ARMED FORCES TRIBUNAL,
REGIONAL BENCH, GUWAHATI

15. **OA-12/2023**

Ex-Sub Maj & Hony Lt Nil Kanta Sinha
Army No.JC 326269W
S/O. Late Manik Chandra Sinha
House No.16, Simantapur Path
PO- Basistha, Guwahati
Assam, PIN-781029

..... Applicant
By legal practitioners for Applicant
AR Tahbildar

-Versus-

1. The Union of India
Represented by the Secretary.
Ministry of Defence,
Sena Bhawan, New Delhi-1.

2.The Officer-in-Charge,
Records, Bengal Engineer Group,
PIN- 908779, C/O 56 APO

3.The Addl. Directorate General of Personnel
Services, Adjutant General's Branch,
Integrated HQ of MoD (Army), MP-6(C)
New Delhi.

4. The Principal Controller of Defence Accounts (Pension),
Draupadi Ghat, Allahabad- 211014.

..... Respondents
By legal practitioner for Respondents
Dipanjali Bora, CGSC

CORAM:

HON`BLE MR. JUSTICE K. HARILAL, MEMBER (J)
HON`BLE AIR MSHL BALAKRISHNAN SURESH, MEMBER (A)

ORDER
02.04.2024

1. Deeply aggrieved by the denial of disability element of pension, the applicant has filed this O.A. and prayed for an order directing the respondents to grant disability element of pension to him.

2. Applicant Nil Kanta Sinha, Army No. JC-326269W was a Hony Lieutenant who was enrolled in the Indian Army on 02.02.1978 and was discharged from service in Low Medical Category on 29.02.2008 after completion of about 30 years of service. At the time of enrolment, he was medically and physically fit for the Army service and no note of any disability was recorded by the medical experts at the time of his enrolment. But during the period of his service, in 2007, he was diagnosed with Coronary Artery Disease (CAD) and Type-II Diabetes Mellitus (Type II DM). Eventually, the Release Medical Board assessed the CAD(OPTD) @ 30% for life and Type-II Diabetes Mellitus @ 15-19% for life, and composite disability was assessed at 40% for life. But, the RMB further opined that the disabilities were neither attributable to nor aggravated by military service. Subsequently, the adjudicating authority had rejected his

claim for disability element of pension on the ground that the disabilities are neither attributable to nor aggravated by military service. According to the applicant, though his claim for disability element of pension was rejected, no medical documents had been served to him and hence, he could not file an appeal in time. But later, he obtained the medical documents invoking the provisions under RTI Act, 2005 and thereafter, filed a representation dated 24.02.2023 (Annexure-F) claiming the disability element of pension and the same was rejected vide order dated 13 Mar 2023 (Annexure R-VI) of the Affidavit-in-Opposition as time-barred. In the above circumstances, he was left with no remedy other than approaching this Tribunal.

3. In the Affidavit-in-Opposition, the respondents raised various contentions to justify the denial of disability element of pension to the applicant. According to them, the applicant has failed to file appeal, within the time and the same has become time-barred. They rejected the claim for disability element of pension on the ground that the RMB unequivocally held that the disabilities were neither attributable to nor aggravated by military service; but the respondents have admitted his long tenure of service of about 30 years. The applicant miserably failed to satisfy the statutory requirements under Regulation 53 of the Pension Regulations for the Army, 2008. Regarding disability of 40% for life, the RMB further opined that the

disabilities were neither attributable to nor aggravated by military service and hence, the applicant is not entitled to get disability element of pension. It is further contended that the statutory authorities have carefully considered the applicant's claim for disability element of pension in accordance with relevant rules and the existing medical/administrative provisions and rejected it as he failed to satisfy the statutory requirements under law. It is also admitted that the applicant submitted his applications on 14.12.2022 and 24.02.2023 under RTI Act, 2005 seeking certain medical documents and those documents were provided to him by BEG Records along with letters dated 05.01.2023 and 13.03.2023. Thereafter, the applicant submitted an application dated 24.02.2023 for grant of disability element of pension and the reply was communicated vide letter dated 13.03.2023.

