

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

D.

OA 1819/2019 with MA 2701/2019

Lt Col Sharad Kaku (Retd) Applicant

VERSUS

Union of India and Ors. Respondents

For Applicant : Mr. Shakti Chand Jaidwal, Advocate

For Respondents : Ms. Jyotsna Kaushik, Advocate

CORAM

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

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

ORDER
03.11.2023

Vide our detailed order of even date; we have allowed the OA 1819/2019. 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.

[Signature]
(JUSTICE ANU MALHOTRA)
MEMBER (J)

[Signature]
(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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

MA 2701 / 2019

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of **3287** days in filing the present OA. In view of the verdicts 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)*, the MA 2701/2019 is allowed despite opposition on behalf of the respondents and the delay of **3287** days in filing the OA 1819/2019 is thus condoned. The MA is disposed of accordingly.

OA 1819 / 2019

The applicant 'Lt Col Sharad Kaku (Retd)' No. IC-47085MP

vide the present OA makes the following prayers:-

"(a) Call for the records of the Applicant and after perusal thereof, set aside the Impugned Order dated 30.07.2019 passed by the Respondents, rejecting the Appeal of the Applicant for grant of disability element of pension to him;

(b) Direct the Respondents to treat the disability of the Applicant namely "CARCINOID TUMOR RT LUNG (OPTD)" as Attributable to/Aggravated by military service;

(c) Direct the Respondents to grant disability element of pension to the Applicant @ 20 % for life w.e.f. 11.01.2009, as degree of disablement of Applicant's disability has been assessed @ 20% for life by the RMB;

(d) Direct the Respondents to pay disability element of pension to the Applicant @ 50% for life w.e.f 11.01.2009 by rounding off Applicant's disability from 20% to 50% as per Govt. Policy dated 31.01.2001.

(e) Direct the Respondents to pay 10% interest to the Applicant on arrears of disability pension w.e.f 11.01.2009 and/or

(f) Issue such other order/direction as may be deemed appropriate in the facts and circumstance of the case."

2. The applicant was commissioned in the Indian Army on 19.12.1987 (PC) and prematurely retired from service voluntarily on 10.01.2009 (AN). At the time of retirement from service, since, the officer was in low medical category, he was brought before a duly constituted Release Medical Board on 18.09.2007 which opined the

disability of the applicant of 'Carcinoid Tumor (RT) LUNG (OPTD)' with a percentage of disablement of 20% for life as being neither attributable to nor aggravated by military service and quantified the same at 'NIL' for life for the grant of the disability pension.

3. The initial disability claim of the applicant was adjudicated by the Competent Authority and rejected in terms of Regulation 53 of PRA 1961, Part-I being conceded 'NANA' vide AG's letter No. 13016/IC-47085N/A-16/ARTY/MP-6(B)/118/2010/AG/PS-4 (Imp-II) dated 23.04.2010. The first appeal filed by the applicant dated 16.06.2019 was filed after 09 years and 03 months and was not considered being time barred and intimation to this effect was sent to the applicant vide letter No. 12681/IC-47085/T-10/MP-5(B).

4. The respondents contend to the effect that in terms of Regulation 37 (a) of PRA 2008 and Regulation 53 of PRA 1961, Part I, 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 nor to the broad banding thereof in terms of Para 7.2 of the GoI MoD policy letter No. 1(2)/97/D(Pen-C) dated 31.01.2001.

CONTENTIONS OF THE PARTIES

5. The applicant submits that he was commissioned in the Indian Army on 19.12.1987 after having been thoroughly examined by several medical

experts who found him absolutely fit in all respects and free from any disease or disability and no note of any disease or disability was entered on the medical documents of the applicant at the time of his induction in the Indian Army. The applicant submits that he served the Indian Army from 1987 till 2009 at various places including difficult postings i.e. high altitude areas / the field areas which has resulted into the disability of **‘Carcinoid Tumor (RT) LUNG (OPTD)’**.

