

COURT No.2  
ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

2.

OA 1046/2019 with MA 1720  
/2019

Ex Sgt Jayanta Das

VERSUS

Union of India and Ors.

..... Applicant

..... Respondents

For Applicant : Mr Baljeet Singh, proxy for Mr. Virender  
Singh Kadian, Advocate  
For Respondents : Mr. Shyam Narayan, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)  
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER  
05.10.2023

Vide our detailed order of even date, we have allowed the OA 1046/2019. Learned counsel for the respondents makes an oral prayer for grant of leave to appeal in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007 to assail the order before the Hon'ble Supreme Court. After hearing learned counsel for the respondents and on perusal of our order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order to grant leave to appeal. Therefore, prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)  
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)  
MEMBER (A)

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**OA No. 1046 of 2019 with MA 1720/2019**

**Ex Sgt Jayanta Das**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant : Mr. V.S. Kadian, Advocate**

**For Respondents : Mr. Shyam Narayan, Advocate**

**CORAM :**

**HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER(J)**

**HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)**

**ORDER**

**MA 1720/2019**

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 5475 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 1720/2019 is allowed despite opposition on behalf of the respondents and the delay of 5475 days in filing the OA 1046/2019 is thus condoned. The MA is disposed of accordingly.

1. The applicant vide the present O.A 1046/2019 has made the following prayers:-

*“(a) Quash and set aside the impugned letter No. AirHQ/99798/1/726674/(DP/RMB) dated 15.05.2019. and/or*

*(b) Direct respondents to treat the disability BRONCHIAL ASTHMA(OLD) 2-09.0 assessed @20% for life of the applicant as attributable to or aggravated by military service and grant him disability element of pension with the benefits of broad banding to 50%. and/or*

*(c) Direct respondents to pay the due arrears of disability element with interest @12% 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 along with cost of the application in favour of the applicant and against the respondents..”*

2. The applicant Ex Sgt Jayanta Das was enrolled in the Indian Air Force on 19.01.1988 and discharged from service on 16.04.2004 under the clause “At his own request” after rendering total 16 years and 88 days of regular service. The applicant was recommended to be placed in lower medical category CEE (T-24) for disability BRONCHIAL ASTHMA vide AFMSF-15 dated 14 Jan 2004. Subsequently he was placed in LMC: CEE (P) vide AFMSF-15 dated 14 Apr 2004. His release medical board not solely on medical grounds was held at 9 AFH vide AFMSF-16 dated 14 Apr 2004 and found him fit to be released in low medical category CEE (P) for the disability BRONCHIAL ASTHMA. The RMB has however considered his

disability of Bronchial Asthma as neither attributable to nor aggravated by service, and that it was due to climatic conditions, not connected with service. The percentage of disablement was assessed as 20% for lifelong with the disability qualifying for disability pension with duration Nil for life. The RMB was approved by the Dy PMO (S) HQ WAC, IAF dated 27 Apr 2004.

3. The claim for disability pension filed by the applicant was rejected vide the impugned letter no. Air HQ/99798/1/726674/(DP/RMB) dated 15.05.2019 stating to the effect that the disability of the applicant of BRONCHIAL ASTHMA assessed @20% for life was Neither Attributable to Nor Aggravated by service and that thus the parameters of Para-153 of Pension Regulations for IAF, 1961(Part-I) which required that the disability was either attributable to or aggravated by service was not fulfilled. Though there is nothing to indicate the institution of any appeal against the rejection of the disability pension claim filed by the applicant, taking into account, the factum that the present OA has been pending consideration since its institution on 26.06.2019 and as the pleadings are complete, we consider it appropriate to take up the OA for consideration in terms of Section-21(1) of the AFT Act, 2007.

## **CONTENTIONS OF THE PARTIES**

4. The applicant submits that he joined the Indian Air Force on 19.01.1988 in a fit medical category without any note of disability recorded on the medical records of the respondents for the applicant and thus in terms of the verdict of the Hon'ble Supreme Court in ***Dharamvir Singh Vs. UOI & Ors*** in CA No. 4949/2013, the disability that the applicant suffers from, has to be held to be attributable or aggravated by military service. Specific reliance was also placed on behalf of the applicant on the observations of the Hon'ble Supreme Court in CA No. 4949/2013 in Para-28 in ***Dharamvir Singh Vs. UOI & Ors.***, which lays down as under:-

*"28. A conjoint reading of various provisions, reproduced above, makes it clear that:*

*(i) Disability pension to be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable or aggravated by military service to be determined under "Entitlement Rules for Casualty Pensionary Awards, 1982" of Appendix-II (Regulation 173).*