4. Heard the learned counsel appearing for the applicant and the learned Central Government Standing Counsel appearing for the respondents.

5. Learned counsel for the applicant has advanced arguments highlighting the point that no reasoning has been made in the RMB proceedings for the cause of disabilities of CAD and Type-II DM. The RMB assessed the disabilities in a perfunctory manner in violation of the provisions under the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008, Regulations for Medical

Services, 1983 and the Guide to Medical Officers, 2002. The RMB miserably failed to discharge the burden of proof under Rule 7 of the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008. Further, the learned counsel for the applicant has invited our attention to the long period of service for about 30 years rendered by the applicant and submitted that he was posted twice in the field services and lastly he was posted at Tawang, a high altitude area from 09.12.1999 to 20.04.2023 before the detection of the diseases. But, the stress and strain during the long period of service, high altitude service and dietary compulsion have not been considered by the RMB or the adjudicating authority, while evaluating the cause of disabilities.

6. *Per contra*, the learned Central Government Standing Counsel appearing for the respondents advanced arguments to justify the rejection of the claim for disability element of pension raised by the applicant. The learned Standing Counsel further contended that the applicant has miserably failed to satisfy the conditions under Regulation 53 of the Pension Regulations for the Army, 2008. The RMB has held that the disabilities of the applicant were neither attributable to nor aggravated by the military service. There is no reason to interfere with the opinion of the Release Medical Board. It is also contended that the applicant has not filed the statutory appeal within the time and now it has become time-barred.

7. In view of the rival pleadings, the reliefs sought for and the arguments advanced at the Bar, the question to be considered in this O.A. is given below:

> (i) Had there been any illegality, impropriety or arbitrariness in the denial of disability element of pension to the applicant on the ground that the disabilities were neither attributable to nor aggravated by military service?

8. Though the applicant has not preferred an appeal against the denial of disability element of pension to him, considering the extra-ordinary facts and circumstances involved in this O.A., the inordinate delay in filing the O.A. and the arbitrariness, irregularity and illegality in the Release Medical Board proceedings, we deem it just and proper to consider the O.A. on merits, for the interest of justice, and we do so.

9. The respondents in the Affidavit-in-Opposition stated that the applicant failed to satisfy the requirements under Regulation 53 of the Pension Regulations for the Army, 2008. We noticed that as per Regulation 1 of the Pension Regulations for the Army, 2008, this Regulation has come into force from 1st July, 2008 only. But the applicant was discharged from Army service on 29.02.2008. In short, when the applicant was discharged from Army service, Pension

Regulations for the Army, 1961 was in force. That apart, going by the order Annexure-E produced by the applicant and Annexure-III produced by the respondents, we find that the applicant's claim for disability pension has been rejected under Regulation 179 of the Pension Regulations for the Army, 1961. So, we have examined the applicant's entitlement for disability element of pension under Regulation 179 of the Pension Regulations for the Army, 1961.

10. The first point to be considered is whether the respondents discharged the onus of proof under Rule 7 of the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008 which has come into effect from 1.1.2008. Rule 7 reads thus:

> **"7. Onus of proof.-** Ordinarily the claimant will not be called upon to prove the condition of entitlement. However, where the claim is preferred after 15 years of discharge/ retirement/ invalidment/ release by which time the service documents of the claimant are destroyed after the prescribed retention period, the onus to prove the entitlement would lie on the claimant."

It is well discernible from the aforesaid rule that it consists of two conditions to shift the onus of proof to the claimant; (i) 15 years must have been elapsed after the discharge of the claimant when the O.A. is filed; and (ii) the service documents, including medical documents in respect of the applicant's claim must have been destroyed. Unless

the aforesaid two conditions are satisfied, the onus of proof will lie on the respondents.

