

ARMED FORCES TRIBUNAL
REGIONAL BENCH
GUWAHATI
(Through Video-conferencing)

O.A. NO.4/2021

Ex-Nk Ginhahang ... Applicant
Versus
Union of India & Ors. ... Respondent

For applicant : **Mr. AR Tahbidar, Advocate**
For the Respondents : **Ms. Deepanjali Bora, Advocate**

CORAM:

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN PM HARIZ, MEMBER(A)

ORDER

1. This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, by the applicant, who is aggrieved by the rejection of his claim for disability pension by the respondents vide impugned order dated 18.12.2019.

2. The applicant was initially enrolled in the Brigade of The Guards on 15.02.1984 and was discharged from service on 28.02.2001 under Army rule 13 (3) III (i) after rendering 17 years and 15 days of qualifying service. The applicant was granted service pension vide PCDA (P) Allahabad PPO no. S/058790/2000 (Army). Thereafter, the applicant was re-enrolled in DSC on 21.09.2002 and he did not opt to count his former service towards DSC service. He

was discharged from DSC service wef 30.04.2019 under Army rule 13 (3) III (i) after rendering 16 years, 7 months and 10 days of qualifying service. At the time of discharge, the applicant was brought before a duly constituted medical board. Release Medical Board assessed his disability 'TYPE-II DIABETES MELLITUS' and 'OBESITY' as neither attributable to nor aggravated by military service @ 20% disablement and 'NIL' percentage of disability qualifying pension. The first appeal preferred by the individual was rejected vide order dated 18.12.2019. The second appeal preferred by the applicant is under consideration by the Second Appellate Committee on Pension (SACP). The applicant was granted second service pension vide PPO no. 194201901194.

3. Learned counsel for the applicant submitted that, as per Regulation 53(a) of the Pension Regulations for the Army, 2008- "*An individual released/retired/discharged on completion of term of engagement or on completion of service limits or on attaining the prescribed age (irrespective of his period of engagement), if found suffering from a disability attributable to or aggravated by military service and so recorded by Release Medical Board, may be granted disability element in addition to service pension or service gratuity from the date of retirement/discharge, if the accepted degree of disability is assessed at 20 percent or more*". He further submitted

that as per Rule 5 of the Entitlement Rules for Causality Pensionary Awards, 1982 a member is presumed to have been in sound physical and mental condition upon entering service except to physical disabilities noted or recorded at the time of entrance. In this case, the applicant was in sound physical and mental health at the time of entry into service and no note of any disease was recorded at the time of entry into service. The onset of the disease was only in March 2017, while the applicant was in service due to stress and strain related to military service. Moreover, Rule 9 of the aforesaid Rule puts the burden to disapprove the correlation of the disability with the service with the authorities and categorically prescribes that 'benefit of doubt is to be given to the claimant. Therefore, that the release medical board had illegally and arbitrarily held the disease as neither attributable to nor aggravated by military service.

4. Learned counsel for the respondents submitted that as per Para 53(a) of the Pension Regulations for the Army, 2008 (Part I), the primary condition for grant of disability pension is that the disability is either attributable to or aggravated by military service and disability is assessed at 20% or over. In the instant case, the disability of the applicant is assessed as NANA by the medical board with nil percentage of disability. Hence, the applicant is not entitled for disability pension.

5. Learned counsel for the respondents further submitted the disability DIABETES MELLITUS TYPE-II is a metabolic disorder of idiopathic origin with a strong genetic familial preponderance. The disability 'OBESITY' is due to interplay of genetic metabolic and lifestyle factors and due to failure in maintaining the body weight. Hence, the Release Medical Board has correctly held both the disabilities as neither attributable to nor aggravated by military service.

6. Learned counsel for the respondents had also submitted that as per section 21 of the AFT Act 2007, the Tribunal shall not ordinarily admit an appeal unless it is satisfied that the applicant had availed the remedies available to him under the Army Act 1950. In the present case, the second appeal preferred by the applicant is already under consideration by the SACP. This aspect has already been upheld by the Hon'ble AFT (PB) New Delhi in the judgment dated 05 Feb 2019 in OA No 1569/2018 in the case titled Col (Retd) Satinder Singh Vaid Vs Union of India & Others. Therefore, the O.A is, therefore, liable to be dismissed with costs.

