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

1.

OA 1958/2020 with MA 2258/2020

Col Jiwan Nath Mehrotra (Retd) ..... Applicant
VERSUS
Union of India and Ors. ..... Respondents

For Applicant : Mr. I S Yadav, Advocate
For Respondents : Mr. Prabodh Kumar, Advocate

CORAM

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

ORDER
09.11.2023

Vide our detailed order of even date we have allowed the OA 1958/2020. 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 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, the prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

AP

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O R D E R

MA 2258/2020

This is an application filed under section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 4115 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of ***UoI & Ors Vs Tarsem Singh*** 2009(1)AISLJ 371 and in ***Ex Sep Chain Singh Vs Union of India & Ors*** (Civil Appeal No. 30073/2017) and the reasons mentioned, the MA 2258/2020 is allowed and the delay of 4115 days in filing the OA 1958/2020 is thus condoned.

2. The MA is disposed of accordingly.

OA 1958/2020

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

"(a) To declare the action of the respondents as unjust, arbitrary and illegal; and
(b) To quash the order dated 30.11.2007, dated 21 May 2009 and dated 19 Mar 2020 (Annexure A-1 Coolly); and
(c) To direct the respondents to grant the disability element of pension 60% and further rounding off the disability element of pension to 75% from the date of retirement; and
(d) To grant an interest of 12% on the delayed payment of service element of the disability pension and revision; and
(e) To award exemplary costs upon the Respondents in the facts and circumstances of the record; and
(f) Such further order or orders, direction/directions be passed so as to this Learned Tribunal may deem fit and proper in accordance with law."

4. The applicant was commissioned in the Army on 17.12.1977 and retired from service on 31.01.2007(AN) on attaining the age of superannuation. At the time of retirement since the officer was in low medical category, he was brought before a duly constituted Release Medical Board on 31.01.2007. As per the RMB proceedings (AFMSF-16 dated 26.04.2007) the disabilities of the officer were assessed as under:-

"

S.no	*ATT/AGGR NANA*	*Disability*	*Percentage of disablement with duration*	*Composite assessment for all disabilities with duration (Max 100%) with duration*	*Disability qualifying for disability pension with duration*	*Net assessment qualifying for disability pension (Max 100%) with duration*
(A)	*Coronary Artery Disease Unstable Angina LMCA+ DVD POST CABGS*	*NANA*	*50% for life*	*60% for life*	*Nil for life*	*Nil for life*
(B)	*IMPAIRED GLUCOSE TOLERANCE (IGT)*		*11-14% for life*			

"

5. The initial disability claim of the applicant was adjudicated and rejected by the competent authority vide Letter No. 13101/IC-35035/Engrs/MP-6 (C)/191/07/PS-4 (Imp-II) dated 30 Nov 2007, stating that the competent Authority, after examining the case in the light of the relevant rules and administrative/medical provisions has decided that disabilities (i) "CORONARY ARTERY DISEASE UNSTABLE ANGINA LMCA+DVD POST CABGS and (ii) IMPARIED GLUCOSE TOLERANCE (IGT) from which the applicant was suffering from at the time of the Release Medical Board, had been considered as neither attributable to nor aggravated by the military service by the Release Medical Board, and thus he did not fulfill the twin eligibilities condition as laid down in Regulation 53 of Pension Regulation for the Army 1961, Part-I, for the grant of disability pension.

6. The first appeal dated 05.06.2008 filed by the applicant against the rejection of the disability pension claim was adjudicated and rejected by the Appellate Committee vide letter no. 13101/IC-35035/Engrs/MP-6 (C)/70/2008/AG/PS-4 (Imp-II) dated 21.05.2009 stating that:-

> ***"On perusal of your service medical documents, the ACFA has decided that your disabilities (6) "CORONARY ARTERY DISEASE UNSTABLE ANGINA LMCA+DVD POST CABGS and (1) IMPAIRED GLUCOSE TOLERANCE (IGT) have appropriately held as neither attributable to nor aggravated by the military by the RMB. Therefore, you are not entitled to disability pension as per Regulation 53 of Pension Regulation for the Army 1961, Part-1. Accordingly the ACFA has not accepted your appeal.***

In case you are not satisfied with the above decision, you may prefer second appeal to the Defence Minister's Appellate Committee on Pensions, Min of Det/Pen-Appeal), Room No. 208, 'A' Wing, Sena Bhawan, New Delhi-110011 within six months from the date of receipt of this letter".