6. The applicant places reliance on his posting profile as reflected in his personal statement in Part I of the RMB proceedings dated 08.09.2019 which is to the effect:-

S.no.	From	To	Place/Ship	P/F(HAA/Ops/Sea Service/others)	S.no.	From	To	Place/Ship	P/F(HAA/Ops/Sea Service/others)
(i)	09.01.88	21.11.91	Allahabad	Peace	(ii)	22.11.91	18.04.92	Fd(OP RAKSHAK-II)	Field
(iii)	29.04.92	25.06.93	Allahabad	Peace	(iv)	26.06.93	03.07.95	Siachen Glacier (OP MEGHDOOT)	Field
(v)	04.07.95	04.08.95	Devlali	Peace	(vi)	05.08.96	13.09.98	Meerut	Peace
(vii)	21.09.98	13.09.99	Lungleit (Mizoram)	Field	(viii)	14.09.99	04.11.99	Manipur	Field
(ix)	05.11.99	30.10.00	Mizoram	Field	(x)	31.10.00	08.12.00	Tripura	Field
(xi)	09.12.00	04.02.01	Mizoram	Field	(xii)	05.02.01	13.02.02	Tripura	Field
(xiii)	26.02.02	13.05.04	Ambala Cantt	Peace	(xiv)	14.05.04	31.05.07	School of Arty Devlali	Peace
(xv)	01.06.07	Till date	Firozpur Cantt	Peace					

7. Significantly, the applicant also places reliance on Paras 3 and 4 and the responses thereto of the applicant in the personal statement made by him during the RMB proceedings as under:-

“3. Did you suffer from any disability before joining the Armed Forces?
NO

4. Give details of any incidents during your service, which you think caused or made your disability worse: ***During my two yr tenure in 'Op Meghdoot' I was inducted on the glacier 'three' times which I feel has aggravated my disability.***

8. The applicant thus submits that he was deployed in 8 field postings prior to the onset of the disability in October 2006, when he was posted in his 16th posting at the School of ARTY Devlali. The onset of the disability in October 2006 is reflected in the statement of the case in the RMB to the effect:-

<i>Disabilites</i>	<i>Date of origin</i>	<i>Rank of Indl</i>	<i>Place and unit where serving at the time</i>
<i>Carcinoid Tumor Rt Lung (Optd)</i>	<i>Oct 06</i>	<i>Lt Col</i>	<i>Devlali, No 1 EW (Non Comn) Sub unit</i>

9. The applicant submits that during his tenure of 21 years of service, he was posted to the field areas at Jammu and Kashmir, Mizoram, Manipur, Tripura for more than five years with two years tenure in the Siachen Glacier whilst he was deployed in Operation Meghdoot. The applicant also submits that he was posted at the glacier three times starting with the Northern Glacier as part of the Advanced Party at the time of movement of the regiment to the base camp, and that the second time he was inducted as an observation post officer and towards the end

of the tenure, he was inducted the third time as a replacement for a casualty which had taken place due to extreme weather and enemy firing.

10. The applicant further submits that whilst he was posted at the Siachen Glacier three times from 26.06.1993 to 03.07.1995, due to lack of oxygen at high altitude, he faced breathing difficulties whilst undertaking strenuous work and that during the third induction he had to be evacuated on heart enlargement, IBP and ECG abnormality and that he was admitted in the Command Hospital, Chandi Mandir for over a month on complete bed rest. The applicant submits that he managed his problem with rest and was able to complete his tenure at the glacier without further aggravation of the problem requiring medication or hospitalization.

11. Inter alia, the applicant submits that after de-induction from the Siachen Glacier, he was again posted to field areas / high altitude areas which aggravated his disability without the applicant coming to know of the same, since his disability of cancer is a silent killer disease. The applicant submits that the reasons for aggravation of his disability are *inter alia* due to service compulsions and his postings as rebutted as under:-

(i) Posting to the High Altitude Areas/ Field Areas for more than five years.

(ii) Posting to Siachen Glacier for more than two years with three inductions.

(iii) Being denied selective promotion to the rank of Lt Col in the year 2002-03.

