

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

**A.**

**OA 110/2019 with MA 510/2019**

<b>Ex Nk Hari Kishan</b>	.....	<b>Applicant</b>
<b>VERSUS</b>		
<b>Union of India and Ors.</b>	.....	<b>Respondents</b>

<b>For Applicant</b>	:	Mr. VS Kadian, Advocate
<b>For Respondents</b>	:	Mr. Shyam Narayan, Advocate

**CORAM**

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

**ORDER  
05.12.2023**

Vide our detailed order of even date, we have allowed the OA 110/2019. Learned counsel for the respondents makes an oral prayer for grant of leave to appeal in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007 to assail the order before the Hon'ble Supreme Court. After hearing learned counsel for the respondents and on perusal of our order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order to grant leave to appeal. Therefore, prayer for grant of leave to appeal stands declined.

**(JUSTICE ANU MALHOTRA)  
MEMBER (J)**

**(REAR ADMIRAL DHIREN VIG)  
MEMBER (A)**

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

**OA No. 110 of 2019 with MA 510/2019**

**Ex Nk Hari Kishan**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

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

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

**CORAM :**

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

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

**ORDER**

**MA 510/2019**

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 3630 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 510/2019 is allowed despite opposition on behalf of the respondents and the delay of 3630 days in filing the OA 110/2019 is thus condoned. The MA is disposed of accordingly.

1. The applicant vide the present O.A 110/2019 has made the following prayers:-

*“(a) Quash and set aside impugned letter No P/15364321/DP-4/NER dated 31.10.2018. And/or  
(b) Direct respondents to treat the disability MEDULLARY CARCINOMA THYROID(OPTD) D-60 of the applicant as attributable to or aggravated by military service and grant disability element of pension from the date of retirement of the applicant along with benefit of broad banding from @20% to 50%. and/or  
(c) Direct respondents to pay the due arrears of disability pension with interest @12% p.a. from the date of retirement with all the consequential benefits.  
(d) Any other relief which the Hon’ble Tribunal may deem fit and proper in the fact and circumstances of the case.”*

2. The applicant No. 15364321K Ex Nk Hari Kishan was enrolled in the Army (Corps of Signals) on 06.04.1988 and was discharged from service with effect from 31.07.2008(A/N) under Army Rule 13(3) III(v) read in conjunction with Sub Rule 2A on medical grounds being in low medical category S1H1A1P2E1(Permanent) for the disability “MEDULLARY CARCINOMA THYROID(OPTD), D-00”. He has rendered 20 years & 117 days of service for which he is in receipt of Service Pension vide PPO No S/038944/2008(Army) dated 22.07.2008. In terms of the Integrated HQ of Min of Defence(Army) MP-3 letter no. B/10201/06-08/Vol-I/MP-3(PBOR) dated 12.04.2004 and dated 27.06.2007, as the applicant was in a permanent low medical category, he was

discharged w.e.f. 31.07.2008. However, in terms of the judgment dated 07.11.2008 of the Hon'ble Supreme Court in CA 6587/2008 in SLP(C) No. 6037/2007 which directed that **"all affected persons may rejoin service with all consequential benefits including continuity in service, seniority and pay upto 31 Dec 2008"**, vide Signals Records letter No. 3094/CA-8/T-4/LMC/REINST dated 14.01.2009, the applicant was apprised of the same as also vide a telegram dated 24.01.2009 directing him to report to the Depot Regiment with the condition that if he failed to rejoin with all relevant documents within 30 days of receipt of the option letter it would be assumed that he had accepted his discharge. The applicant did not report to the unit and thus according to the respondents he accepted his discharge willingly from service.

3. As the applicant was in Low Medical Category S1H1A1P2E1 (Permanent) for the disability "MEDULLARY CARCINOMA THYROID (OPTD), D-00", at the time of his retirement, he was brought before a duly constituted Release Medical Board (RMB) held on 11 April 2008 held at the Military Hospital, Ambala, wherein he was medically & physically examined and his disability was opined as "neither attributable to nor aggravated by military service and not connected with service", due to the disability being not related to



military service, and the applicant was opined to be not entitled to the grant of disability pension. The medical board assessed the percentage of disablement @20% for life with the net assessment qualifying for disability pension @Nil vide AFMSF-16 dated 11 April 2008.

