

COURT NO. 2, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA No. 1358/2016

MWO Tej Singh

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Praveen Kumar, Advocate

For Respondents : Mr. VS Mehndiyan, Advocate

CORAM :

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

O R D E R

O.A. 1358/2016

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act,2007, the applicant has therefore filed this O.A and the reliefs claimed in Para 8 - read as under:

“

a) Direct to respondents to release computing rounding off benefit of disability pension @ 80% to @100% with effect from 13.03.2013 to for life,

Govt. of India vide dated 31.01.2001 and judgment dated 10.12.2014 passed by Hon'ble Supreme Court of India in Bench of matter titled as Union of India & Others Vs. Ram Avtar in Civil Appeal 418/2012 alongwith 12% annual interest till the payment be made, for which the applicant deserves.

AMENDED THROUGH M.A. 2409/2018 :

- b) May please be allowed the Misc. Application under Rule 25 of the Armed Forces Tribunal Act, 2008 by directing the respondents to consider the disabilities (i)Primary Hypertension @30% and Posterior Circulation Stroke @20% as attributable to or aggravated by service and grant 100% disability pension to the applicant w.e.f. 13.02.2013. the applicant is already in receipt of 80% disability pension till date.**
- c) Issue any other appropriate order or direction which this Hon'ble Tribunal may be deem fit and proper in facts and circumstances of the case.**

BRIEF FACTS

2. The applicant was enrolled in the Indian Air Force on 13.11.1975 and discharged from service on 31.01.2013 under

the clause "on attaining the age of superannuation" after rendering total 37 years and 4 days of regular service.

3. The applicant at the time of RMB held on 13.03.2012 was suffering from four disabilities (a) COPD (b) Primary Hypertension (c) Posterior Circulation Stroke (d) Tuberculosis pleural Effusion. The disabilities (b) and (c) of the applicant were considered as neither attributable to nor aggravated by service, whereas ID (a) was considered as aggravated by service @30% for life and ID (d) was considered attributable to service @100% disability for one year. The composite assessment was assessed @100% for one year.

4. After the expiry of one year in relation to the assessment of the disability ID (d) Lt Tuberculosis pleural effusion assessed @100 for one year, the respondents conducted a Re-Survey Medical Board on 27.03.2014 at BH, New Delhi, Cantt which reassessed the disability ID (d) at 50 % for two years w.e.f. 13.03.2013 to 12.03.2015 and accordingly the applicant was given 80 % disability pension in relation to ID (a) COPD @ 30% for life and ID (d) Lt Tuberculosis pleural effusion @50% for two years.

5. After the expiry of two years, the respondents conducted another RSMB on 12.03.2015 to reassess the disability ID (d) Lt Tuberculosis Pleural effusion and assessed it as 50% for life. Accordingly, the applicant was granted 80% disability pension w.e.f 13.03.2015 to 26.03.2015 for an interim period and thereafter it was converted into life w.e.f 27.03.2015.

6. The claim for the grant of the disability pension was forwarded to the AFRO for adjudication, the same was accepted vide letter No. RO/3305/3MED Cat (D) dated 08.08.2012. Accordingly, Jt CDA (AF) , New Delhi issued PPO No. 08/14/b/dp/ Corr/ 0647/2014 and 08/ 14/ DP/ Corr/ 0920/ 2015 respectively for disability ID (a) and disability ID (d) respectively. However, the composite assessment for both the disabilities was not done by the RMB, aggrieved by which the applicant has filed the instant O.A. and thus, in the interest of justice, we take up the same for consideration.

CONTENTIONS OF THE PARTIES

7. The learned counsel for the applicant submitted that after filing of the O.A., the applicant found some fresh development in the instant case due to which the applicant filed

M.A. No. 2409/2018 seeking direction for considering the disability ID (b) Primary Hypertension and disability ID (c) Posterior circulation stroke as attributable to or aggravated by service, which was allowed vide order dated 14.02.2023. The learned counsel for the applicant submitted that the applicant suffered with Primary Hypertension @30% for life which was considered to be NANA and Posterior circulation stroke @ 20 % for life which was also considered to be NANA by the RMB.

8. The learned counsel for the applicant submitted that the respondents whilst granting the disability pension for the disability ID (a) COPD @ 30% for life and disability ID (d) Lt tuberculosis pleural effusion @ 50 % for life, did not assess the composite assessment for both the disabilities and recommended to send the case file to JCDA (AF) for assessing the composite assessment. The learned counsel for the applicant further submitted that the respondents though considered and granted the disability pension in relation to the disability ID (a) @30% for life and disability ID (d) @50% for life, did not compute the composite assessment of the two disabilities and also denied the disability pension with regard to

disability ID (b) Primary Hypertension and disability ID (c) Posterior circulation stroke.

