

**ARMED FORCES TRIBUNAL, CHANDIGARH  
REGIONAL BENCH AT CHANDIMANDIR**

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OA 1063 of 2012

<b>Ganpat Singh</b>	.....	<b>Petitioner(s)</b>
<b>Vs</b>		
<b>Union of India and others</b>	.....	<b>Respondent(s)</b>

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For the Petitioner (s) : Mr SK Chauhan, Advocate

For the Respondent(s) : Dr. Urmil Gupta, CGC

**Coram: Justice Prakash Krishna, Judicial Member.  
Air Marshal (Retd) SC Mukul, Administrative  
Member.**

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**JUDGMENT  
27.01.2014**

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1. By this petition, the petitioner prays for grant of disability pension with benefit of rounding off.

2. As per the averments of the petitioner, he joined the Army on 7<sup>th</sup> October, 1965 and was discharged from service on 1<sup>st</sup> November, 1989, as Havildar in Low Medical Category CEE (P) after rendering 24 years 24 days of service. During the course of service, he was posted at various high altitude, field areas and faced unsuitable and adverse atmosphere/environment which badly affected his health. As a consequence, the petitioner suffered serious health hazards which resulted in his disability. The petitioner suffered eye ailment/eye problem and vision loss permanently due to service conditions. The Medical Board diagnosed him as a case of '**MATURE CATARACT RT EYE (OPTD) IMMATURE CATARACT LET EYE (366)**'.

3. It is further averred that as per order of Hon'ble the Punjab & Haryana High Court reported in 2000(4) SCT 580, a very stringent medical test is taken at the time of entry into army service and if there is no note of disease made at the time of entry, the disease resulting in invalidation of the person from service, is presumed to have arisen out of the service and attributable to military service, which is enshrined in Regulation 173 , Rule 7(B) of Appendix-II of the Army Pension Regulations 1961. The Hon'ble Apex Court, High Courts and Armed Forces Tribunals have settled the law that under

such type of circumstances when there is no note of disease on document at the time of entry, the sickness of disease is attributable to or aggravated by military service. It was also held in the case of Ved Parkash Sangwan v. Union of India 2000(5) AD (Delhi) 749 while interpreting Pension Regulation for Army 1961 (Regulation 173 and Appendix II Para 7(b) that when combatant soldier in army not having any disease at the time of entry into military service, suffered eye-ailment/eye problem/disorder allowed the petitioner to grant disability pension. The learned counsel for the petitioner relied upon the following judgments in support of his contention.

- i) Ex.Nk BB Suresh Kumar v. Union of India and others 2008(4) RSJ 684 (Delhi High Court)
- ii) Ex.Sep Jagbir Singh v. Union of India and others 2000(2) SCT 555 (Delhi High Court).
- iii) Ex. Sepoy Bhup Singh v. UOI 2001(3) RSJ 23 (Punjab and Haryana High Court)
- iv) Union of India and others v. Dhir Singh China 2003(3) RSJ 2 (Hon'ble Apex Court)
- v) Captain Bakhtawar Singh (Retd) v. Union of India and others 1988(1) SLR 439 (Pb & Hry High Court)
- vi) Ex.Gnr Dharam Vir Singh v. Union of India and others 2003(1) SLR 268. (Allahabad High Court)
- vii) Ex-Sign Balwinder Nath v. Union of India and others 2002(1) SLR 392 (Punjab & Hry High Court)
- viii) Ram Parkash v. Union of India and others 2005(4) RSJ 441 (Punjab and Haryana High Court)

4. The respondents in their written reply bring out that the petitioner was enrolled in the regiment of Artillery on 7.10.1965 and transferred to pension establishment w.e.f. 31<sup>st</sup> October, 1989 on fulfilling the conditions of enrolment. At the time of discharge, the petitioner was in Low Medical Category CEE (Permanent) due to disabilities '**MATURE CATARACT RT EYE (OPTD) IMMATURE CATARACT LET EYE (366)**'. The Release Medical

Board, held on the petitioner at 155 Base Hospital on 9.6.1989, opined the disability as neither attributable to nor aggravated by military service and not connected with military service. The degree of disablement was assessed at 20% for two years.

5. It is averred that the disability pension claim was forwarded to PCDA(P) Allahabad which was rejected vide letter dated 19.7.1990 and this fact was communicated to the petitioner vide letter dated 3<sup>rd</sup> August, 1990. The petitioner did not prefer any appeal against rejection of disability pension. Since the petitioner was not in receipt of disability pension, the question of rounding off did not arise.