4. The applicant was thus held not entitled to the grant of disability pension in terms of Rule 179 of the Pension Regulations for the Army, 1961(Part-I) by the Competent Authority as revised by Rule-53(a), Pension Regulation 2008(Part-I), as the RMB had found the disability to be neither attributable to nor aggravated by military service and the applicant was informed of the same vide Signals Records vide letter No. P/15364321/Bd-Oct 08/ REJ-0422/DP-1/NER dated 12.12.2008 with an advice to prefer an appeal to the Appellate Committee on First Appeals (ACFA) against the decision within six months from the date of receipt of the said letter, if he was not satisfied with the said decision.

5. No appeal was preferred by the applicant against the same, though a Legal Representation was filed by the applicant dated 19.08.2018. Vide the impugned letter no. P/15364321/DP-4/NER/ dated 31.10.2018, the respondents apprised the applicant that the said appeal cum legal notice had been filed after a lapse of approximately 10 years after rejection of his disability pension claim and was thus

time barred in terms of Govt. of India, Min of Def letter No. 1(3)/2008/ D(Pen/Pol) dated 17.05.2016 and the applicant was also informed that the RMB had opined that his disability was neither attributable to nor aggravated by military service though it was assessed with a net disablement @20% for life. In the interest of justice, we consider it appropriate to take up the present OA for consideration in terms of Section-21(1) of the AFT Act, 2007.

### ***CONTENTIONS OF THE PARTIES***

5. On behalf of the applicant it was submitted to the effect that the disability that the applicant suffers from had its onset on 09.06.1999 at Tezpur in a field posting when the applicant was posted in the Signals/OPR trade and arose after induction of the applicant in the Indian Army on 06.04.1988 i.e. after a period of 11 years of military service and after the applicant had been posted on two field postings from 06.07.1998 to 15.11.2001, and from 22.09.1990 to 19.01.1993 and that he had to be treated for 109 days as per the RMB from 09.06.1999 to 06.07.1999, 18.08.1999 to 20.09.1999 and 21.09.1999 to 06.11.1999 and the applicant submits that the disability that he suffers from is due to the stress and strain of military service and has to be held to be Attributable to and Aggravated thereby. Reliance was placed on behalf of the applicant on the verdict of the

Hon'ble Supreme Court 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, with specific reliance on observations in Para-28 of the verdict of the Hon'ble Supreme Court in CA No. 4949/2013 in *Dharamvir Singh Vs. UOI & Ors.*, 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."*

to contend to the effect that the disability having arisen after induction of the applicant in the military service in a fit medical category without any note or disability recorded on the records of the respondents for the applicant and the applicant having also undergone annual medical examination to the onset of the disabilities, coupled with the factum that even in the RMB proceedings vide Para-2,3,5(a), (b),(c), it is reflected as under:-

*"2. Did the disability exist before entering service?(Y/N/could be): NO*

*3. In case the disability existed at the time of entry, is it possible that it could not be detected during the routine medical examination carried out at the time of the entry? YES*

*5.(a) Was the disability attributable to the officer's own negligence or misconduct? If Yes, in what way? NO*

*(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*

*(c) Has the officer refused to undergo operation/treatment? If so, officer's reasons will be recorded? Note: In case of refusal of operation treatment a certificate from the officer will be attached. NO,"*

making it apparent that the disability in question has to be held to be attributable to and aggravated by military service. The applicant further submits that there is nothing to indicate any contributory factors from the side of the applicant through the case summary placed on record.

6. Reliance was also placed on behalf of the applicant on the MoD letter no. F.No. 4(17)2015/D(Pen/Legal) dated 29.06.2017 to submit to similar effect. Inter alia, reliance was also placed on behalf of the applicant on Regulation 423 of the Regulations for the Medical Services of the Armed Forces, 2010 to submit to the effect that whether the opinion of the RMB merely stated that the disability was not related to military service without giving any reasons for the same, the same is wholly cryptic and cannot be accepted. Regulation 423 of the Regulations for the Medical Services of the Armed Forces 2010, provides to the effect:-

***"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, to contend to the effect that merely because the disability had its onset in a peace area, the same is insufficient to dislodge the factum of two field postings prior to the onset of the disability and of the consequential stress and strain of military service therefrom.