(iv) Not being selected to the rank of Colonel in selection years 2005-2006.

(v) Not getting full leave and adequate rest due to operational commitments and service exigencies."

12. The applicant further submits that during his posting to the School of ARTY at Devlali whilst playing a unit organized game of Hockey, he collided with the goalkeeper causing him pain in his chest and as the pain did not subside, an X-ray of the chest was taken which revealed a tumor in his lungs and investigations confirmed that it was a solid tumor in his right lung which was diagnosed as a carcinoid tumor. Inter alia the applicant submits that he was transferred to INHS Asvini at Mumbai where the tumor along with the part of the affected lung was removed surgically and his medical category was accordingly lowered temporarily, which was made permanent by the Review Medical Board, subsequently.

13. The applicant further submits that as his disabilities started adversely affecting his military duties coupled with lack of career progression in service because of low medical category, the applicant retired from Army Service in low medical category S1H1A1P2E1 with the said disability which the applicant submits continues to affect him for life. Inter alia the applicant submits that the RMB having opined the disability that he suffers from of '**Carcinoid Tumor (RT) LUNG (OPTD)**' with a percentage of disablement at 20% for life, as being

neither attributable to nor aggravated without assigning any reason for the same is wholly arbitrary and erroneous.

14. The opinion of the RMB as reflected in Part V thereof is to the effect:-

“

<i>Disability</i>	<i>Attributable to service (Y/N)</i>	<i>Aggravated by service (Y/N)</i>	<i>Not connected with service (Y/N)</i>	<i>Reason / Cause / Specific condition and period in service</i>
<i>Carcinoid Tumor Rt Lung (Optd)</i>	<i>N</i>	<i>N</i>	<i>Y</i>	<i>Not connected to mil service</i>

”

The applicant submits that the Release Medical Board has grossly erred in assessing the disability of the applicant as being neither attributable to nor aggravated by military service despite it being a well-known fact in medical science, that lack of oxygen in the human body cells is the primary cause for developing of tumors and submits that it was the lack of oxygen during his postings to the high altitude areas especially the Siachen Glacier which resulted into the onset of the disability of the tumor in his lungs, though it was detected accidentally later in the year 2006.

15. The applicant further submits that in as much as he had retired from service on 10.01.2009 and at that time prematurely retired officers were not entitled to the disability pension, he had not pursued his claim

for the grant of disability pension at that time by challenging the findings of the RMB. Inter alia, the applicant submits that after the order of the Tribunal in OA 336/2011 in *Maj (Retd.) Rajesh Kumar Bhardwaj vs Union of India and others*, the Government vide notification dated 19.05.2017 extended the benefit of the disability element of pension to all prematurely retired officers across the board. Reliance was thus placed on behalf of the applicant on the Government of India Ministry of Defence letter no. 16(05)/2008/D(Pension/Policy) dated 19.05.2017 which relates to the subject "Grant of Disability Element to Armed Forces Personnel who were retained in service despite disability attributable to or aggravated by Military Service and subsequently proceeded on premature/ voluntary retirement prior to 01.01.2006."

wherein it was further stated to the effect:-

"The undersigned is directed to refer to this Ministry's letter No. 16(5)/2008/ D(Pen/Policy) dated 29th September 2009 wherein disability element/ war injury element have been allowed to such Armed Forces Personnel who were retained in service despite disability and retired/ discharged voluntary or otherwise in addition to retiring/ service pension or retiring/ service gratuity, subject to condition that their disability was accepted as attributable to or aggravated by military service and had foregone lump sum compensation in lieu of that disability.

2. In terms of Para- 3 of the above referred letter the provisions stated above are applicable to the Armed Forces Personnel who were retired/ discharged from service on or after 01.01.2006. Armed Force Tribunal (Principal Branch) New Delhi in OA No. 336 of 2011 vide their order

dated 07.02.2012 have struck down Para-3 of this Ministry's above letter.