6. It is further averred that although the petitioner was found fit for army service in primary medical examination report by the Recruiting Medical Officer at the time of enrolment, it cannot be presumed that he was free from all diseases as the primary medical examination did not involve various specialized tests/clinical examination which were carried out by specialists only when referred to them.

7. We have heard the learned counsel for the parties and perused the record.

8. A perusal of the record shows that the petitioner was fully fit when he was enrolled in the Army. The report of the Release Medical Board, held on 9<sup>th</sup> June, 1989, clearly brings out that the petitioner was operated for cataract right eye and was discharged from service on 31.10.1989. The summary and opinion of the Medical Specialist are as under:

No, 1280476 Hav Ganpat Singh  
Unit HQ 8 Mtn Arty Bde C/O 99 APO  
Service – 24 years

Height- 168 cm  
Weight 60 Kg.  
Chest 82-5  
Age 42 years.

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Diag: 'MATURE CATARACT RT EYE (OPTD) IMMATURE CATARACT LT EYE (366)'.  


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Summary and opinion of LT Col BL Goswami, Classified Specialist in authority

An old case of Cataract both eyes Rt eye (Optd) in cat 'CEE'(Temp) for 6/12 years w.e.f. 02 Feb 89. Now reported for SMS.

He noticed diminution of vision in Rt eye in the month of Sep 88 was NOT associated with redness, pain or watering. No history of DM.

He was diagnosed as a case of Mat Cat Rt eye and Immature Cat Lt eye. Rt eye was operated on 11 Jan 89 . Intracapsular lens extraction with cryo was done. The Capsule broke at the terminal stage of Lens delivery. Lens extraction completed extracapsularly by vectis and Lens Look. Vitreous followed the lens. Vitrectomy was done. AC was red with rigors lactate.

At present: Rt eye - No congestion  
 Aphakic  
 Wound well healed  
 AC Deep  
 Pupil slightly updrawn  
 Most capsule seen behind the pupil in upper part  
 Vit clear  
 Fundus NAD  
 Lt eye- No congestion  
 Cornea {}  
 AC {} N  
 Pupil {}

....XXX...XXX...XXX.....XXX...XX

“His all laboratory tests are within normal limits.

A case of Mat Cat Rt Eye (optd) and Immature Rt.

Fit for release in Cat CEE (Permanent).”

In view of the above the indl is brought before release medical board.

Sd/- B.L.Goswami  
 Eye Specialist.”

9. On assessment, the Medical Board found the disability ‘**MATURE CATARACT RT EYE (OPTD) IMMATURE CATARACT LET EYE (366)**’ at 20% for two years neither attributable to nor aggravated by military service being a constitutional disorder (age related). The personal statement of the petitioner in the Medical Board proceedings which were signed by the petitioner brings out that he did not suffer from such disability cataract when he joined the service. However, he could not give any incident during the service which may have caused above disability or may have worsened his condition and lastly he denied any injury or any incident which could have attributed to or aggravated onset of the above injury during service.

10. The learned counsel for the petitioner very vehemently argued that at the time of entry into service, the petitioner was medically fit, hence, any disease occurring after the entry in the service shall be deemed to have arisen during service and since the disease Cataract has arisen after the entry in the military service, the same is attributable to military service. It is difficult to accept such a broad proposition of law. There are diseases which are age related also. Such diseases are directly proportionate to age of an individual.

11. The disease 'Cataract' may have arisen after his entering into service as it has been clearly mentioned by the Medical Board in its proceedings that the disability did not exist before entering into service. Still, it has to be established that it is attributable to or aggravated by military service.

In Chapter VI of "GUIDE TO MEDICAL OFFICERS (MILITARY PENSION)" the disease 'Cataract' has been defined as under :

*"Cataract is primarily due to degenerative changes in the lens causing defective vision.*