7. On behalf of the applicant, reliance was also placed on the order dated 20.12.2013 in TA 258/2011 of the AFT(RB), Chandigarh in the case of ***Darshan Singh vs. UOI and another*** in relation to the disability of 'Giant Cell Tumour Right Femur(OPTD)' with reference to the Entitlement Rules for Casualty Pensionary Awards to Armed

Forces Personnel, 1982, wherein it had been observed vide Para-10,11,19 to the effect:-

*"10. According to Entitlement Rules for Casualty Pensionary Awards 1982, there was a list of diseases not normally affected by service and at Serial No.1 it reads as under:*

***"Malignant diseases (Cancer and Carcinoma)** This position has now changed which shall be referred below:*

*11. According to CHAPTER-II Guide to Medical Officers (Military Pensions), under heading Entitlement General Principles' it is provided as under:*

*"Medical Boards should examine cases in the light of the aetiology of the particular disease and after considering all the relevant particulars of a case, record their conclusions with reasons in support, in clear terms and in a language which the pension sanctioning authority, a lay body, would be able to appreciate fully in determining the question of entitlement according to the rules. In expressing their opinion medical officers should comment on the evidence both for and against the concession of entitlement. In this connection, it is as well to remember that a bare medical opinion without reasons in support will be of no value to the Pension Sanctioning Authority.*

*If it is established on evidence that the disease was brought about by service conditions, then attributability is clearly indicated. If on the other hand, a disease not attributable to service.....having been of pre-enrolment origin or having its origin in other than service conditions, has been influenced in its subsequent course by conditions of service. the claim*

would stand for acceptance on the basis of aggravation.

Opinion on entitlement must be impartially given in accordance with the evidence, the benefit of any reasonable doubt being given to the claimant."

Under heading '**CANCER**' on the same CHAPTER-II, it is provided as under:

9. Cancer is one of the diseases regarded as usually unaffected by ordinary conditions of service. While its precise cause is still unknown and entitlement is not normally conceded, there is adequate material both of scientific and statistical nature which brings into light the causative factors and the connection between service related factors and carcinogenesis. Post World War II research highlighted the interaction of nuclear explosion and occurrences of cancers. American Armed Forces Committed to enemy action in Vietnam also studied the occurrence of cancers in troops in action.

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
- Congenital chromosomal abnormalities
- (g) Diet, exercise, life styles

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

(a) **TERRAIN**:-Exposure to UV rays in high altitude areas, high back ground irradiation and pollution are etiological factors now recognized in initiating carcinogenesis. Service personnel are forces to stay long in certain terrains, can get exposed to noxious factors.

(b) **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.

(c) **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.

(d) **Diet**:- The ration issued in services may not contain adequate amount of fibre, fresh vegetables and fruits which are cancer preventing agents. The personnel may not be able to procure and supplement the diet due to remote location, non-availability of the material.

(e) **Exercise**:- Physical exercise is known to protect against cancer like that of colon. Postings at high altitude, uncongenial weather conditions, insurgency affected areas, interfere with exercise programmes.

(f) **Stress and strain**:- Stress and strain of services is something unique and has now been documented in initiating certain cancers in human beings. The question of relationship between a malignant condition and an accepted injury is different to establish. The vast majority of traumatic lesions however severe, show no tendency to be followed by cancer either immediately or remotely.

#### 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*

19. Further reliance was placed upon the judgment of this Tribunal in **O.A. No. 949 of 2011, titled 'Nirmala Devi Vs Union of India and others**, decided on 13.04.2011, wherein it was observed as under:-

*"Any cancer detected in any person who has taken part in an operation of any kind has been included in the "aggravated" list. Petitioner was deployed on proper Operational deployment from June 1991 to 1992 (which is within the 30 days to 5 years since the cancer was detected in 1994) but was also posted to Operational area and intermittently remained deployed even after the cancer was detected. The Medical Board had not given the detailed reasons while rejecting attributability/ aggravation". It was further observed as under:-*

*Merely writing that "it is a neoplastic disability not connected with military service" is not enough to deny the aggravation. It is pertinent to mention that any cancer detected in a person who has taken part in an operation of any kind has been included in the aggravated list. Therefore, taking over-all position of the facts and circumstances of the case as well as the Guide to Medical Officers, we are of the view that the invaliding disease from which the husband of the petitioner was found to suffer is deemed to be attributable to military service. He continued to serve in Field/Modified Field Areas after the detection of his disease. Thus, the disease has also been aggravated by Military Service. The percentage of the disability was assessed as 100% by the Invaliding Medical Board. Hence the case of the petitioner is covered under paragraph 173 of the Pension Regulations of the Army, 1961 and he is entitled to get disability pension regulations for the Army, 1961 and he is entitled to get disability*

*pension for 100% disability from the date of his discharge. The Petition was accordingly allowed and Special Family Pension was granted after the death of the husband of the Petitioner to Petitioner. The disability found was 100% from the date of discharge until his death.*

to contend to the effect that the disability of the applicant has to be held to be aggravated by military service.