3. The issue of extension of above benefit to the Pre-2006 retired/ discharged Armed Forces Personnel, who were retained in service despite disability attributable to or aggravated by military service, was under active consideration of Government. Now, the President is pleased to decide that all Pre-2006 Armed Forces Personnel who were retained in service despite disability and retired voluntarily or otherwise will be allowed disability element/ war injury element in addition to retiring/ service pension or retiring/ service gratuity, subject to the condition that their disability was accepted as attributable to or aggravated by military service and had foregone lump sum compensation in lieu of that disability. Further, concerned Armed Forces Personnel should still be suffering from the same disability which should be assessed at 20% or more on the date of effect of this letter.

7. The provisions of this letter shall take effect from 01.01.2006."

16. Inter alia the applicant submits that the rejection of his appeal by the respondents on the ground of delay is in violation of the spirit of the verdicts of the Hon'ble Supreme Court in *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)* in as much as the pension is due and payable to the applicant and as the disability pension is also a matter of pension and is based on a continuous cause of action, the applicant is entitled to receive the same each month.

17. The applicant further submits that cancer is one of the diseases which can be caused by stress and strain of service, viral infection,

ultraviolet rays and that the applicant was posted to high altitude areas for more than five years and subjected to harmful effects of ultraviolet rays and thus there is a high possibility of the same contributing to the onset of the aggravation of the applicant's disability.

18. Reliance was placed on behalf of the applicant on the verdicts of the Hon'ble Supreme Court in:-

i) *Dharamvir Singh Vs. Union of India and others*, 2013 STPL(Web) 498 SC (Civil Appeal No. 4949 of 2013 (Arising out of SLP(C) No. 6940 of 2010, decided on 02.07.2013);

ii) *Sukhvinder Singh Vs. Union of India and others*, 2014 STPL(Wed) 468 SC (Civil Appeal No. 5605 of 2010), decided on 25.06.2014;

iii) *Union of India and another Vs. Rajbir Singh*, Civil Appeal No. 2904 of 2011, decided on 13.02.2015 by Supreme Court; and

iv) *Union of India and others Vs. Angad Singh Titaria*, Civil Appeal No. 11208 of 2011, decided on 24.02.2015 by the Supreme Court.

with specific reliance on the observations in Para 28 of the Hon'ble Supreme Court in *Dharamvir Singh* (supra) 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."

19. Reliance was also placed on behalf of the applicant on the observations of the Hon'ble Supreme Court in *UOI & Ors. vs Rajbir Singh* in Civil Appeal no. 2904/2011 dated 13.02.2015 (2015) 12 SCC 264 vide Para15 which is to the effect:-

15. The legal position as stated in Dharamvir Singh's case (supra) is, in our opinion, in tune with the Pension Regulations, the Entitlement Rules and the Guidelines issued to the Medical Officers. The essence of the rules, as seen earlier, is that a member of the armed forces is presumed to be in sound physical and mental condition at the time of his entry into service if there is no note or record to the contrary made at the time of such entry. More importantly, in the event of his subsequent discharge from

service on medical ground, any deterioration in his health is presumed to be due to military service. This necessarily implies that no sooner a member of the force is discharged on medical ground his entitlement to claim disability pension will arise unless of course the employer is in a position to rebut the presumption that the disability which he suffered was neither attributable to nor aggravated by military service. From Rule 14(b) of the Entitlement Rules it is further clear that if the medical opinion were to hold that the disease suffered by the member of the armed forces could not have been detected prior to acceptance for service, the Medical Board must state the reasons for saying so. 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. The burden to establish such a disconnect would lie heavily upon the employer for otherwise the rules raise a presumption that the deterioration in the health of the member of the service is on account of military service or aggravated by it. A soldier cannot be asked to prove that the disease was contracted by him on account of military service or was aggravated by the same. The very fact that he was upon proper physical and other tests found fit to serve in the army should rise as indeed the rules do provide for a presumption that he was disease-free at the time of his entry into service. That presumption continues till it is proved by the employer that the disease was neither attributable to nor aggravated by military service. For the employer to say so, the least that is required is a statement of reasons supporting that view. That we feel is the true essence of the rules which ought to be kept in view all the time while dealing with cases of disability pension."