*The causes of Cataract are many :*

- |   |                                  |
|---|----------------------------------|
| <i>(a) Senile cataract</i>                                  |                                  |
| <i>(b) Metabolic disease-</i>                               | <i>Diabetes mellitus</i>         |
|   | <i>Hypocalcaemia</i>             |
|   | <i>Galactosemia</i>              |
| <i>(c) Trauma</i>   | <i>Direct penetrating injury</i> |
|   | <i>eye</i>                       |
|   | <i>Concussion</i>                |
|   | <i>Ionizing radiation</i>        |
|   | <i>(Radiographer)</i>            |
|   | <i>Electric shock and</i>        |
|   | <i>Lightning</i>                 |
|   | <i>Prolonged exposure to UV</i>  |
|   | <i>Light ( for decades)</i>      |
| <i>(d) Complicated cataract</i>                             | <i>Secondary to uveitis</i>      |
|   | <i>Chroiditis</i>                |
|   | <i>High Myopia</i>               |
|   | <i>Glaucoma</i>                  |
| <i>(e) Drugs</i>  | <i>Steroids, Chlorpromazine,</i> |
|   | <i>Amiodarone</i>                |
| <i>(f) IOL Implant</i>                                      |                                  |
| <i>(g) Complications of atopic dermatitis and psoriasis</i> |                                  |

*It is unaffected by conditions of military service in both its onset and course unless the onset or course is brought about or hastened by an ocular injury or infection during service. The disability could also be aggravated by long service under adverse conditions, as for example in prolonged active operations or as a prisoner of war. "*

12. A perusal of the entire material makes it abundantly clear that the disease 'Contract' is unaffected by conditions of military

service in both its onset and course unless the onset or course is brought about or hastened by an ocular injury or infection during service. It is further clear that disease can be aggravated by long service under adverse conditions, as for example in prolonged active operations or as a prisoner of war.

13. Appendix II deals with Entitlement Rule for disability and Special Provisionary Awards 1982 has been attached to the Pension Regulations for the Army,1961 (Part-1) and there is Annexure III to this Appendix which deals with classification of diseases. Under head 'J' those diseases have been mentioned which are normally not affected by service. The following eye diseases have been mentioned which are normally not affected by service :

1. Errors of refraction.
2. Hypennetropia
3. Myopia
4. Astigmatism
5. Presbyopia
6. **Glaucoma**

It is common knowledge that Glaucoma is also known as '**Cataract**'.

14. A conjoint reading of this classification of diseases mentioned in Annexure 'III' to Appendix II of Pension Regulations for the Army ,1961 (Part-1) as well as Guide To Medical Officers (Military Pension),2002 makes it clear that disease '**Cataract**' is not affected by service conditions though this disease can be aggravated by long service under adverse conditions like prolonged active operations or as a prisoner of war which is not there in this case.

15. In the case at hand the petitioner himself has signed the initial statement of the Medical Board to the effect that there is no incident during service which may have caused this disease or may have worsened its condition. There is specific column '5' in which the individual is required to mention the wound or injury during service, the reason for its happening and if there was any Court of Inquiry or there was any injury report. In this column the petitioner has written nothing which means that he did not sustain any injury during service. In column 6 also, again the answer is nil which asks

the question “any other information you wish to give about your health”. Thus, it is admitted to the petitioner that neither there was any circumstance during service by which the disease as Cataract’ was aggravated nor there was any injury to the eye bringing this disease.

16. The Medical Board has clearly opined that the disease is constitutional and is neither attributable to, nor aggravated by military service. It cannot be said that the Medical Board has not given any reason for coming to this conclusion that looking to the entire facts and circumstances including the statement of the individual himself, the Board has come to the conclusion that the disease is age related and we do not find any reason to differ with the opinion of the Medical Board.

17. Here we would like to refer to the judgment of Hon’ble the Apex Court in Civil Appeal No.3686 of 2012 (arising out of SLP (C) No.6629 of 2011) **Union of India and another Vs.Talwinder Singh**, decided on 20.04.2012. In the said case Hon’ble the Apex Court has observed as under :

*“It is a settled legal proposition that opinion of the Medical Board should be given primacy in deciding cases of disability pension and the Court should not grant such pension brushing aside the opinion of the Medical Board”.*

After this observation, Hon’ble the Apex Court referred to the following decisions of the Apex Court :

- (i) Union of India & another V. Baljit Singh (1996) 11 SCC 315;
- (ii) Union of India & others V. Dhir Singh China, Col.(Retd.) (2003) 2SCC;
- (iii) Controller of Defence Accounts (Pension) & others V. S.Balachandran Nair;AIR 2005 SC 4391;
- (iv) Union of India & others V.Keshar Singh,(2007) 12 SCC 675; and
- (v) Union of India & others Vs. Surinder Singh Rathore,(2008) 5 SCC 747.