9. The learned counsel for the applicant submitted, whilst refuting the contention of the respondents made through their counter affidavit filed on 21.11.2017 wherein they stated that the RSMB was conducted on March 2014/2015, did not specify the composite assessment for the disabilities IDs (a) and (d) and clarification for the same was sought from the JCDA, however, the JCDA has no power to assess the composite assessment for the two disabilities. Moreover, the applicant was granted disability pension in relation to the disability ID (a) 30% and disability ID (d) @50 % for life, the addition of both the pensions will add upto 80% and the same is reflected in the PPOs issued separately for both the disabilities, however, the respondents did not assess the composite assessment for disabilities ID (a) and (d).

10. The learned counsel for the applicant submitted that the applicant is entitled to 100% disability pension in relation to all the four disabilities since as per the computation of composite assessment of disabilities issued by DGAFMS,

Ministry of Defence, New Delhi dated 14.12.2009, the composite assessment for all the four disabilities would be as follows:

Disability ID (a) COPD – 30% (for life) - Aggravated by service

Disability ID (B) Primary hypertension – 30% (for life) – NANA

Disability ID (c) Posterior circulation stroke –20%(for life)- NANA

Disability ID (d) Lt Tuberculosis Pleural Effusion- 50% (for life)

Composite assessment – 81%.

11. The learned counsel for the applicant submitted that the applicant suffered from the disability ID (b) Primary hypertension and disability ID (c) Posterior circulation stroke, whilst in active service and the same should be considered attributable to or aggravated by service as both the disabilities are the outcome of stress and strain of military service and dietary compulsions.

12. Per Contra, the learned counsel for the respondents submitted that the applicant is in receipt of disability pension in relation to the disability ID (a) @50 % for life and disability ID (d) @30% for life and accordingly the PPOs were issued for both the IDs separately since the composite assessment for IDs was not made by the medical authority and

the same was sought from the JCDA for clarification which was not done by JCDA.

13. The learned counsel for the respondents submitted that the applicant's claim for the disability pension in relation to the disability ID (b) primary hypertension assessed @30% for life and disability ID (c) posterior circulation stroke assessed @20% for life was not considered whilst granting disability pension for the disability ID (a) and (d) since the RMB dated 13.03.2012 considered the disability primary hypertension and posterior circulation stroke as neither attributable to nor aggravated by service.

ANALYSIS

14. On the careful perusal of the material available on record and also the submissions made on behalf of the parties, we are of the view that it is not in dispute that the applicant was in receipt of disability pension in relation to disability ID (a) and disability ID(d) vide separate PPOs for both the IDs. The RSMB conducted in March 2014 and 2015 did not specify the

composite assessment for the disability IDs (a) and (d), and the clarification in this regard was sought from the JCDA .

15. It is pertinent to mention that the applicant was granted disability pension in relation to disability ID (a) @30% for life and disability ID (d) @50 % for life, and the same is reflected in the PPOs issued separately for both the disabilities. Whereas, the addition of both the pensions will add upto 80% through straight-jacket formulae of addition but the respondents erred in not assessing the composite assessment for disabilities ID (a) and (d). However, the composite assessment for disability ID (a) 30% for life and (d) @ 50% for life, would be 65% as per the policy dated 14.12.2009.

The question now remains is whether the applicant is entitled to disability pension @100% after considering the disability ID (b) primary hypertension assessed @30% for life and disability ID (c) posterior circulation stroke assessed at 20% for life.

16. In so far as the second disability of Primary Hypertension is concerned, the consistent view taken by this Tribunal qua the disability of primary hypertension is based on

the law laid down by the Hon'ble Supreme Court in the case of ***Dharamvir Singh v. Union of India and others*** (2013) 7 SCC 316, the Entitlement Rules for Casualty Pensionary Awards, 1982, and observations in para-28 of the said verdict 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 nonbattle 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 AppendixII (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."

Further as per amendment to Chapter VI of the 'Guide to Medical Officers (Military Pension), 2008 at para-43, it is provided 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.”

17. It has, already been observed by this Tribunal in a catena of cases that peace stations have their own pressure of rigorous military training and associated stress and strain of the service. It may also be taken into consideration that most of the personnel of the armed forces have to work in the stressful and hostile environment, difficult weather conditions and under strict disciplinary norms.