20. Reliance was also placed on behalf of the applicant on the order of the AFT PB in OA 327/2011 titled as *Smt Seema Devi vs UOI & Ors.*, dated 04.10.2023 in which case the applicant's late husband therein who had been diagnosed as a case of Cancer (Carcinoma lungs) was held

entitled to the grant of Special Family Pension. Specific reliance was placed on behalf of the applicant on observations in para 12 and 13 of the said order to the effect:-

" 12. The malignancies of various types are mentioned in the list of the diseases which are considered attributable to service and those malignancies are described in Clause 10 and 11 of Medical Officers (Military Pensions) i.e. Guide to Medical Officers (Military Pensions), which is referred to above, and copy of such guidelines is placed on record at page 29. In Clause 10 (b) Sub- Clause (viii) all types of cancer have been mentioned, subject to, "any cancer which is detected from thirty days to five years after combat induced stress".

13. The Clause 11 i.e. presumes that the Malignancies aggravate by mentions the following reasons:

- (a) Passive smoking;*
- (b) Diet (Ca pancreas, colo rectal Ca)*
- (c) Stress Any cancer detected in an individual who has taken part in an operation of any nature."*

to *inter alia* submit that clause 11 of the GMO (Military Pensions) 2002 stipulates that stress is one of the reasons for any cancer detected in an individual who has taken part in an operation of any nature.

21. Reliance was also placed on behalf of the applicant on the order dated 12.07.2016 of the AFT RB Chandigarh in OA 674/2015 in the case of ***Smt Meenakshi Taneja vs UOI & Ors.***, in which the late husband of the applicant thereof incurred 'Renal Cell Carcinoma (Left) Kidney and and it was directed therein that the deceased husband of that applicant was entitled for disability pension at the rate of 80% rounded off to 100%

in relation to the disability of cancer. The observations made in para 11 of the said order are to the effect:-

"11. The Rules aforesaid were examined and explored in various recent judgments by the Supreme Court. The disease 'cancer' has been included in Clause 9 of Medical Officers (Military Pension) Regulations, 2008. The precise cause for cancer is unknown. The recognized causative agents for carcinogenesis are:-

- a) Viral infection;*
- b) Radiation from nuclear sources;*
- c) Ultra violets rays;*
- d) Chemicals;*
- e) Acquired chromosomal abnormalities;*
- f) Congenital chromosomal abnormalities;*
- g) Trauma (chronic irritation leading to dermatological cancers e.g. Kangri Cancer.*

Whereas service related conditions in relation to carcinogenesis are occupational hazards, infection and its attributability is depending upon the merits of each case. Whereas Clause 10(ii) includes 'Renal Cell Carcinoma' attributable to Military service.

Captain Ahuja was suffering from "RENAL CELL CARCINOMA (LT.KIDNEY (OPTD) (C-64)" which resulted in his death within 2 years and 3 months after his discharge."

It was thus submitted on behalf of the applicant that he is entitled to the grant of the disability element of pension at 20% for life with effect from 11.01.2009 which is to be broadbanded to 50% for life in terms of the verdict of the Hon'ble Supreme Court in **UOI vs Ram Avtar** (Civil Appeal 418/2012) dated 10.12.2014 and the GoI MoD letter dated 31.01.2001.

22. The respondents on the other hand through their counter affidavit and submissions made on their behalf, reiterate that there is no infirmity in

the opinion of the RMB opining the disability of the applicant to be neither attributable to nor aggravated by military service and submit that in as much as the applicant is not entitled to the grant of the disability element of pension, he is consequentially not entitled to the grant of broad banding thereof.