7. The second appeal dated 06.04.2020 filed by the applicant against the rejection of the disability pension claim was rejected vide letter no. 12681/IC-35035P/T-7/MP-5(b) dated 19.03.2020 as being time barred. The instant OA has thus been filed by the applicant. In the interest of justice in terms of Section 21 (1) of the AFT Act 2007, we consider it appropriate to take up the OA for consideration.

CONTENTIONS OF THE PARTIES

8. During the course of the hearing on 16.10.2023, it was submitted by learned counsel for the applicant that the prayer made through the present OA is confined to seeking the grant of disability element of pension in relation to the disability of ***CORONARY ARTERY DISEASE UNSTABLE ANGINA LMCA+DVD POST CABGS*** and that the prayer made seeking the grant of the disability pension in relation to the disability of ***IMPAIRED GLUCOSE TOLERANCE (IGT)*** is not pressed.

9. The applicant submits that he was commissioned in the Indian Army on 16.12.1977 in a fit medical condition without any note of disability recorded on the records of the respondents and thus the disability that he suffers from of **Coronoary Artery Disease Unstable Angina LMCA+DVD POST CABGS** has to be held to be attributable to

and aggravated by military service. The applicant has further submitted to the effect that the disability that the applicant has suffered from Coronoary Artery Disease Unstable Angina LMCA+DVD POST CABGS had its onset on 03.01.2005, after 28 years of military service and that, thus, the said disability in the circumstances of the instant case has to be held to be attributable to and aggravated by military service. Reliance was placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court ***Dharamvir Singh*** vs. ***Union of India***_(in Civil Appeal No. 4949/2013 decided on 02.07.2013), ***Union of India& Anr.*** Vs. ***Rajbir Singh*** (in Civil Appeal No.2904/2011 decided on 13.02.2015) to contend to the effect that in the absence of any note of the disability recorded on the records of the respondents *qua* the applicant at the time of induction into the military service, with their being nothing on the record to indicate as to why the disabilities could not be detected by the respondents at the time of the induction of the applicant into the military service, the disability that the applicant suffers from has to be held to be attributable or aggravated by military service.

10. It was also further submitted on behalf of the applicant, that there is virtually no reason that has been put forth by the Release Medical Board in its opinion as to why the disability was opined to be not connected with military service and that such a cryptic analysis made by the Release Medical Board cannot be sustained. Reliance in relation thereto was placed on behalf of the applicant on the order dated

05.03.2020 of this Tribunal in OA 1660/2017 in the case of ***Lt. Col Mohan Singh. (Retd.)*** Vs. ***Union of India and Ors*** (decided on 05.03.2020) as well as on the order dated 06.03.2020 in OA 1858/2017 in the case of ***Gp Capt Rajesh Kumar Singh (Retd.)*** Vs. ***Union of India and Ors.*** and on the order dated 12.02.2020 of this Tribunal in OA 1343/2017 in the case of ***Brig. H.K. Sharma (Retd.)*** Vs. ***Union of India and Ors.*** to contend to the effect that in each of these cases in relation to the disabilities for Coronoary Artery Disease Unstable Angina LMCA+DVD POST CABGS, the prayers made by the applicant thereof, for the grant of disability element of pension has been granted. Specific reliance was placed on behalf of the applicant on the observation in Para 7 of the order in ***Lt. Col Mohan Singh*** (Supra) to the effect:-