8. On behalf of the respondents, it was contended that there was no infirmity whatsoever in the RMB opining that the disability that the applicant suffers from was neither attributable to nor aggravated by military service nor in the rejection of the Legal Representation sent by the applicant. The respondents have further submitted that at the time of enrolment the General medical officer attached/posted with the recruiting office is not able to detect the chronic nature of diseases due to bulk recruitment and no pathology/other test facilities are available with the Recruiting Officers and thus constitutional diseases cannot be detected, nor are there any provisions to carry out internal medical examination at the time of recruitment which may manifest later. The respondents thus reiterate that the disability that the applicant suffers from is neither attributable to nor aggravated by military service.

9. Inter alia, the respondents submit to the effect that arduous nature of the duties in hazardous and inhospitable terrain in all



climatic conditions in the interest of organization is an essential facet of service in the Armed Forces and all who join the Indian Army are aware of the same and thus the contention raised on behalf of the applicant that the disability was due to stress and strain of military service cannot be accepted.

### ***ANALYSIS***

10. On a consideration of the submissions made on behalf of either side, it is essential to observe that the factum that as laid down vide the verdict of the Hon'ble Supreme Court in ***Dharamvir Singh(Supra)***, that 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***.

11. It is essential to observe that in the instant case the applicant was discharged from military service on 31.07.2008 and thus it is the Entitlement Rules for Casualty Pensionary Awards, to the Armed Forces Personnel 2008 that apply in the instant case and not the Entitlement Rules for Casualty Pensionary Awards, to the Armed Forces Personnel, 1982, that would apply. Be that as it may the



Entitlement Rules for Casualty Pensionary Awards, to the Armed Forces Personnel 2008, which take effect from 01.01.2008 provide vide Paras 6, 7, 10, 11 to the effect:-

- "6. Causal connection:**  
*For award of disability pension/special faraily 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 contacted 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.

12. The verdict of the Hon'ble Supreme Court in *Dharamvir Singh Vs. UOI & Ors.* vide Para-33 thereof, also stipulates to the effect:-

***"33. As per Rule 423(a) of General Rules for the purpose of determining a question whether the cause of a disability or death resulting from disease is or is not attributable to service, it is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a field service/active service area or under normal peace conditions. "Classification of diseases" have been prescribed at Chapter IV of Annexure I; under paragraph 4 post traumatic epilepsy and other mental changes resulting from head injuries have been shown as one of the diseases affected by training, marching, prolonged standing etc. Therefore, the presumption would be that the disability of the appellant bore a casual connection with the service conditions." - (emphasis supplied)***

13. The disability that the applicant suffers from as brought forth through the RMB dated 11.04.2008 has arisen after induction of the

applicant on 06.04.1988 in a fit medical category after a period of 11 years of military service on 09.06.1999, with the applicant having been deployed on two field postings prior to the onset of the disability, and the onset of the disability being in fact during the second field posting of the applicant as per the posting profile of the applicant submitted on 30.11.2023, which reads as under:-

**“ POSTING PROFILE ”**

Ser No	From	To	Unit/Fmm	Location of Unit/Fmm	Peace/Field/HAA/CI Ops
(a)	06 Apr 1988	05 Nov 1988	1 MTR	Jabalpur	Peace
(b)	06 Nov 1988	24 Feb 1990	4 TTR	Jabalpur	Peace
(c)	25 Feb 1990	21 Sep 1990	6 TTR	Goa	Peace
(d)	22 Sep 1990	04 Jan 1993	28 IDSR	Kupwara(J&K)	Field
(e)	05 Jan 1993	19 Jun 1995	SCSC	Pune	Peace
(f)	20 Jun 1995	05 Jul 1998	Comn Gp NSG, Manesar	Delhi	Peace
(g)	06 Jul 1988	15 Nov 2001	4 COSR	Tezpur	Field
(h)	16 Nov 2001	31 Aug 2004	MCTE	Mhow	Peace
(i)	01 Sep 2004	02 Jun 2007	25 IDSR	Rajouri(J&K)	Field
(k)	03 Jun 2007	06 Jul 2008	2 CSR(A)	Ambala	Peace
(l)	06 Jul 2008	31 Jul 2008	Depot Regt	Jabalpur	Peace

14. The opinion of the RMB in Part-V is as under:-

“

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

1. Causal relationship of the disability with Service conditions or otherwise.				
Disability	Attributable to service (Y/N)	Aggravated by Service (Y/N)	Not Connected with Service (Y/N)	Reason/Cause/Specific Condition & period in Service
<b>MEDULLARY CARCINOMA THYROID (OPTD), D-00</b>	<b>No</b>	<b>No</b>	<b>Yes</b>	<b>Disability not related to mil service.</b>
Note: A Disability "Not Connected with Service" would be neither Attributable nor aggravated by Service.				