23. *Inter alia* the respondents submit that the present OA has been filed with much delay and seek the dismissal of the OA on the said grounds with the reliance placed on:-

*"a) Hon'ble Supreme Court in the case of **Union of India & Ors Vs Rajwanti** has also allowed the petition filed by UOI and dismissed the relief as asked by Rajwanti on grounds of delay (copy annexed as Annexure R/4).*

*(b) In other case MA No. 142/2016 in OA No. 90 of 2016 filed by **Ex Capt Srinivasan Narayanan** has been dismissed by the Hon'ble AFT (RB) Chennai vide their order dt 09 Aug 2017 on grounds of delay.*

(c) OA No. 1915/2017 with MA 1450/2017 filed by IC-16720L Col Opendr Kumar Verma has been dismissed by the Hon'ble Tribunal (PB) New Delhi vide their order dt 21 Nov 2017 on grounds of delay."

Inter alia the respondents submit that the applicant in the instant case was not invalided out from service and rather completed his tenure and thus submit that the prayer made by the applicant cannot be granted.

ANALYSIS

24. As regards the contention raised on behalf of the respondents that the OA has been filed with delay, as observed hereinabove MA 2701/2019 has been allowed in view of the verdicts of the Hon'ble

Supreme Court in *Tarsem Singh* (supra) and in *Ex Sep Chain Singh* (supra), taking into account the factum that the applicant in the instant case seeks the grant of the disability element of pension which the applicant seeks to contend relates to a continuous cause of action and a continuous wrong and a continuous amount due to him from the respondents. The OA is thus taken up for consideration in terms of Section 21 (1) of the AFT Act 2007 in the interest of justice.

25. Significantly, as per the GMO Military Pensions, 2002 para 10 which deals with malignancy is considered attributable to service. Para 10 (c) thereof reads to the effect:-

"10 (c). any cancer which is detected from 30 days to five years after combat induced stress."

Significantly, the said para 10 (c) and para 11 of the GMO (Military Pensions) 2002 has been deleted from the GMO (Military Pensions) 2008.

26. Paras 9, 10, 11 and 12 of the GMO (Military Pensions) 2008 read as under:-

"9. Cancer. Precise cause of cancer is unknown. There is adequate material both of scientific and statistical nature which brings into light the causative factors like radiation, chemicals, and viral infections.

The recognized causative agents for carcinogenesis are:-

- (a) Viral infection*
- (b) Radiation from nuclear sources*
- (c) Ultra violet rays*
- (d) Chemicals*

- (e) *Acquired chromosomal abnormalities*
- (f) *Trauma (chronic irritation leading to dermatological cancers*
eg: kangri cancer)

The service related conditions in relation to carcinogenesis are as under:-

(a) **Occupational Hazards:** *All ranks working in nuclear powered submarines, doctors and paramedics working with electro-magnetic equipment, personnel working with radars, communication equipment, microwave and also those handling mineral oils such as petrol and diesel are exposed despite stringent safety measures.*

(b) **Infection:** *As a cause of cancer has been documented in certain malignancies. Though identification of an organism may not be possible due to lack of facility but there is gross evidence clinically to suspect infection.*

(c) *The question of relationship between a malignant condition and an accepted injury is difficult to establish. The vast majority of traumatic lesions however severe, show no tendency to be followed by cancer either immediately or remotely. However chronic irritation leading to dermatological cancers have been documented (eg: Kangri Cancer),attributability will be conceded depending on the merit of the case.*

10. Malignancies Considered Attributable to Service

(a) Due to Occupational Hazards:

- (i) *Any cancer in those personnel working or exposed to radiation source in any forms:*
 - (aa) *Acute leukaemia*
 - (ab) *Chronic lymphatic leukaemia*
 - (ac) *Astrocytoma*
 - (ad) *Skin cancers*
- (ii) *Any cancer in those exposed to chemical especially Petroleum products or other chemicals:-*
 - (aa) *Carcinoma bladder*
 - (ab) *Renal cell carcinoma*
 - (ac) *Carcinoma of Renal Pelvis*
- (iii) *Any cancer in those exposed to coal dust, asbestos, silica & iron*
 - (aa) *Bronchogenic Carcinoma*

(ab) Pleural Mesothelioma

(b) Due to Viral Infection:

- (i) Hepato-cellular carcinoma (HV B&C)*
- (ii) Ca nasopharynx (EB virus)*
- (iii) Hodgkin's disease (EB virus)*
- (iv) Non-Hodgkin's Lymphoma (Viruses)*
- (v) Acute Leukaemia (HTLV1)*
- (vi) Ca anal canal (HTLV 1)*
- (vii) Any cancer due to HIV infection (contracted out of blood transfusion/needle stick injury in service)*
- (viii) Ca Cervix (HPV)*

11. Blank

12. Malignancies Not Attributable and Not Aggravated

Tobacco related cancers in smokers and tobacco users e.g. carcinoma lung, carcinoma oral cavity, carcinoma bladder. Cancers due to congenital chromosomal abnormalities e.g. CML where Ph chromosome identified. "

27. In terms of Para 10 (iii) of the said GMO (Military Pensions) 2008, Bronchogenic Carcinoma falls within the category of malignancy being due to an occupational hazard of persons exposed to coal dust, asbestos, silica and iron. That the applicant was deployed to field areas during the periods:-

- 22.11.91 to 18.04.92 at Fd(OP RAKSHAK-II)
- 26.06.93 to 03.07.95 at Siachen Glacier (OP MEGHDOOT)
- 21.09.98 to 13.09.99 at Lungleit (Mizoram)
- 14.09.99 to 04.11.99 at Manipur
- 05.11.99 to 30.10.00 at Mizoram
- 31.10.00 to 08.12.00 at Tripura
- 09.12.00 to 04.02.01 at Mizoram
- 05.02.01 to 13.02.02 at Tripura

is not refuted by the respondents.

28. The applicant has himself in Para 4 of the personal statement stated that his induction on to the glacier three times as well as his two years tenure in Operation Meghdoot at the Siachen Glacier could have aggravated his disability, the onset of which was detected only in 2006. Through the scientific data available on the internet, it is brought forth that detection of lung cancer is usually difficult.

29. The applicant was deployed in the trade of artillery and thus his having been subjected to occupational hazards cannot be overlooked, nor the aspect of his having handled artillery equipment and thus consequentially exposed to radiations and chemicals.

30. Furthermore as per the article dated 19.08.2020 published by the National Library of Medicine, National Center for Biotechnology. Information as accessed on the internet (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7466429/>) , Chronic Stress Promotes cancer development, and it is stated therein to the effect:-

"Stress is an inevitable part of life. Chronic stress on account of reasons like adversity, depression, anxiety, or loneliness/social isolation can endanger human health. Recent studies have shown that chronic stress can induce tumorigenesis and promote cancer development. This review describes the latest progress of research on the molecular mechanisms by which chronic stress promotes cancer development. Primarily, chronic stress activates the classic neuroendocrine system [the hypothalamic-pituitary-adrenal (HPA) axis] and the sympathetic nervous system (SNS) and leads to a decline and dysfunction of the prefrontal cortex and the hippocampus under stress. Stress hormones produced during the activation of both the HPA axis and the SNS can promote tumorigenesis and cancer development through a variety of mechanisms. Chronic

stress can also cause corresponding changes in the body's immune function and inflammatory response, which is significant because a long-term inflammatory response and the decline of the body's immune surveillance capabilities are implicated in tumorigenesis. Stress management is essential for both healthy people and cancer patients. Whether drugs that limit the signaling pathways downstream of the HPA axis or the SNS can suppress chronic stress-induced cancers or prolong patient survival deserves further study.