> ***"In view of the settled position of law on attributability, we find that the RMB has denied attributability to the applicant only by endorsing that the disability 'CORONARY ARTERY DISEASE ACUTE STEIWMI (OLD) (N) LV FUNCTION (NOT Tx) LEFT DOMINANT DVD ICD (125.2) is neither attributable to nor aggravated (NANA) by service as the origin of disease is in peace area and not connected with service. The applicant was enrolled in Indian Army on 26.07.1978 and the disability has originated for the first time after more than 32 years of Army service Le. 26.03.2011. We are therefore of the considered opinion that the reasons given in RMB for declaring disease as NANA is very brief and cryptic in nature and does not adequately explain the denial of attributability. Additionally we are of the opinion that it is not correct to say that there is no stress and strain of military service in peace areas. Therefore, benefit of doubt in these circumstances should be extended in favour of the applicant in view of the law settled on this matter by Dharamvir Singh vs Union of India & Ors (supra). Hence, we consider***

the disability of the applicant as aggravated by military service, as such the applicant is entitled for the disability element from the date of his discharge.",

with it having been submitted to the effect, that the reasons given in the RMB in the instant case are also wholly brief and cryptic in nature and do not adequately explain the non grant of attributability of the disability due to military service. Likewise, on behalf of the applicant it was submitted that even the rejection of the first appeal and the second appeal by the respondents was wholly erroneous.

11. On behalf of the respondents, it was submitted to the effect that in terms of Regulation 153 for the Pension Regulation for the Army 1961, vide Para 21, Part 1, it is stipulated therein to the effect:-

"An officer compulsorily retired on account of age or on completion of tenure, if suffering on retirement from a disability attributable to or aggravated by the military service medical authority. may, at the discretion of the President, be granted in addition to the retiring pension admissible, a disability, according to the accepted degree of disablement at the time of retirement",

and it is thus been submitted on behalf of the respondents in as much as the RMB had opined the disability of the applicant to be neither attributable to nor aggravated by military service, the applicant is not entitled to the grant of disability element of pension in terms thereof. The respondents further submitted that there is no infirmity whatsoever, in the opinion of the Release Medical Board in so opining that the disability of the applicant was neither attributable to nor aggravated by the military

service and further submitted that there is no infirmity in the rejection of the first and second appeals of the applicant as well.

12. Reliance was also placed on behalf of the respondents on the verdict of the Hon'ble Supreme Court in ***Ex CFN Narsingh Yadav*** Vs. ***Union of India and Ors.*** (Civil Appeal No. 7672/2019) and in ***Union of India and Anr.*** Vs. ***RFN Ravinder Kumar*** (Civil Appeal No. 1837/2009 vide order dated 23.05.2012), to submit to the effect that the opinion of the Medical Board has to be accorded weight and credence and ought not to be overlooked in the absence of strong medical evidence in relation thereto. It was further submitted on behalf of the respondents that the posting profile of the applicant makes it apparent that he was mostly posted in peace areas and thus, it cannot be contended as sought to be contended on behalf of the applicant that there were any stress factors due to military service which caused the disability in question to the applicant. It was thus prayed, on behalf of the respondents that the present OA be dismissed.

ANALYSIS

13. At the outset, it is essential to advert to the posting profile of the applicant which is as reflected in the RMB proceedings dated 31.01.2007as follows:-

"

S.No	*From*	*To*	*Unit*	*Peace/Field*
01.	*Aug 1978*	*May 1981*	*14 Engr Regt*	*Peace*
02.	*Jun 1981*	*Mar 1983*	*GE Bikaner*	*Peace*
03.	*Mar 1983*	*Nov 1983*	*GE (p) (Army)*	***Field***

			Suratgarh	
04.	*Dec 1983*	*Feb 1987*	*14 Engr Regt*	*Peace*
05.	*Feb 1987*	*Mar 1988*	*CME Pune*	*Peace*
06.	*Apr 1988*	*Jun 1991*	*664 EPU*	***Semi field***
07.	*Jun 1991*	*Nov 1994*	*GE (P) No 1 Delhi*	*Peace*
08.	*Nov 1994*	*Nov 1996*	*14 Engr Regt*	*Peace*
09.	*Nov 1996*	*Sep 1999*	*HQ CE (p) Udayak*	***Field***
10.	*Sep 1999*	*Jun 2002*	*1031 Rly Engr Regt (TA)*	*Peace*
11.	*Jul 2002*	*Oct 2004*	*HQ DGAR, Shillong*	*Peace*
12.	*Oct 2004*	*Oct 2005*	*HQ ARTRAC*	*Peace*
13.	*Oct 2005*	*Till date*	*1031 Rly Engr Regt (TA)*	*Peace*