11. Coming to the instant case, we find that though 15 years have elapsed after the discharge of the applicant from service when the O.A. was filed, the respondents have not raised the contention that they have already destroyed the service documents, including medical documents in respect of the claim of the applicant for disability pension and they have produced copies of all the concerned records. That apart, the respondents have served the copies of the medical documents to the applicant under the Right to Information Act on 05.01.2023 and 13.03.2023. Therefore, the conditions under Rule 7 have not been fully satisfied and only one condition is satisfied to shift the onus of proof to the applicant. Hence, we find that the onus of proof would lie on the respondents themselves.

12. The learned counsel for the applicant focussed his argument on the anomalies in the RMB proceedings about the cause of disabilities. So, we have meticulously examined the opinion of the RMB, and we also find that no reason has been given by the RMB as to the cause of disabilities except the finding that the disabilities are neither attributable to nor aggravated by military service, with a very brief opinion of the Specialist. How did the RMB arrive at such a finding? Neither the proceedings of the Release Medical Board nor the opinion of the Specialist has stated anything to indicate that they

have evaluated the cause of disabilities and assessed the percentage of disabilities, as per the provisions under the Regulations for Medical Services, 1983 or the Guide to Medical Officers, 2002.

13. Regulation 423(a) & (c) of the Regulations for Medical Services, 1983 has provided certain specific methods for the determination of the cause of disability, which is extracted below:

> **"423(a)** *For the purpose of determining whether the cause of a disability or death is or is not attributable to service, it is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a Field Service/Active Service area or under normal peace conditions. It is, however, essential to establish whether the disability or death bore a causal connection with the service conditions. All evidence both direct and circumstantial, will be taken into account and benefit of reasonable doubt, if any, will be given to the individual. The evidence to be accepted as reasonable doubt, for the purpose of these instructions, should be of a degree of cogency, which though not reaching certainty, nevertheless carries a high degree of probability. In this connection, it will be remembered that proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. If the evidence is so strong against an individual as to leave only a remote possibility in his favour, which can be dismissed with the sentence "of course it is possible but not in the least probable" the case is proved beyond reasonable doubt. If on the other hand, the evidence be so evenly balanced as to render*

impracticable a determinate conclusion one way or the other, then the case would be one in which the benefit of the doubt could be given more liberally to the individual, in cases occurring in Field Service/ Active Service areas.

(c) *The cause of a disability or death resulting from a disease will be regarded as attributable to service when it is established that the disease arose during service and the conditions and circumstances of duty in the Armed Forces determined and contributed to the onset of the disease. Cases, in which it is established that service conditions did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, will be regarded as aggravated by the service. 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 service in the Armed Forces. 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."*

(Underline supplied)

14. Since the Guide to Medical Officers (Military Pension), 2008 (Amendment to Chapters VI & VII) has been issued after the date of discharge of the applicant on 29.02.2008, the Guide to Medical Officers, 2002 as such is applicable to the applicant. Going through

the provisions under the Guide to Medical Officers, 2002, we find that CAD(OPTD) and Type-II DM are classified diseases which are affected by stress and strain and dietary compulsion and specific parameters are provided under Chapters I to III for assessing the cause of diseases and entitlement of disability pension thereunder. But, the Release Medical Board and the adjudicating authority have miserably failed to evaluate the possibility of attributability and aggravation of the diseases in accordance with the aforesaid Regulations and GMO, 2002. As per Para 26 of Chapter VI of the Guide to Medical Officers, 2002, environmental factors interact with genetic susceptibility to determine the onset of different variants of diabetes and it would be appropriate to concede aggravation, by service, where the conditions are shown to have been such as to produce delay in proper treatment resulting in persisting worsening. Therefore, the RMB should have evaluated the possibility of aggravation, in view of the long period of service spanning about 30 years, including two field postings for more than 6 years, and the last high altitude service at Tawang for 3 years and 4 months. All evidence both direct and circumstantial should have been taken into account and benefit of doubt should have been given to the applicant. Proof beyond reasonable doubt does not mean proof beyond a shadow of doubt, and if it is not reaching certainty, high degree of cogency could have been sufficient. The medical opinion does not hold that the disease could not have been

detected on medical examination prior to the acceptance for service. No note of any disability was made at the time of the applicant's acceptance for service. Thus admittedly, the diseases were not in existence at the time of enrolment. Had it been otherwise, he would not have been recruited in the Army. Therefore, the diseases should have been deemed to have arisen or aggravated by the service conditions. Thus, the respondents miserably failed to discharge the burden of proof under Rule 7 of the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008.