18. The 'Entitlement Rules for Casualty Pensionary Awards, to the Armed Forces Personnel 2008, which take effect from 01.01.2008 provide vide Paras 6,7,10,11 thereof as under:-

"6. Causal connection:

For award of disability pension/special family pension, a causal connection between disability or death and military service has to be established by appropriate authorities.

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.

10. Attributability:

(a) Injuries:

In respect of accidents or injuries, the following rules shall be observed:

- i) Injuries sustained when the individual is 'on duty', as defined, shall be treated as attributable to military service, (provided a nexus between injury and military service is established).*
- ii) In cases of self-inflicted injuries while 'on duty', attributability shall not be conceded unless it is established that service factors were responsible for such action.*

(b) Disease:

(i) For acceptance of a disease as attributable to military service, the following two conditions must be satisfied simultaneously:-

(a) that the disease has arisen during the period of military service, and

(b) that the disease has been caused by the conditions of employment in military service.

(ii) Disease due to infection arising in service other than that transmitted through sexual contact shall merit an entitlement of attributability and where the disease may have been contacted prior to enrolment or during leave, the incubation period of the disease will be taken into consideration on the basis of clinical courses as determined by the competent medical authority.

(iii) If nothing at all is known about the cause of disease and the presumption of the entitlement in favour of the claimant is not rebutted, attributability should be conceded on the basis of the clinical picture and current scientific medical application.

(iv) when the diagnosis and/or treatment of a disease was faulty, unsatisfactory or delayed due to exigencies of service, disability caused due to any adverse effects arising as a complication shall be conceded as attributable.

11. Aggravation:

A disability shall be conceded aggravated by service if its onset is hastened or the subsequent course is worsened by specific conditions of military service, such as posted in places of extreme climatic conditions, environmental factors related to service

conditions e.g. Fields, Operations, High Altitude etc.”

Thus, the ratio of the verdicts in **Dharamvir Singh Vs. Union Of India &Ors** (Civil Appeal No. 4949/2013); (2013 7 SCC 316, **Sukhvinder Singh Vs. Union Of India &Ors**, dated 25.06.2014 reported in 2014 STPL (Web) 468 SC, **UOI &Ors. Vs. Rajbir Singh** (2015) 12 SCC 264 and **UOI & Ors. Vs. Manjeet Singh** dated 12.05.2015, Civil Appeal no. 4357-4358 of 2015, as laid down by the Hon'ble Supreme Court are the fulcrum of these rules as well.

Furthermore, Regulation 423 of the Regulations for the Medical Services of the Armed Forces 2010 which relates to 'Attributability to Service' provides 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.

(b). Decision regarding attributability of a disability or death resulting from wound or injury will be taken by the authority next to the Commanding officer which in no case shall be lower than a Brigadier/Sub Area Commander or equivalent. In case of injuries which were self-inflicted or due to an individual's own serious negligence or misconduct, the Board will also comment how far the disablement resulted from self-infliction, negligence or misconduct.

(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.

(d). The question, whether a disability or death resulting from disease is attributable to or aggravated by service or not, will be decided as regards its medical aspects by a Medical Board or by the medical officer who signs the Death Certificate. The Medical Board/Medical Officer will specify reasons for their/his opinion. The opinion of the Medical Board/Medical Officer, in so far as it relates to the actual causes of the disability or death and the circumstances in which it originated will be regarded as final. The question whether the cause and the attendant circumstances can be accepted as attributable to/aggravated by service for the purpose of pensionary benefits will, however, be decided by the pension sanctioning authority.

(e). To assist the medical officer who signs the Death certificate or the Medical Board in the case of an invalid, the CO unit will furnish a report on :

(i) AFMSF - 16 (Version - 2002) in all cases

(ii) IAFY - 2006 in all cases of injuries.

(f). In cases where award of disability pension or reassessment of disabilities is concerned, a Medical Board is always

necessary and the certificate of a single medical officer will not be accepted except in case of stations where it is not possible or feasible to assemble a regular Medical Board for such purposes. The certificate of a single medical officer in the latter case will be furnished on a Medical Board form and countersigned by the Col (Med) Div/MG (Med) Area/Corps/Comd (Army) and equivalent in Navy and Air Force.”

(emphasis

supplied),___

has not been obliterated.

19. The applicant served in the Indian Air Force for 37 years. The onset of the disability occurred in 2010, after 35 years of long service. The accumulated stress and strain of such a long service and the nature of the work on the applicant cannot be overlooked and the disability of Primary Hypertension ought to be held to be attributable to and aggravated by military service.