"

14. The applicant was commissioned in the Indian Army on 17.07.1977, in the Engineer arm of the Army. The Re-categorization Medical Board proceedings *qua* the applicant as reflected in the AFMSF-15 2006 dated 27.04.2005, reflect categorically to the effect that it had been stated in Para 19 of the same to the effect:-

> ***"Is the disability attributable to service? If so, please explain?(Y/N): ~~YES~~ NO",***

which thus indicates that the Re-categorization Board dated 27.04.2005 had itself opined initially that the disability that applicant suffered from i.e. Coronoary Artery Disease Unstable Angina LMCA+DVD POST CABGS which had its origin on 03.01.2005 was aggravated by military service. **However**, the said opinion was struck off and it has been then stipulated therein to the effect that the said disability was not aggravated by military service. Consequentially, the summary and opinion of the Re-Categorization

Board dated 12.05.2006, though, shows the percentage of disability of the applicant at being 50% as under:-

"Percentage of the disability- 50% fifty percent",

stated in relation to paragraph 17, 18, 19 thereof to the effect:-

"

Was the disability contracted in service? (Y/N)	*Already completed in initial board*
Was it contracted in circumstances over which he had no control? (Y/N)	
Is the disability attributable to Service? (Y/N). If , please explain?	
If no directly attributable to service, was it aggravated by service? (Y/N), If so please explain	

"

and have thus stated in response to the aspect of the disability being aggravated by military service as was reflected in the initial Board i.e. AFMS15 dated 27.04.2005. The Release Medical Board dated 31.01.2007, vide its opinion in Part 5 thereof stated as under:-

"

1. cause/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*
Coronary Artery Disease, Unstable Angina LMCA+ DVD POST CABGS	*NO*	*NO*	*YES*	*Disease not connected with service as per AFMSF-15 dt 27 Apr 2005*
IMPAIRED GLUCOSE TOLERANCE (IGT)	*NO*	*NO*	*YES*	*Disease not connected with service*

"

and thus merely stated to the effect that the disease was not connected with service as per AFMSF-15 dated 27.04.2005. No ostensible reasons were given by the Release Medical Board dated 31.01.2007, neither vide the AFMSF-15 dated 27.04.2005 nor by the Re-categorization Board dated 26.04.2006, as to why the disability that the applicant suffered from was neither attributable to nor aggravated by military service.

15. The responses to Para 2,3 and Para 5 to Para 5(A) Para 5(B) Para 5(C) in Part 5 of the RMB are as under:-

"

Did the disability exist before entering service? (Y/N/Could be) No
In case of disability awarded aggravation whether the effects of such aggravation still persist? If yes, whether the effects of aggravation will persist for a material period. Yes
(a) Was the disability attributable to the individual's own negligence or misconduct? If yes, in what way No/NA
(b) If not attributable, was it aggravated by negligence or misconduct? If so, in what way and to what percentage of the total disablement? No,NA
(c) Has the individual refused to undergo operation/treatment? No *If so, in what way and to what percentage of the total disablement?* ***Note:** In case of refused of operation/treatment, a certificate from the individual will be attached*

"

which categorically indicate that the disability Coronary Artery Disease Unstable Angina LMC+DVD POST CABGS, did not exist before the applicant was inducted in the Indian Army nor was it possible to have not been detected during a routine medical examination conducted at the time of entry. The statement of the Commanding Officer of the applicant of January 2007, categorically indicates to the effect that the applicant was

not excused from performance of any duties. The medical case sheet attached to the RMB does not put forth any contributory factors of any kind from the side of the applicant which resulted into the disability. There is nothing to indicate any family history also in relation to the disability that the applicant suffered from.

