appeal Diary No. 21017/2019 decided on 08.07.2019.

12. We note that the Release Medical Board has opined the disability as Neither Attributable to Nor Aggravated by service, and thus, observing that expert view carries due weight in the absence of cogent medical material demonstrating a service-related causal chain or aggravation, we must essentially record that the Apex Court had an occasion to consider the said question in Ex. Sapper Mohinder Singh Vs. Union of India[Civil Appeal No. 0164/1993 (arising out of SLP No. 4233/1992)] decided on 6.2.1995, wherein it was observed that the opinion given by the invalidating Medical Board with regard to the assessment of disability of an incumbent should be respected until a fresh Medical Board examines the incumbent and comes to a different conclusion.

13. The aforesaid observations have been endorsed by the Hon'ble Supreme Court in **Ex CFN Narsingh Yadav v. UoI** (Civil Appeal No. 7672 of 2019), wherein it was held as under:-

> ***"21) Though, the opinion of the Medical Board is subject to judicial review but the Courts are not possessed of expertise to dispute such 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. "***

14. Moreover, the Hon'ble Supreme Court in **Secretary, Ministry of Defense and Ors v. A.Damodaran (Dead)** through LRs and Others (Civil Appeal No. 5678 of 2009)has observed as reproduced herein:-

> ***42. Here is also a case where the Medical Board has given its definite opinion that the disease from which the petitioner was suffering was not attributable to or aggravated by military service. It was recorded by the Medical Board that the case is of schizophrenia in a young officer with five years' service manifested in disorder of thought, perception, behaviour and emotional incongruity. Further opinion of the Board is that he had been reviewed by the medical specialist and no physical contributory factor elicited for his psychiatric breakdown. Disablement assessed is 60% (sixty per cent) disability neither attributable to nor aggravated by service.***
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> ***XXX XXX XXX***
>
> ***44. Another relevant factor which is required to be noted is that the report of the Medical Board is not under challenge. As has been held by this Court, such opinion of the Medical Board would have the primacy and therefore, it must be held that the learned Single Judge and the Division Bench of the High Court were not justified in allowing the claim of the respondent."***

15. In view of the aforesaid analysis, this Court concludes that there is no demonstrable causal or aggravating link between the applicant's service

and the onset or progression of his disability. The opinion of the RMB warrants no interference. The present Original Application is, therefore, devoid of merit and is liable to be dismissed.

16. There shall be no order as to costs.

17. Pending miscellaneous application(s), if any, stand closed.

Pronounced in open Court on this day of 13th January, 2026.

(JUSTICE NANDITA DUBEY)

MEMBER (J)

(RASIKA CHAUBE)

MEMBER (A)