*(ii) A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service. [Rule 5 r/w Rule 14(b)].*

*(iii) Onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a*

*right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally. (Rule 9).*

*(iv) If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service.*

*[Rule 14(c)].*

*(v) 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 or death will be deemed to have arisen in service. [14(b)].*

*(vi) If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons. [14(b)]; and*

*(vii) It is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II of the "Guide to Medical (Military Pension), 2002 – "Entitlement : General Principles", including paragraph 7,8 and 9 as referred to above."*

to contend to the effect that the Govt of India vide its Min of Def letter F. No. 4(17)/2015/D(Pen/Legal) dated 29.06.2017 has also stated therein that if the individual meets the conditions as observed by the Hon'ble Supreme Court in ***Dharamvir Singh Vs. UOI & Ors*** in CA No. 4949/2013 then such a person was entitled to the prayer for the grant of disability element of pension. Reliance was also placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in ***UOI & Ors. Vs. Rajbir Singh***, (2015) 12 SCC 264 to contend to similar effect.

5. The applicant has further submitted that the opinion of the Release Medical Board(RMB) in Part-V thereof to the effect:-

“

**PART-V**  
**OPINION OF THE MEDICAL BOARD**

1. Causal relationship of the disability with Service conditions or otherwise.					
Sl No.	Disability	Attributable to service (Y/N)	Aggravated by Service (Y/N)	Not Connected with Service (Y/N)	Reason/Cause/Specific Condition & period in Service
(a)	BRONCHIAL ASTHMA(OLD) Z-09.0	NO	NO	YES	It is due to climatic condition. Not connected with service.

”

which state that the disability of the applicant was not connected with military service and was neither attributable to nor aggravated by military service is wholly arbitrary.

6. On behalf of the respondents, it was reiterated through the Counter Affidavit dated 07.01.2020, that in the instant case in as much as the disability of the applicant was neither attributable to nor aggravated by military service, the applicant is not entitled to the grant of the disability element of pension.

***ANALYSIS***

7. It is essential to observe that the disability that the applicant suffers from, had its onset in the year 1993 as reflected by the statement of the case in Part-IV of the RMB, which is as under:-



PART-IV  
STATEMENT OF CASE

1. Chronological list of the disabilities

Disabilities	Date of origin	Place and unit where serving at the time
BRONCHIAL ASTHMA(OLD) Z-09.0	1993	AFRO, New Delhi

that is after a period of 5 years of joining the Indian Air Force and the said disability is indicated to have continued till his discharge, when he was discharged from service on 16.04.2004. This is so in as much as, even on 20.10.2003 as per the diagnosis placed on record with the RMB, the applicant had reported sick at the IAF Hospital with breathing difficulty, cough and cold for six months. The RMB itself had opined in Part-V thereof that the disability that the applicant suffers from, was due to climatic conditions, though it was also stated to be not connected with military service. The climatic conditions to which the applicant was subjected to, have to be held to be those to which he was subjected to and which he underwent during his mandatory postings, as indicated by the posting profile of the applicant put forth in the Personal statement in Part-I of the RMB dated 14.04.2004, which is as under:-



**PART I**  
**PERSONAL STATEMENT**

1. Give details of the service (P=Peace OR F= Field/Operational/Sea Service)

SL. NO	FROM	TO	PLACE/SHIP	P/F (HAA/Ops/Sea service/others)
1.	19.01.88	19.02.89	SAMBRA	P
2.	20.02.89	11.04.93	TAMBARAM	P
3.	12.04.93	18.04.96	NEW NEW DELHI	P
4.	19.04.96	06.08.97	BARRACKPORE	P
5.	07.08.97	14.03.2000	BARRACKPORE	P
6.	15.03.2000	07.03.03	JAISALMER	F
7.	08.03.03	16.04.04	HALWARA	P

8. Furthermore, in as much as the disability in the instant case had its onset in 1993 and the applicant was discharged in 2004 prior to the amendment to Chapter-VI of the GMO(Military Pension),2008, the relevant Guide to Medical Officers(Military Pension) is the GMO(Military Pension),2002 which provides vide Para-5 thereof in relation to the disability of Bronchial Asthma, to the effect:-

*"5. The term bronchial asthma would be reserved for those cases of chronic lung disease in which attacks of respiratory embarrassment develop. Bronchial asthma is essentially an allergic condition. The disease is predisposed by a variety of causes such as heredity, food, emanations from animals, bronchitis, nasal sinus infection, respiratory tract infection such as bronchitis, nasal polyp, gastrointestinal irritation, climate (cold air), locality, emotion and nervous shock. The other exciting factors are tobacco, smoke, dust, strenuous*