Humans have always experienced periods of excessive stress on account of global issues, such as poverty, war, and epidemics. Stress can be divided into acute stress and chronic stress. Acute stress usually exists in emergencies, such as fighting or escaping. Changes in the structure and function of certain molecules and tissues in the brain activate the emotional cognitive system, and we make decisions for stress-coping mechanisms. At the same time, the body temporarily produces catecholamines and corticosteroids to improve mobility and responsiveness. Therefore, acute stress is often beneficial to the body. However, chronic stress is heavily implicated in causing ill health, and today it is considered to encompass occupational stress as well as unusual adversities. Its potential negative effects include not only insomnia, gastrointestinal disorders, anxiety, and depression, but also an increased risk of cardiovascular disease, mental illness, and cancer

Surveys have shown that approximately one million new cancer cases occur every year among young people aged 20–39 years, and they have been partly attributed to stress. The relationship between chronic stress and cancers has aroused increasingly widespread interest and concern in the medical community. Many scholars have performed research on the relationships between stress and cancers such as prostate, breast, gastric, lung and skin cancer, and have found evidence indicating that chronic stress can induce tumorigenesis and promote cancer development.”

31. 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*.

32. Furthermore, Para 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.

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

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.

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 contracted prior to enrolment or during leave, the incubation period of the disease will be taken into consideration on the basis of clinical course 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. Altitudes etc."

(emphasis supplied),__

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.

34. It is essential to observe that the initial presumption of the disability having arisen during military service having not been rebutted in the instant case, in view of the applicant having admittedly joined the Indian Army in a fit medical condition, with the applicant having been found to be in a fit medical condition after physical tests to join the Indian Army, in the absence of any cogent reasons put forth by the RMB vide its opinion in the Part V of the Medical Board Proceedings dated 18.09.2008 which are wholly cryptic to the effect that the disability was not connected to military service without detailing any reasons for the same, in terms of Para 10 b (iii) of the attributability clause of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel 2008, in the instant case the disability of the applicant which had its onset after a period of 11 years of military service has to be held to be attributable to military service, in the absence of any reasons put forth by the Release Medical Board for the non detection thereof at the time of induction into military service, nor for the detection thereof in subsequent annual medical examinations conducted after the applicant joined military

service and also taking into account the factum that the said disability has occurred after the applicant had been deputed to eight field postings.

35. As regards the contention raised on behalf of the respondents that the applicant had prematurely retired from service voluntarily on 10.01.2009 and thus the applicant was not entitled to the grant of the disability element of pension, the said aspect stands settled vide the order of this Tribunal in OA 336/2011 in *Maj (Retd.) Rajesh Kumar Bhardwaj* (supra) in relation to which the applicant has rightly placed reliance on the Government of India Ministry of Defence letter dated 19.05.2017 already adverted to hereinabove in para no.14 as per which the Armed Forces Personnel who have retired voluntarily in terms of clause 3 thereof, are entitled to the grant of the disability element of pension subject to the condition that the disability is attributable to or aggravated by military service and assessed with the percentage of disablement at 20% or more. As the percentage of disablement in the instant case has been assessed by the RMB at 20% for life as observed by us hereinabove, the disability of the applicant in the instant case in view of the settled law vide the verdicts of the Hon'ble Supreme Court in *Dharamvir Singh* (supra), *Rajbir Singh* (supra), *Ram Avtar* (supra), *Angad Singh Titaria* (supra), and in terms of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel 2008 and in terms of Para 423 of the Regulation for Medical Services to the Armed Forces Personnel, the

disability in the instant case that the applicant suffers from is held attributable to and aggravated by military service.

CONCLUSION

36. In the circumstances, the **OA 1819/2019** is allowed and the applicant is held entitled to the grant of the disability element of pension qua the disability of the applicant i.e. **Carcinoid Tumor (RT) LUNG (OPTD)** assessed at 20% for life, which is directed to be broad banded to 50% for life in terms of the verdict of the Hon'ble Supreme Court in ***Union of India vs Ram Avtar*** decided on 10.12.2014 in Civil Appeal no. 418 of 2012 with effect from the date of his discharge and the respondents are directed to issue the corrigendum PPO with directions to the respondents to pay the arrears within a period of three months from the date of receipt of a copy of this order, *failing which*, the respondents would be liable to pay interest @6% p.a. on the arrears due from the date of this order.

37. No order as to costs.

Pronounced in the ~~Open~~ Court on the 3rd day of November, 2023.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/AP/