7. Having heard both the sides at length, the only issue to be decided is whether the disability of the applicant i.e. 1. Diabetes Mellitus T-II and 2. Obesity could be held attributable to or aggravated by military service and broad banded to 50 percent.

8. The law on the point of attributability of a disability is already settled by the Hon'ble Supreme Court in the case of *Dharamvir Singh Vs. Union of India [(2013) 7 SCC 316]*, which has been followed in subsequent decisions of the Hon'ble Supreme Court and in the number of orders passed by the Tribunal, wherein the Apex Court had considered the question with regard to payment of disability pension and after taking note of the provisions of the Pension Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers, it was held by the Hon'ble Supreme Court that an Army personnel shall be 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 and in the event of his being discharged from service on medical grounds, any deterioration in his health, which may have taken place, shall be presumed due to service conditions. The Apex Court further held that the onus of proof shall be on the respondents to prove that the disease from which the incumbent is suffering is neither attributable to nor aggravated by military service.

9. Hon'ble Supreme Court in the case of *Union of India & Ors. Vs. Rajbir Singh [Civil Appeal Nos. 2904 of 2011]* decided on 13.02.2015, after considering the case in *Dharamvir Singh (supra)*

upholding the decision of the Tribunal granting disability pension observed as under :

“..... Last but not the least is the fact that the provision for payment of disability pension is a beneficial provision which ought to be interpreted liberally so as to benefit those who have been sent home with a disability at times even before they completed their tenure in the armed forces....

.....There may indeed be cases, where the disease was wholly unrelated to military service, but, in order that denial of disability pension can be justified on that ground, it must be affirmatively proved that the disease had nothing to do with such service.....”

10. Further, the Hon'ble Supreme Court also in the case of *Commander Rakesh Pande Vs. Union of India & Ors. [Civil Appeal No. 5970 of 2019]* decided on 28.11.2019, has upheld the decision of the Armed Forces Tribunal granting disability pension in respect of diabetes to the applicant.

11. In the light of the law already laid down with regard to the attributability/aggravation, we find that the RMB has denied the attributability/aggravation of the disability (diabetes mellitus) on the ground that the disease is metabolic disorder and not connected with service. However, taking note of the facts and circumstances of the

case, we are of the view that this reasoning given by the RMB for denying disability element of disability pension to the applicant is not convincing. The Tribunal has consistently taken a view that the armed forces personnel go through the pressure of rigorous military training and associated stress and strain of the service and holding the disability in question as only metabolic disorder without giving any specific grounds for the opinion may not be acceptable. It may also be taken into consideration that the most of the personnel of the armed forces, during their service, work in the stressful and hostile environment, difficult weather conditions and under strict disciplinary norms. Admittedly, the applicant was initially enrolled in the army in February, 1984 and the disability's onset was only diagnosed in March, 2017. There has not been any note regarding his leading a poor lifestyle and family history etc. We are, therefore, of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant in view of above judgment and settled law on the point of attributability/aggravation, the disability (diabetes mellitus) of the applicant should be held attributable to/aggravated by the military service.

12. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is entitled for disability element of pension in respect of disability 'diabetes mellitus Type-II.

Therefore, OA is allowed. The respondents are directed to grant disability element of pension to the applicant @ 20% which be further rounded off to 50% for life from the date of discharge in term of the judicial pronouncement of the Hon'ble Supreme Court in the case of Union of India Vs. Ram Avtar (Civil Appeal No. 418/2012) decided on 10.12.2014. However, as the applicant has approached the Tribunal after a considerable delay, in view of the law laid down in *Tarsem Singh's case (supra)*, arrears will be restricted to three years prior to the date of filing of this OA i.e. 05.04.2021.

13. Accordingly, the respondents are directed to calculate, sanction and issue necessary PPO to the applicant within four months from the date of receipt of copy of this order, *failing which*, the applicant shall be entitled to interest @ 6% per annum till the date of payment.

14. Pending MAs, if any, stand closed accordingly. There is no order as to costs.

Pronounced in open Court on this ___15th ___ day of May,
2023.

**(JUSTICE RAJENDRA MENON)
CHAIRPERSON**

**(LT GEN P.M. HARIZ)
MEMBER(A)**

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