

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

16.

OA 1159/2019 with MA 1869/2019

Ex WO Ramparkash Paul Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Ms. Pallavi Awasthi, Advocate
For Respondents : Mr. Harish V Shankar, Advocate

CORAM

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

ORDER
07.11.2023

MA 1869/2019

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 150 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 in the application, the MA 1869/2019 is allowed and the delay of 150 days in filing the OA 1159/2019 is thus condoned.

2. The MA is disposed of accordingly.

OA 1159/2019

3. The applicant vide the present OA makes the following prayers:-

“(a) To set aside the letter No. Air HQ/99798/1/647685/DAV/DP/CC dated 25.02.2018 passed by the respondents.

(b) To direct the respondents to grant the disability pension alongwith arrears to the applicant by treating the same as attributable and aggravated by the AF service @30% for life long.

(c) To direct the respondents to grant the benefit of rounding of disability of the applicant to @50% for life in terms of law settled by Hon’ble Supreme Court of India in Civil Appeal No. 418/2012 titled as UOI & Ors. vs. Ram Avtar vide judgment dated 10.12.2014 as well as in a catena of judgments by this Hon’ble Tribunal.

(d) To direct the respondents to apy the due arrears of disability pension with interest @18% p.a. with effect from the date of retirement with all the consequential benefits.

(e) To pass such further order or orders, direction/directions as this Hon’ble Tribunal may deem fit and proper in accordance with law.”

4. It is essential to observe that at page 2 in the synopsis and list of dates and events, it has been stated by the applicant as under:-

“12.12.1973- The applicant was enrolled in Indian Army on 12.12.1973. At the time of entry into the service, the applicant was subjected to thorough medical examination by the medical board and was found medically fit to join the service of the Air Force.

That at the time of discharge, the applicant was subjected to release medical board proceedings and was found suffering with disability of DEPRESSIVE REACTION 300 (a) @20%. But the respondents wrongly opined that the disability of the applicant is neither attributable to nor aggravated by military service. It is submitted that the applicant was not supplied with the copy of his release medical board at the time of discharge and therefore he is not much aware about his disability. The applicant had to work under very stressful conditions and due to which his disability depressive REACTION 3000(a) @20% had happened. It is submitted that the disability ID of the applicant happened due to stress and strain of service and hence the same is attributable to or aggravated by military service only.

30.06.1994-That the applicant was superannuated from the service on 30.06.1994 in the rank of Havildar after rendering service of 20 years, 06 months and 19 days in Indian Army.

That at the time of release medical board, the applicant was told that his disability has been assessed for two years only but he was not supplied with any medical documents. After 2-3 years of his discharge, the applicant has approached to the Base Hospital several times for his re-survey medical board but he was told that a communication in this behalf from the concerned record office is necessary for the re-survey medical board and the same cannot be done without it. Being aggrieved, the applicant approached to Record Office also for the review medical board and for the supply of his release medical board proceedings where he was told that he will be intimated about the re-survey medical board whenever the same will be done in his case and hence he kept on waiting for a call regarding re-survey medical board but nothing has been done so far. The applicant is entitled for the disability pension for life because his disability in question is attributable to and aggravated by military service and the disease is not curable.

24.11.2018-That the applicant made a representation dated 24.11.2018 whereby he requested that his disability may be considered as attributable to or aggravated by military service and he may be granted with disability pension. But, even after lapse of.

25.02.2018-That in terms of letter No. Air HQ/99798/1/647685/DAV/DP/CC dated 25.02.2018, the respondents have rejected the Appeal preferred by the applicant firstly for the reason that the disability of the applicant is neither attributable to nor aggravated by military service and second reason mentioned therein that normal limit of making an appeal is six months and maximum permissible time limit is five years and the appeal of the applicant was not considered due to delay in making the appeal. It is submitted that the respondents are arbitrary and unjustified while rejecting the appeal of the applicant on limitation grounds in terms of the judgments passed by Hon'ble Apex Court in this behalf.

08 JULY 2019-HENCE THIS OA"

5. In as much as the prayer that the applicant has made seeking the grant of disability element of pension in relation to the disability of Primary Hypertension which the applicant submits was due to the stress and strain of military service and which the respondents have opined to be neither attributable to nor aggravated by military service, learned counsel for the applicant in reply to specific Court query submitted that the synopsis and list of dates and events has been erroneously put forth with the facts therein as depicted herein above and that in fact the averments as made in Para 4.3 onwards in the OA reflect the correct facts of the instant case, in relation to the posting profile of the applicant which aspect is borne out to be correct through the averments that have been made in the counter affidavit dated 30.09.2022 filed by the respondents.