”

and the same is apparently wholly cryptic without any reasons as to why the disability was not related to military service. The disability in the instant case has been assessed with a percentage of disablement of 20% by the RMB as under:-

“

6. What is present degree of disease/disablement as compared with a healthy person of the same age and sex?(Percentage will be expressed as Nil or as follows) 5%,10%,15% and thereafter in multiples of ten from 20% to 100%				
Disease/Disability (As numbered in Para 1 Part VI)	Percentage of disablement	Composite assessment for all disabilities (Max 100%) with duration	Disability Percentage Qualifying for Disability Pension with duration	Net Assessment Qualifying for disability Pension (Max 100%) with duration
<b>(a)MEDULLARY CARCINOMA THYROID (OPTD), D-00</b>	20% for life	20% for life	NIL	NIL

”

15. In the instant case, apparently it is the Chapter-VI of GMO(M.P.) of 2008 that shall apply, Para-9 of Chapter-VI of the GMO(MP),2008 reads 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:**

**(1) Any cancer in those personnel working or exposed to radiation source in any forms:**

- (aa) Acute leukaemia**
- (ab) Chronic lymphatic leukaemia**
- (ac) Astrocytome**
- (ad) Skin cancers**



*(11) 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*

*(111) Any cancer in those exposed to coal dust, asbestos, silica & iron*

*(aa) Bronchogenic Carcinoma*

*(ab) Pleural Mesothelioma*

*(b) Due to Viral Infection:*

*(1) Hepato-cellular carcinoma (HV B&C)*

*(11) Ca nasopharynx (EB virus)*

*(111) Hodgkin's disease (EB virus)*

*(iv) Non-Hodgkin's Lymphoma (Viruses)*

*(v) Acute Leukaemia (HTLVI)*

*(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."*

Stress and strain of service which formed part of Chapter-VI of the GMO(M.P), 2002 as sub-clause(f) of Chapter-VI of the GMO(MP), 2002 does not feature in the GMO(MP), 2008 as being the service related condition for causation of Carcinogenesis.

16. Nevertheless, it cannot be overlooked that no ostensible reasons have been given by the RMB for the onset of the disability and taking into account the factum that the applicant had been inducted in a fit medical condition at the time of induction in military service on 06.04.1988, in terms of Para-7 of the Entitlement Rules for



Casualty Pensionary Awards, to the Armed Forces Personnel 2008 itself as already adverted to in Para-11 herein above, the claimant is not to be called upon to prove the condition of entitlement ordinarily (especially in cases where the claim is preferred within a period of 15 years of discharge from service) and it cannot be overlooked that in terms of Para-10(b)(iii) of the said Entitlement Rules of 2008 itself, it has been categorically stipulated to the effect if nothing is at all known about the cause of disease and the presumption of the entitlement in favour of the claimant is not rebutted, (as has not been rebutted by the respondents in the instant case), attributability should be conceded on the basis of the clinical picture and current scientific medical application. In the facts and circumstance of the instant case as the onset of disability was after a period of 11 years of military service after two field postings, and rather in the field posting of the applicant at Tezpur, the disability that the applicant suffers from of MEDULLARY CARCINOMA THYROID has to be held to be attributable to and aggravated by military service.


### ***CONCLUSION***

17. The OA 110/2019 is allowed. The applicant is thus entitled to the grant of disability element of pension @20% for life for the

disability of MEDULLARY CARCINOMA THYROID (OPTD), D-00 with rounding off to 50% for life, from the date of discharge, which in terms of the verdict of the Hon'ble Supreme Court in *UOI & Ors. vs Ramavtar* in Civil Appeal No. 418/2012. However, as the OA has been filed with much delay, the arrears of the disability element of pension shall commence to run from a period of three years prior to the institution of the present OA.

18. The respondents are thus directed to calculate, sanction and issue the necessary PPO to the applicant within a period of three months from the date of receipt of copy of this order and the amount of arrears shall be paid by the respondents, failing which the applicant will be entitled for interest @6% p.a. from the date of receipt of copy of the order by the respondents.

Pronounced in the open Court on the 5<sup>th</sup> day of December, 2023.

  
[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)

  
[JUSTICE ANU MALHOTRA]  
MEMBER (J)

/TS/