16. It is essential to observe that the applicant has been medically examined each year after induction into the military service on 17.12.1977 and the disability (CAD) had its onset on 03.01.2005 after 28 years of military services and as the RMB proceedings specifically indicate that the applicant did not suffer from any disability at the time of induction into the military service nor was it not possible to detect the disability that the applicant was suffering from before his induction into the military service, the disability that the applicant suffered from of CAD has essentially to be held to be attributable to and aggravated by military service.

17. It is essential to observe that the factum that as laid down by Hon'ble Supreme Court in ***Dharamvir Singh*** vs ***UOI & Ors*** (Civil Appeal No. 4949/2013) 2013 AIR SCW 4236 decided on 02.07.2013), 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.

18. It is essential to observe vide Para-28 of the verdict of the Hon'ble Supreme Court in Dharamvir Singh (Supra) it has been laid down to the effect:-

> ***"28. A conjoint reading of various provisions, reproduced above, makes it clear that:***
> ***(0 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, (Regulation 173). 1982" of Appendix-II (Regulation 173)***
> ***(1) 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 fo 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 9as referred to above."

19. It is essential to observe that the verdict 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 Paras 12 to 15 is to the effect:-

12. Reference may also be made at this stage to the guidelines set out in Chapter-II of the Guide to Medical Officers (Military Pensions), 2002 which set out the "Entitlement: General Principles", and the approach to he adopted in such cases Paras 7, 8 and 9 of the said guidelines reads as under:

"7. Evidentiary value is attached to the record of a member's condition at the commencement of service, and such record has, therefore, to be accepted unless any different conclusion has been reached due to the inaccuracy of the record in a particular case or otherwise. Accordingly. if the disease leading to member's invalidation out of service or death while in service, was not noted in a medical report at the commencement of service, the inference would be that the disease arose during the period of member's military service. It may be that the inaccuracy or incompleteness of service record

on entry in service was due to a non-disclosure of the essential facts by the member eg pre-enrolment history of an injury or disease like epilepsy, mental disorder, etc. It may also be that owing to latency or obscurity of the symptoms, a disability escaped detection on enrolment. Such lack of recognition may affect the medical categorisation of the member on enrolment and/or cause him to perform duties harmful to his condition. Again, there may occasionally be direct evidence of the contraction of a disability, otherwise than by service. In all such cases, though the disease cannot be considered to have been caused by service, the question of aggravation by subsequent service conditions will need examination.

The following are some of the diseases which ordinarily escape detection on enrolment:

(a)Certain congenital abnormalities which are latent and only discoverable on full investigations e.g. Congenital Defect of Spine, Spina bifida, Sacralisation,

(b) Certain familial and hereditary diseases e.g Haemophilia, Congenial syphilis, Hoemoglobinopathy.

(c) Certain diseases of the heart and blood vessels e.g Coronary Atherosclerosis. Rheumatice Fever.

d)Diseases which may be undetectable by physical examination on enrolment, unless adequate history is given at the time by the member eg Gastric and Duodenal Ulcers, pilepsy, Mental Disorders, HIV Infections

(e) Relapsing forms of mental disorders which haveintervals of normality.

(f)Diseases which have periodic attacks e.g Bronchial Asthma Epilepsy, Csom, etc.

8. The question whether the invalidation or death of a member has resulted from service conditions, has to be judged in the light of the record of the member's condition on enrolment as noted in service documents and of all other available evidence both direct and indirect

In addition to any documentary evidence relative to the member's condition to entering the service and during service, the member must be carefully and closely questioned on the circumstances which led to the advent of his disease, the duration, the family history, his pre- service history, etc. so that all evidence in support ar against the claim is elucidated. Presidents of Medical Boards should make this their personal responsibility and ensure that opinions on attributability, aggravation or otherwise are supported by cogent reasons; the approving authority should also be satisfied that this question has been dealt with in such a way as to leave no reasonable doubt.