20. In so far as the disability ID (c) posterior circulation stroke is concerned, the applicant suffered from the said disability after 36 years of service at Air Force Station, Hindan (Peace area).

21. It is relevant to mention that the available scientific literature shows the relation between Posterior circulation stroke and hypertension and one such website is

<https://pubmed.ncbi.nlm.nih.gov/21482144/> accessed on

10.11.2023, the extract of which is reproduced herein below :-

“ Background: Postmortem data have shown that blood pressure before death correlates more closely with a narrowing of the vertebral arteries than any other vessel studied. This study explores a possible association between hypertension, both before and after posterior circulation infarction (POCI) compared to anterior circulation infarction (ACI).

Methods: Patients with a first-ever stroke enrolled in the South London Stroke Register between 2000 and 2006 were included. Chi-square tests and multivariable logistic regression were used to compare risk factors including hypertension, sex, smoking history, diabetes, and hypercholesterolemia in patients with POCI compared to ACI. Chi-square testing was used to compare the incidence of newly diagnosed hypertension after POCI and ACI. Absolute blood pressure readings recorded before stroke and 7

days after stroke were also compared between groups.

Results: On multivariable analysis, POCI was significantly associated with male sex (odds ratio [OR] 2.24; 95% confidence interval [CI] 1.55-3.22; $P < .001$) and hypertension (OR 1.69; 95% CI 1.15-2.50; $P = .008$). After stroke, patients with POCI were more likely to be newly diagnosed with hypertension during a 1-year follow-up period (OR 2.15; 95% CI 1.20-3.86; $P = .009$) and as an inpatient (OR 3.27; 95% CI 1.49-7.13; $P = .002$). Systolic blood pressure was significantly higher in the POCI group before stroke (152 v 146 mm Hg; $P = .027$). Diastolic blood pressure was significantly higher 7 days poststroke (81 v 74 mm Hg; $P = .01$) in patients not previously diagnosed with hypertension.

Conclusions: This study has shown a significant association between hypertension before and after POCI compared to ACI. We believe further investigation with brainstem imaging and recordings of sympathetic nervous system activity after stroke is warranted.”

22. From the available scientific literature, it can be said that the disability ID (c) i.e. Posterior Circulation Stroke is the consequence of hypertension since the said disability occurred after the applicant suffered from hypertension. Thus, the disability of Posterior Circulation Stroke therefore ought to be considered as attributable to military service.

23. Therefore, we are of the view that the applicant is entitled to the disability pension in relation to disability ID (b) primary hypertension assessed @30% for life and disability ID (c) posterior circulation stroke assessed at 20% for life. The applicant is, thus, entitled to the disability pension for primary hypertension and posterior circulation stroke in addition to the disability pension already granted at the time of release for disability ID (a) COPD @30% for life and the disability ID (d) Lt tuberculosis pleural effusion @50% for life.

24. The calculation for the assessment as per MoD letter No. 16036/ RMB/ IMB/ DGAFMS/ MA(Pens) dated

14.12.2009 of all the four disabilities works out to be 82.8% = 83%.

CONCLUSION

25. The OA 1358/2016 is thus allowed granting the disability element of pension for the disability ID (b) Primary Hypertension @ 30% for life and disability ID (d) posterior circulation stroke @20% for life, (along with disability ID (a) COPD assessed @30% for life and disability ID (d) Lt Tuberculosis pleural effusion assessed @50% for life, for which the applicant is already in receipt of disability pension vide separate PPOs), compositely assessed at 83% for life which is to be rounded off to 100% for life with effect from the date of his discharge in terms 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.

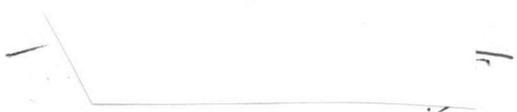
26. The respondents are thus directed to calculate, sanction and issue the necessary PPO to the applicant within a period of three months from the date of receipt of the copy of

this order and the amount of arrears shall be paid by the respondents, failing which the applicant will be entitled for interest @6% p.a. from the date of receipt of the copy of the order by the respondents. However, as the applicant has approached the Tribunal after a considerable delay, in view of the law laid down in **Union of India & Ors. Vs. Tarsem Singh 2009 (1) AISLJ 371**, the arrears of disability pension are restricted to commence to run from three years prior to the date of the filing of O.A. 1358/2016

Pronounced in the open Court on this day of ²³ November, 2023.


[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

Pranav/


[JUSTICE ANU MALHOTRA]
MEMBER (J)