6. The applicant Ex WO Ramparkash Paul was commissioned in the Air Force on 12.03.1977 and discharged from service on 31.03.2012 under the clause 'on fulfilling the conditions of his enrolment' after rendering 35 years and 20 days of regular service. As per averments made in the counter affidavit dated 30.09.2022 filed on behalf of the respondents, the applicant is indicated to have been placed in low medical category A4G4 (T-24) for the disability of Primary Hypertension vide AFMSF-15 dated 29.12.2010 and during subsequent review he was placed in low medical category: A4G2 (P) for the said disability of Primary Hypertension vide AFMSF-15 dated

23.08.2011. The release Medical Board qua the applicant was held at 412 AF station, New Delhi vide AFMSF-16 dated 21.09.2011, found the applicant fit to be released in the low medical category A4G2 (P) for the disability with reasons specified in the opinion of the medical board opined therein as under:-

“

PART V
Opinion of the Medical Board

1. Causal Relationship of the Disability with Service conditions or otherwise.				
Disability	Attributable to service (Y/N)	Aggravated by service (Y/N)	Not Connected with Service(Y/N)	Reason/Cause/Specific condition and period in service
1. Primary Hypertension (old)	NO	NO	Yes	Onset (Nov 2010) while posted to peace station. There is no close time association with stress/strain of service. Hence NANA in terms of para 43 of ch VI of GMO 2002.

”

7. The said Release Medical Board however, assessed the percentage of disablement of the said disability in Para 6 thereof as under:-

6. What is the present degree of disablement as compared with a healthy person of the same age and sex.? (Percentage will be expressed as NIL or as follows): 1-5%, 6-10%,11-14%, 15-19% and thereafter in multiples of ten from 20% to 100%.				
Disability (As numbered in Question 1 Part IV)	Percentage of disablement	Composite assessment for all disabilities with duration (Max 100%).	Disability Qualifying for Disability Pension with duration	Net Assessment qualifying for Disability Pension(Max 100%) with duration
1. Primary Hypertension (old)	30%	30% (Thirty percent for life long)	NIL	NIL

8. The onset of the disability is mentioned in Part IV, Statement of the case as under:-

“Present condition in detail.

PDisabilities	Date of Origin	Rank of the Indl	Place and unit where serving at the time
1.Primary Hypertension (old)	Nov 2010	JWO	Air HQ (VB)

”

9. The applicant was informed of the rejection of his claim for the grant of the disability element of pension vide letter dated 05.01.2011 vide letter no. RO/2703/547685/03/12/P&W(DP/RMB) with an advice that he may prefer an appeal to the Appellate Committee for First Appeal (ACFA) within a period of six months from the date of receipt of this letter for the grant of his disability pension. A legal notice cum appeal dated 25.01.2019, was sent on behalf of the applicant which was responded to, on behalf of the respondents vide the impugned letter dated 25.02.2019 apprising the applicant to the effect that in terms of Rule 153 of the Pension Regulations for the Indian Air Force 1961 Part 1, the primary conditions for the grant of disability pension have not been met and as the disability of the applicant was not attributable to the Air Force service, the applicant was not entitled to the grant of disability element of pension. The applicant was also informed that the applicant's prayer could also not consider as an appeal as it was time barred. In the interest of justice, we consider it appropriate to take up the matter for consideration thus in terms

of Section 21(1) of the Armed Forces Tribunal Act, 2007, in view of the pendency of the OA since its institution on 15.07.2019.

10. On behalf of the respondents, learned counsel for the respondents placed reliance on the posting profile of the applicant as depicted in Part I in the Personal Statement in the RMB dated 21.09.2012 which is as under:-

**“ PART I
PERSONAL STATEMENT**

Give details of service (P- Peace OR F-Field/Operational/Sea Service.)									
Sl. NO.	From	To	Place/Ship	P/F (HAA)	Sl. NO.	From	To	Place/Ship	P/F (HAA)
(i)	12.03.77	29.06.78	BELGAUM /1GTS	P	(ii)	30.06.78	21.06.81	23W/JA MMU	P
(iii)	22.06.81	25.10.87	NAGPUR/ HQ MC (U)	P	(iv)	26.10.87	23.06.92	AVADI/23 ED	P
(v)	24.06.92	27.11.96	BHUJ/2201 SQN	P	(vi)	28.11.96	06.11.01	NEW DELHI/VB	P
(vii)	07.11.01	15.08.06	UDHAMPUR/39WG	P	(viii)	16.08.06	26.07.09	AHMED ABAD 2AIR NCC	P
(ix)	27.07.09	28.04.10	KALAIKUNDA/5WG	P	(x)	29.04.10	TILL DATE	NEW DELHI AIR HQ (VB)	P
2. Give particulars of any diseases, wounds or injuries from which you are suffering:									
Illness	First Started		Rank of Indl	Where treated	Approximate dates and periods treated				
	Date	Place							
1. Primary Hypertension (OLD)	Nov 2010	New Delhi	JWO	BHDC	Treated as OPD patient				

”

11. It has been submitted on behalf of the applicant that the onset of the disability in November 2010 was after the commissioning of the applicant in the Indian Air Force on 12.03.1977 after more than 33 years of service in the Indian Air

Force and that in as much as, the applicant suffered from no disability whatsoever at the time of induction in the military service as reflected in Paragraph 2, Part V of the Opinion of the Medical Board in the RMB as under:-

“ *2. Did the disability exist before entering service? (Y/N/Could be) NO*

”

and also the response of the respondents to Para 3 of the said RMB as under:-

“ *3. In case disability awarded Aggravation, whether the effects of such
aggravation still persist? If yes, whether the effects of aggravation will
persist for a material period.
N/A*

”

the contentions simplicitor raised on behalf of the respondents through the opinion of the Medical Board to the effect that the disability that the applicant suffered from was whilst he was posted at a peace station, is itself insufficient to dislodge the prayer made by the applicant in relation to his contention that the disability he suffered from was due to stress and strain of the service.