9. On the question whether any persisting deterioration has occurred, it is to be remembered that invalidation from service does not necessarily imply that the member's health has deteriorated during service. The disability may have been discovered soon after joining and the member discharged in his own interest in order to prevent deterioration. In such cases, there may even have been a temporary worsening during service, but if the treatment given before discharge was on grounds of expediency to prevent a recurrence, no lasting damage was inflicted by service and there would be no ground for admitting entitlement. Again a member may have been invalided from because he is found so weak mentally that it is impossible to make him an efficient soldier. This would not mean that his condition has worsened during service, but only that it is worse than was realised on enrolment in the army. To sum up, in each case the question whether any persisting deterioration on the available [pic]evidence which will vary according to the type of the disability, the consensus of medical opinion relating to the particular condition and the clinical history."

13. In Dharamvir Singh's case (supra) this Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum

up the legal position emerging from the same in the following words:

"29.1. Disability pension to be granted to an individual who is invalided 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 to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).

29.2. 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 read with Rule 14(b)].

29.3. The 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).

29.4. 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)]. [pic] 29.5. 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 [Rule 14(b)]

29.6. 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 [Rule 14(b)]; and 29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the

Guide to Medical Officers (Military Pensions), 2002 "Entitlement: General Principles, including Paras 7, 8 and 9 as referred to above (para 27)."

14. Applying the above principles this Court in Dharamvir Singh's case (supra) found that no note of any disease had been recorded at the time of his acceptance into military service. This Court also held that Union of India had failed to bring on record any document to suggest that Dharamvir was under treatment for the disease at the time of his recruitment or that the disease was hereditary in nature. This Court, on that basis, declared Dharamvir to be entitled to claim disability pension in the absence of any note in his service record at the time of his acceptance into military service. This Court observed:

"33. In spite of the aforesaid provisions, the Pension Sanctioning Authority failed to notice that the Medical Board had not given any reason in support of its opinion, particularly when there is no note of such disease or disability available in the service record of the appellant at the time of acceptance for military service. Without going through the aforesaid facts the Pension Sanctioning Authority mechanically passed the impugned order of rejection based on the report of the Medical Board As per Rules 5 and 9 of the Entitlement Rules for Casualty Pensionary Awards, 1982, the appellant is entitled for presumption and benefit of presumption in his favour. In the absence of any evidence on record to show that the appellant was suffering from "generalised seizure (epilepsy)" at the time of acceptance of his service, it will be presumed that the appellant was in sound physical and mental condition at the time of entering the service and deterioration in his health has taken place due to service."

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."

(emphasis supplied)

20. It is thus held that the presumption that the disability of Coronary Artery Disease Unstable Angina LMC+DVD POST CABGS was attributable to and aggravated to military services has not been rebutted by the respondents.

21. Significantly, the observations in Paragraphs 22, 23 & 24 of the Hon'ble Supreme Court in ***UOI & Ors Vs. Manjeet Singh*** dated 12.05.2015 Civil Appeal no. 4357-4358 of 2015 are to the effect:-

"22. Be that as it may, adverting inter alia to Rule 14(b) of the Rules, we are of the unhesitant opinion that reasons, that the diseases could not be detected on medical examination prior to acceptance in service, ought to have been obligatorily recorded by the Medical Board sans whereof, the respondent would be entitled to the benefit of the statutory inference that the same had been contracted during service or have been aggravated thereby. There is no reason forthcoming in the proceedings of the Medical Board, as to why his disabilities eventually adjudged to be constitutional or genetic in nature had escaped the notice of the authorities concerned at the time of his acceptance for Army service. On a comprehensive consideration of the Regulation, Rules and the General Principles as applicable, the service profile of the respondent and the proceedings of the Medical Board, we are constrained to hold that he had been wrongly denied the benefit of

disability pension. His tenure albeit short, during which he had to be frequently hospitalized does not irrefutably rule out the possibility, in absence of any reason recorded by the Medical Board that the disability even assumed to be constitutional or genetic, had not been induced or aggravated by the arduous military conditions. The requirement of recording reasons is not contingent on the duration of the Army service of the member thereof and is instead of peremptory nature, failing which the decision to board him out would be vitiated by an inexcusable infraction of the relevant statutory provisions. Having regard to the letter and spirit of the Regulation, Rules and the General Principles, the prevailing presumption in favour of a member of the Army service boarded out on account of disability and the onus cast on the authorities to displace the same, we are of the unhesitant opinion that the denial of disability pension to the respondent in the facts and circumstances of the case, have been repugnant to the relevant statutory provisions and thus cannot be sustained in law. The determination made by the High Court of Jammu and Kashmir at Jammu is thus upheld on its own merit.