*exercise, certain drugs and exposure to organic materials, fumes and chemical substances in working environment. Mere physical stress and strain occasioned with psychological factors are not appreciable cause of asthma. Asthmatics are very sensitive to both climate and locality but the effects are so variable in patients that no general rule can be laid down. Some patients are better in dry and others in damp and foggy climate. The dictum that one man's meat is another man's poison is eminently true of asthma. Sudden exposure to cold or occupations involving inhalation of vapours e.g., drivers, cooks, bakers, rubber workers may bring on an attack. While increased susceptibility to allergens and exciting factors may result from exacerbations of asthma occasioned by service factors, such manifestations in service would not automatically be regarded as necessarily amounting to permanent or persistent aggravation. Each case must be considered on its own merits and the question of persistence of aggravation can only be determined by previous history, nature and length of exposure to service factors, the effect of treatment, subsequent employment and progress of disease. Assessment is difficult in asthma during intermission. However, presence of residual lung signs such as (rhonchi, prolonged expiration) hyperinflated emphysematous lungs, pigeon chest deformity and impaired lung function tests are useful guide to chronicity of the disease. **All asthma cases should be accepted on the basis of aggravation.**"*

It is essential to observe that in terms of Para-5 of the GMO(Military Pension),2002 as applicable to the case of the applicant, it has been provided therein that all asthma cases should be accepted on the basis of aggravation. The RMB has already observed herein above that the disability that the applicant suffered from, was due to climatic conditions. In the instant case wherein the applicant suffered from no disability prior to induction into military service, the said disability

would have to be due to the climatic conditions to which the applicant was subjected to during military service.

9. On a consideration of the submissions made on behalf of either side, it is essential to observe that the factum that as laid down by the Hon'ble Supreme Court in *Dharamvir Singh(Supra)* ,a personnel of the Armed forces has to be presumed to have been inducted into military service in a fit condition ,if there is no note of record at the time of entrance in relation to any disability in the event of his subsequently being discharged from service on medical grounds the disability has to be presumed to be due to service unless the contrary is established, - is no more *res integra*.

10. Furthermore, in terms of the 'Entitlement Rules for Casualty Pensionary Awards, to the Armed Forces Personnel 1982 as applicable to the applicant who was discharged in 2004, in terms of Rule-5 thereof, there is a codified presumption that the deterioration in health in the case of discharge from service in a low medical category from that the Armed Forces Personnel had been inducted into military service has to be held Attributable to military service, is clearly spelt out therein. The same is also brought forth through Rule-19 of the said Rules of 1982 which provides that it if the worsening of a condition persists till the time of discharge, that aggravation has to be accepted

and in terms of Rule-20(a) of the said rules, if nothing at all is known of the disease and if the presumption of entitlement is not rebutted, then attributability has to be conceded. It is essential to observe that it has been stipulated in Para-5 of the GMO(MP),2002 as under:-

“

...

*Each case must be considered on its own merits and the question of persistence of aggravation can only be determined by the previous history, nature and length of exposure to service factors, the effect of treatment, subsequent employment and progress of disease. Assessment is difficult in asthma during intermission. However, presence of residual lung signs such as (rhonchi, prolonged expiration) hyperinflated emphysematous lungs, pigeon chest deformity and impaired lung function tests are useful guide to chronicity of the disease. All asthma cases should be accepted on the basis of aggravation”,*

Thus in view of the onset of the disability in the instant case being in 1993 which has continued till discharge of the applicant from service on 16.04.2004 with a percentage of disablement @20%, the said disability has to be held to be aggravated by military service.


### CONCLUSION

11. The OA 1046/2019 is allowed. The applicant is thus entitled to the grant of disability element of pension @20% for life for the disability of Bronchial Asthma with rounding off to 50% for life, from the date of discharge, which in terms of the verdict of the Hon'ble

Supreme Court in *UOI & Ors. vs Ramavtar* in Civil Appeal No. 418/2012.

12. The respondents are thus directed to calculate, sanction and issue the necessary PPO to the applicant for grant of the disability element of pension as directed herein above, within a period of three months from the date of receipt of copy of this order, to commence from the period of three years prior to the institution of this OA instituted on 24.06.2019 and the amount of arrears shall be paid by the respondents accordingly, failing which the applicant will be entitled to interest @6% p.a. from the date of receipt of a copy of the order by the respondents.

Pronounced in the open Court on the 5 day of October, 2023.

  
[REAR ADMIRAL ~~DIHREN~~ VIG]  
MEMBER (A)

  
[JUSTICE ANU MALHOTRA]  
MEMBER (J)

/TS/