12. It has also been submitted on behalf of the applicant that in view of the verdict of the Hon'ble Supreme Court in ***Dharamvir Singh v. UOI & Ors [2013 (7) SCC 36]***, with specific reliance on observations in Para 28 thereof which reads to the effect:-

“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."*

and the observations in the verdict of Hon'ble Supreme Court in *UOI & Ors. vs Rajbir Singh* (2015) 12 SCC 264 and in catena of orders of this Tribunal, it has been specifically observed to the effect that in terms of Regulation 423 of the Regulations for Medical Services in the Armed Forces Personnel 2010, all that is required to be established is whether the disability in question has

a causal connection with military service and it is immaterial that the disability had its onset in a peace area, CIOPS area or a high altitude Area or a field area.

13. On behalf of the respondents, the learned counsel for the respondents placed reliance on Part V, the Opinion of the Medical Board in the Release Medical Board proceedings as already reflected herein above to contend to the effect that in terms of Para 43 of Chapter VI of the GMO (Military Pension) 2008, the applicant is not entitled to the grant of the prayer made. It is thus prayed on behalf of the respondent that the present OA be dismissed.

14. On a consideration of the submissions that have been made on behalf of either side, in view of the observations of the Hon'ble Supreme Court in *Dharamvir Singh v. UOI & Ors* (*supra*) and the guidelines laid down thereby in Para 28 thereof reproduced hereinabove and the observations also specifically in Para 33 thereof which reads to the effect:-

"As per Rule 423(a) of General Rules for the purpose of determining a question whether the cause of a disability or death resulting from disease 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. "Classification of diseases" have been prescribed at Chapter IV of Annexure I; under paragraph 4 post traumatic epilepsy and other mental changes resulting from head injuries have been shown as one of the diseases affected by training, marching, prolonged standing etc. Therefore, the presumption would be that the disability of the appellant bore a casual connection with the service conditions",

(emphasis supplied),_____

and Para 423 of the Regulation for the Medical Services for Armed Forces Personnel 2010 of which Para (a) reads as under:-

"423. (a). For the purpose of determining whether the cause of a disability or death resulting from disease is or 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 Area/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 evidences 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/her favor, 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 case occurring in Field Service/Active Service areas.

(emphasis supplied),__

and has not been obliterated, the arising of the disability in a peace area is *per se* insignificant to dislodge the claim of the applicant.

15. Taking into account the factum that the RMB proceedings itself reflect categorically to the effect that the applicant suffered from no disability whatsoever before his induction into the Indian Air Force, and that the onset of the disability in the instant case was after a period of 33 years of service in the Indian Air Force, the cumulative stress and strain that the applicant had undergone during the said disability with the onset of the disability in the year 2010 in the 9th posting of the applicant cannot be overlooked.




16. In terms of Para 43 of Chapter 6 of the GMO Military Pension of 2008 which reads as under:-

“43. Hypertension – The first consideration should be to determine whether the hypertension is primary or secondary. If (e.g. Nephritis), and it is unnecessary to notify hypertension separately.

As in the case of atherosclerosis, entitlement of attributability is never appropriate, but where disablement for essential hypertension appears to have arisen or become worse in service, the question whether service compulsions have caused aggravation must be considered. However, in certain cases the disease has been reported after long and frequent spells of service in field/HAA/active operational area. Such cases can be explained by variable response exhibited by different individuals to stressful situations. Primary hypertension will be considered aggravated if it occurs while serving in Field areas, HAA, CIOPS areas or prolonged afloat service.”

also, it is indicated that stress and strain of military service are causative factors for the onset of the said disability and also its aggravation. In the circumstances of the instant case, the disability of the applicant of Primary Hypertension assessed with the percentage of disablement @30% for life has to be/held to be attributable to and aggravated by a military service. The OA is thus allowed and the applicant is held entitled to the grant of the disability element of pension for the disability of Primary Hypertension @30% for life which is directed to be broad-banded to 50% for life from the date of discharge.

17. in as much as the present OA has been instituted with much delay in terms of the verdict of Apex Court in ***Union of India and others vs. Tarsem Singh*** (2008) 8 SCC 648, the grant of the arrears of the disability element of pension shall commence to run to be payable from a period of three years prior to the institution of the present OA. The respondents are directed to calculate, sanction and issue the necessary corrigendum PPO to the applicant within a period of three months from the date of this order, failing which the arrears will carry interest at the rate of 6% per annum from the date receipt of this order till the date of payment.


(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)


/NMK