23. The authorities cited at the Bar though underline the primacy of the opinion of the Medical Board on the issue, however, do not relieve it of its statutory obligation to record reasons as required. Necessarily, the decisions turn on their own facts. With the provisions involved being common in view of the uniformity in the exposition thereof, a dilation of the adjudications is considered inessential.

24. Though noticeably, the decision rendered in LPA(SW) 212/2006; Union of India and Others vs. Ravinder Kumar, as referred to in the impugned judgment, was reversed by this Court in Civil Appeal No.1837/2009, we are of the respectful view that the same cannot be construed to be a ruling relating to the essentiality of recording of reasons by the Medical Board as mandated by the Regulations, Rules and the Guiding

Principles. This decision thus is of no determinative relevance vis-a- vis the issues involved in the present appeal."

22. It is essential to observe that the verdict of the Hon'ble Supreme Court in ***Sukhvinder Singh vs UOI & Ors***, dated 25.06.2014 reported in 2014 STPL (Web) 468 SC whereby Para 9 thereof it has been held as under:-

> ***"9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Thirdly, there appears to be no provisions authorising the discharge or invaliding out of service where the disability is below twenty per cent and seems to us to be logically so. Fourthly, wherever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension."***

23. 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 extablish 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) DiwMG (Med) Area/Corps/Comd (Army) and equivalent in Navy and Air Force."

(emphasis supplied),

has not been obliterated.

24. Para 47 of the GMO (MP) 2002 produced to the effect:-

"47. <u>Ischaemic Heart Disease (IHD)</u>. IHD is a spectrum of clinical disorders which includes asymptomatic IHD, chronic stable angina, unstable angina, acute myocardial infarction and sudden cardiac death (SCD) occurring as a result of the process of atherosclerosis. Plaque fissuring and rupture is followed by deposition of thrombus on the atheromatous plaque and a variable degree of occlusion of the coronary artery. A total occlusion results in myocardial infarction in the territory of the artery occluded.

Prolonged stress and strain hastens atherosclerosis by triggering of neurohormonal mechanism and autonomic storms. It is now well established that autonomic nervous system disturbances precipitated by emotions, stress and strain, through the agency of catecholamines affect the lipid response, blood pressure, increased platelet aggregation, heart rate and produce ECG abnormality and arrhythmias.

The service in field and high altitude areas apart from physical hardship imposes considerable mental stress of 36 solitude and separation from family leaving the individual tense and anxious as quite often separation entails running of separate establishment, financial crisis, disturbance of child education and lack of security for family. Apart from this, compulsory group living restricts his freedom of activity. These factors jointly and severally can become a chronic source of mental stress and strain precipitating an attack of IHD. IHD arising in while serving in Field area/HAA/CI Ops area or during OPS in an indl who was previously in SHAPE-I will be considered as attributable to mil service.

Entitlement in Ischemic heart disease will be decided as follows:-

(a) Attributability will be conceded where: A myocardial infarction arises during service in close time relationship to a service compulsion involving severe trauma or exceptional mental, emotional or physical strain, provided that the interval between the incident and the development of symptoms is approximately 24 to 48 hours. IHD arising in while serving in Field area/HAA/CI Ops area or during OPS in an indl who was previously in SHAPE-I will be considered as attributable to mil service. Attributability will also be conceded when the underlying disease is either embolus or thrombus arising out of trauma in case of boxers and surgery, infectious diseases. E.g. Infective endocarditis, exposure to HAA, extreme heat.