15. It is not disputed that the applicant had served in the Army for about 30 years and going by the posting profile in Part-I of RMB proceedings, we find that he was posted in field service during the period from 24.09.1979 to 10.10.1980 and from 16.11.1985 to 03.09.1990 and in high altitude area from 09.12.1999 to 20.04.2003. During the last field service, he was posted at Tawang, a high altitude area and the said postings were before the onset of both the diseases. Therefore, there was enough possibility for aggravation of the diseases even if they were constitutional. In view of the long period of service spanning about 30 years, the nature of duty, service conditions and climatic conditions in the high altitude area to which he was exposed for about three years, we find that even if the root cause of diseases was constitutional or genetic, that would have been aggravated by the aforesaid triggering factors. Merely on the reason

that the diseases were detected on 23rd July, 2007, it cannot be said that the diseases were not in existence before that date. Onset of Coronary Artery Disease and Type-II Diabetes Mellitus cannot happen in one day, and the date of origin shown as 23rd July, 2007 can be treated as the date of detection of the diseases on the basis of the manifestation of symptoms. So, the cause of disabilities should have been determined, in view of the aforesaid triggering factors. The aforesaid triggering factors would give rise to a reasonable doubt in favour of the applicant to get disability element of pension. We do not find the possibility of any reason or circumstance other than the aforesaid triggering factors as cause of diseases. The above view is supported by Rule 7(d) of Chapter I of the Guide to Medical Officers, 2002, which is extracted below:

> **"7.(d) Reasonable Doubt:** Implies that there must be reasons-i.e. facts from which the doubt arises. It is one which influences the decisions arrived at by a reasonable and prudent person when conducting important affairs of his own life. Accordingly, for the purpose of these instructions it will be construed as an alternative favouring a member, which can be supported by rational arguments based on adequate premises and is not merely a strained or fanciful acceptance of vague or remote possibilities."

16. In the above analysis, we find that there has been illegality, impropriety and arbitrariness in the denial of disability element of pension to the applicant for the diseases CAD(OPTD) and Type II Diabetes Mellitus. The applicant is entitled to get disability element of

pension @ 40% for life. In view of policy letter dated 31.01.2001 issued by the Government of India, Circular No.301 dated 27.5.2002 of the PCDA(P), Allahabad and the decision of the Supreme Court in **Union of India and others v. Ram Avtar (Civil Appeal No.418 of 2012)**, the applicant is entitled to get the rounding off benefit also. Therefore, the applicant is entitled to get the disability element of pension @ 50% for life.

17. In the result, respondents 2, 3 and 4 are directed to issue a corrigendum PPO granting disability element of pension to the applicant @ 40%, which would stand rounded off to 50% for life, and pay the arrears for three years prior to the filing of the O.A., i.e. 15.05.2023, at the earliest, at any rate, within five months from the date of receipt of a copy of this order, failing which the unpaid arrears would carry interest @ 9% per annum.

18. The Original Application is allowed accordingly.

19. No order as to costs.

(Air Mshl Balakrishnan Suresh)
MEMBER (A)

(Justice K. Harilal)
MEMBER (J)

LEAVE TO APPEAL

After the above order was passed, the learned Central Government Standing Counsel for the respondents made an oral submission requesting to grant leave of this Tribunal for filing appeal in the Hon'ble Supreme Court against the above order. Heard both sides. We find no merit in the said submission as no point of law of general public importance is involved in this order.

Hence, leave to appeal is rejected.

(Air Mshl Balakrishnan Suresh)
MEMBER (A)

(Justice K. Harilal)
MEMBER (J)

Mc/kk/gm/Sha