Hon’ble the Apex Court then in para 8 of the judgment held as under:

*“ In case the Medical Authorities records the specific finding to the effect that disability was neither attributable to nor aggravated by the military service, **the court should not ignore such a finding for the reason that Medical Board is specialized authority composed of expert medical doctors and it is a final authority to give opinion regarding attributability and aggravation of the disability due to the military service and the conditions of service resulting in the disablement of the individual**”.*

*(emphasis supplied)*

18. Now we would like to discuss the judgments relied upon by the learned counsel for the petitioner. In Ex.Nk BB Suresh Kumar’s case (supra), the petitioner was serving at high altitude and snow bound area without snow goggles which aggravated his eye problem. This judgment is not applicable to the facts of the present case. In Ex.Sep Jagbir Singh’s case (supra) the judgment relied on **Ex.Sapper Mohinder Singh v. Union of India**, the Hon’ble Supreme Court observed that the opinion of the Medical Board respected until further review medical board is held. This judgment is also not applicable to the facts of the present case. In Ex.Sepoy Bhup Singh’s case (supra), the petitioner joined the service in fully fit condition and any disability thereafter was held to be attributable to military service. However, the expert opinion of the medical board was not considered. Thus, this judgment is not strictly applicable to the present case. Dhir Singh China’s case (supra), deals with disability suffered from Open Angle Glaucoma in both eyes, which was found to be not aggravated nor attributable to military service and on account of this disability, the disability pension was denied. Thus, it is also not applicable in the present case. In Captain Bakhtawar Singh’s case (supra) the petitioner suffered complete blindness and the Court had directed the authorities to review his case. This judgment is also not applicable to the facts of the present case. Both Ex.Gnr Dharam Vir Singh’s case and Ex.Sign Balwinder Nath’s case (supra) deal with ear problem and are not applicable to the present case. In Ram Parkash’s case (supra), the Hon’ble Judge has not considered the opinion of the Release Medical Board and the expert opinion therein. This was contrary to the various judgments of the Hon’ble Supreme Court wherein the opinion of the Medical Board has been held as primary by the Hon’ble Apex Court in **UOI & Ors v. Dhir Singh China 2003(3)**



**RSJ 2 and Secy Ministry of Defence v. AV Damodaran, 2009(9) SCC 140.**

19. Section 22 of the Armed Forces Tribunal Act, 2007 provides the period of limitation for filing a petition. For the sake of convenience, the aforesaid section is reproduced below :-

*“22. Limitation. – (1) The Tribunal shall not admit an application –*

*(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 21 has been made within six months from the date on which such final order has been made;*

*(b) in a case where a petition or a representation such as is mentioned in clause (b) of sub-section (2) of section 21 has been made and the period of six months has expired thereafter without such final order having been made;*

*(c) in a case where the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which jurisdiction, powers and authority of the Tribunal became exercisable under this Act, in respect of the matter to which such order relates and no proceedings for the redressal of such grievance had been commenced before the said date before the High Court.*

*(2) Notwithstanding anything contained in sub-section (1), the Tribunal may admit an application after the period of six months referred to in clause (a) or clause (b) of sub-section (1), as the case may be, or prior to the period of three years specified in clause (c), if the Tribunal is satisfied that the applicant had sufficient cause for not making the application within such period.”*

20. These are the three contingencies which have been laid down in respect of limitation. Section 22(2) clearly says that Tribunal shall not admit an application after the period of six months referred to in clause (a) or clause (b) of sub-section (1), as the case may be or prior to the period of three years specified in clause (c), if the Tribunal

is satisfied that the applicant had sufficient cause for not making the application within such period. So far as Section 22(a) and (b) are concerned, the period of limitation is six months. Sub Clause (C) of Section 22 only applies for the cases in which grievance had arisen by reason of any order preceding three years the date of jurisdiction, powers and authority of the Tribunal became exercisable i.e. three years prior to constitution of the Tribunal. But so far as approaching this Tribunal is concerned, the period is six months.

21. The petitioner's release medical board was held on 9.6.1989 and on rejection of his claim for grant of disability pension by the PCDA(P) Allahabad, he was informed to make an appeal if he so desired but he did not do so and has come up with the issue in the present OA which was filed on 20.3.3012. We feel that this lapse of nearly 22 years cannot be condoned.

22. In view of the above discussion and considering the fact that the Medical Board has also given reasons for coming to the conclusion that the disability is neither attributable to nor aggravated by military service, we are satisfied that the petitioner has failed to make out any case for disability pension and the petition is liable to be dismissed.

23. The petition is accordingly dismissed.

**(Justice Prakash Krishna)**

**(Air Marshal (Retd) SC Mukul)**

27.01.2014

raghav

Whether the judgment for reference is to be put on internet? Yes