(b) Aggravation will be conceded in cases in which there is evidence of:-

IHD occurring in a setting of hypertension, diabetes and vasculitis, entitlement can be judged on its own merits and only aggravation will be conceded in these cases. Also aggravation may be conceded in persons having been diagnosed as IHD are required to perform duties in high altitude areas, field areas, counter insurgency areas, ships and submarines due to service compulsions.

There would be cases where neither immediate nor prolonged exceptional stress and strain of service is evident. In such cases the disease may be assumed to be the result of biological factors, heredity and way of life such as indulging in risk factors e.g. smoking. Neither attributability nor aggravation can be conceded in such cases."

25. It is thus apparent vide Para 47 of GMO 2002, itself that it has been stipulated therein the magnitude of physical activity and emotional stress is no less in a peace area and tough work schedule, work pressure of duties, during peace time compounded by pressure of duties, maintenance of law and order are some of the factors which have

increased the stress and strain which have increased in the service manifold that thus no clear distinction can be drawn between service in peace areas and field areas, taking into account the quantum of work and responsibilities involved and that in such cases aggravation due to service, should be examined in favour of individual.

26. It is thereafter essential to observe that it has been laid down by the Hon'ble Supreme Court vide Para 33 of its verdict in ***Union of India Vs. Dharamvir Singh*** (supra) to the effect:-

> ***"33. As per Rule 423(a) of General Rules for the purpose of determining a question whether the cause of a disabiiity 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."***

27. In the facts and circumstances thus of the instant case, where the applicant joined the Indian Army in a fit medical condition without any note of disability of any kind recorded on the records of the respondents coupled with the factum that the applicant underwent the annual medical examinations and there was no disability found coupled with the factum that there is nothing on the record to indicate any contributory factors from the side of the applicant through the medical case sheet *qua* the

applicant at the time of medical examination at the time of onset of the disability in question, in the circumstances of the instant case where the RMB has merely based it's opinion on the AFMSF-15 dated 27.04.2005 to state that the disability that the applicant suffers from was neither attributable to nor aggravated by military service coupled with the factum that the initial Annexure A-15 dated 27.04.2005, itself indicates thereof AFMSF -15 initially opined that the disability suffered from was aggravated by military service but without any explanation for the change of its opinion for it to be NANA by military service. In the circumstances we are fortified, in our view, by the orders of this Tribunal in Orders of ***Mohan Singh*** (supra) and in ***Gp Capt Rajesh Kumar Singh (Retd.)*** (Supra) to the effect, that the unreasoned cryptic opinion of the RMB opining that the disability that the applicant suffered from was neither attributable to nor aggravated by military service cannot be sustained.

28. In the circumstances of the instant case in view of the posting profile of the applicant, already adverted to herein above wherein the applicant is indicated to have been posted on two field postings from March 1983 to November 1983 at Suratgarh GE(P) Army and from November 1996 to September 1999 at HQ CE(P) Udayak, it cannot be contended as sought to be contended by the respondents that the disability that the applicant suffered from was neither attributable to nor aggravated by the military service. The disability that the applicant

suffered from, thus, in the instant case is held to be both attributable and aggravated by military service, in the circumstances of the case.

CONCLUSION

29. The OA No. 1958/2020 is allowed. The applicant is held entitled to the grant of disability element of pension in relation to the disability of Coronary Artery Disease Unstable Angina LMC+DVD POST CABGS at 50% for life in terms of Hon'ble Supreme Court in ***Union Of India*** Vs. ***Ram Avtar*** (supra) and the Govt. of India letter dated 31.01.2001 and the Para 7.2 of Government of India, Ministry of Defence letter No 1(2)/97/D(Pen-C) dated 31.01.2001, which is directed to be broadbanded to 75% for life.

30. The respondents are directed to issue the corrigendum PPO within a period of three months of this order failing which the arrears shall carry interest @ 6% per annum from the date of receipt of copy of this order by the respondents. However, in as much as the instant OA has been filed with delay, the arrears in view of the verdict of ***UOI & Ors Vs Tarsem Singh*** (supra) has to commence from the period of three years prior to institution of the present OA, instituted on 23.11.2020.

31. No order as to costs.

Pronounced in the open Court on 9th day of November, 2023.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/nmk/