

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

B..

OA 1158/2021

Ex Spr (MACP Nk) P Arun Kumar Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Ved Prakash, Advocate
For Respondents : Mr. Rajeev Kumar, Advocate

CORAM

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

ORDER
22.11.2023

Vide our detailed order of even date we have allowed the OA 1158/2021. 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.

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

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

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OA 1158 / 2021

Ex Spr (MACP Nk) P Arun Kumar

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Ved Prakash &
Mr. Devendra Kumar, Advocates
For Respondents : Mr. Rajeev Kumar, Advocate

CORAM :

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

ORDER

The applicant 'Ex Spr (MACP Nk) P Arun Kumar' No.

16112360-A vide the present OA makes the following prayers:-

"(a) Direct the respondents to grant disability element of pension to the Applicant duly round off to 50% w.e.f his date of discharge.

(b) Direct respondents to pay the due arrears of disability element of Pension with interest @12% p.a from the date of retirement with all the consequential benefits.

(c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost of the application in favour of the applicant and against the respondents."

2. The applicant was enrolled in the Indian Army (Madras Engineer Group) on 16.04.2004. Whilst serving with 14 Engineer Regiment located

at Jodhpur, Rajasthan (Peace), the applicant got admitted to Military Hospital, Jodhpur on 07.07.2008 for diagnosis **"MODERATE DEPRESSIVE EPISODE (F32.1)"**. Subsequently, he was placed in low medical category S3 (T- 24) with effect from 18.08.2008 for six months. On subsequent reviews he was placed in medical category S2 (Permanent) with effect from 21.06.2018 at Military Hospital, Secunderabad and continued to be in S2 (Permanent) till his discharge from service on 31.05.2020 having been found to be unwilling to serve against sheltered appointment under Army Rule 13 (3) Item III (v) of Army Rules 1954. He had rendered 16 years, 01 month and 15 days of service for which he has been granted service pension.

3. Before proceeding on discharge, the applicant was brought before Release Medical Board, being in low medical category on 27.02.2020, and was physically examined by a team of specialized doctors who assessed his disease as being neither attributable to nor aggravated by military service. The Release Medical Board has not endorsed that onset of his disease is due to stress/strain of service.

4. The applicant's case as per appendix 'C' of Additional Directorate of General, AG's Branch IHQ of MOD (Army), New Delhi letter No B/40122/MA (P)/AG/PS-5 dated 20.07.2006, vide which the authority to adjudicate the disability element/ pension rests with OIC Records was examined as per policy and parameters on the subject and rejected by

OIC Records on 12.08.2020 for the diagnosis assessed as neither attributable to nor aggravated by military service by the Medical Board. The fact regarding rejection of disability element was communicated to the applicant vide Records, Madras Engineer Group letter No 16112360/Pen (D) dated 19.08.2020 with an advice to prefer an appeal to the Appellate Committee on First Appeal (ACFA) within six months if he was not satisfied with the decision of rejection of his disability element claim. The applicant was once again advised/informed to prefer an appeal vide Records, Madras Engineer Group letter No 16112360A/Pen (D) dated 06.11.2020 in reply to his representation dated 17.09.2020, which was not so filed. 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

5. The applicant submits that he joined the Indian Army in a fit medical condition after undergoing a tough medical examination both at the time of induction as well as at the training center, and there was no note of any disability recorded on the records of the respondents qua the applicants fitness. *Inter alia*, the applicant submits that he remained in a fit medical condition for a long period of four years after induction into the Indian Army and thus it is apparent that the disability that he suffers from was due to military service.

6. The applicant places reliance on the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel 1982 in relation thereto and on the verdict of the Hon'ble Supreme Court in ***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) with specific reliance on the observations in Para 28 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."

7. Reliance was also likewise placed on behalf of the applicant on the verdicts of the Hon'ble Supreme Court in *Union of India and others Vs. Angad Singh Titaria* Civil Appeal No. 11208 of 2011 decided on 24.02.2015, in *Sukhvinder Singh Vs. Union of India and others*, 2014 STPL(Wed) 468 SC (Civil Appeal No. 5605 of 2010) decided on 25.06.2014 and in *Union of India and another Vs. Rajbir Singh* Civil Appeal No. 2904 of 2011 decided on 13.02.2015 to contend to similar effect.

8. 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 the date of discharge which is to be broad banded 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.



9. On behalf of the respondents it has been submitted to the effect that the applicant was discharged on 31.05.2020 having been found to be **unwilling to serve** against the sheltered appointment under Army Rule 13 (3) Item III (v) of Army Rules 1954 and that he had completed 16 years, 01 month and 15 days of service and had been granted service pension vide PPO No. 154202001114 dated 29.06.2020.

10. *Inter alia* the respondents submit that whilst serving with 14 Engineer Regiment located at Jodhpur, Rajasthan (Peace), the applicant got admitted to Military Hospital, Jodhpur on 07 July 2008 for diagnosis **MODERATE DEPRESSIVE EPISODE (F32.1)**. Subsequently, he was placed in low medical category S3 (T-24) with effect from 18 August 2008 for six months. On subsequent reviews he was placed in medical category S2 (Permanent) with effect from 21 June 2018 at Military Hospital, Secunderabad and continued to be in S2 (Permanent) till his discharge from service on 31 May 2020 having been found to be **unwilling to serve** against sheltered appointment. Before proceeding on discharge, he was brought before Release Medical Board, being in low medical category on 27 February 2020. He was physically examined by a team of specialized doctors who assessed his disease as **neither attributable to nor aggravated by military service**.

11. The respondents thus submit that there is no infirmity whatsoever in the assessment made by the Release Medical Board that the disability

that the applicant suffers from was neither attributable to nor aggravated by military service. *Inter alia* the respondents submit that in terms of Para 5 of the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel 2008, the medical test at the time of entry is not exhaustive but its scope is limited to broad physical examination, and thus may not detect some dominant disease and merely because a disease has manifested itself during service does not *per se* establish attributability to or aggravated by military service.

12. *Inter alia* the respondents submit to the effect that the applicable rules in the instant case are the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel 2008 and not the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel 1982 and responded that in as much as the applicant was discharged on 31.05.2020.

13. *Inter alia* the respondents place reliance on the Opinion of the Medical Board placed in Part VII of the RMB dated 27.02.2020 which is as under:-

| <i>Disability</i> | <i>Attributable to service (Y/N)</i> | <i>Aggravated by service (Y/N)</i> | <i>DETAILED JUSTIFICATION</i> |
|--|--------------------------------------|------------------------------------|---|
| MODERATE DEPRESSIVE EPISODE (F 32.1) | NO | NO | Onset of the disability was in a peace area JODHPUR. Hence, conceded nor attributable and not aggravated to mil service vide Para 54 of GMO 2008. |

to submit to the effect that the onset of the disability was in a peace area at Jodhpur and thus could not be conceded to be attributable to military service nor aggravated thereby in terms of Para 54 of the GMO (Military Pensions) 2008.

ANALYSIS

14. The applicant in the instant case was deployed in the trade of 'ENGRS / ARTSNCONS'. The applicant's posting profile reflected in Part II of the RMB in his personal statement which is as under:-

“

| <i>Ser No</i> | <i>From</i> | <i>To</i> | <i>Unit</i> | <i>Place / Ship</i> | <i>P / F (HAA / Ops / Sea Service) / Mod Fd</i> |
|---------------|-------------|-------------|--------------------------|---------------------|---|
| (a) | 16 APR 2004 | 15 SEP 2006 | TRG BN III, MEG & Centre | BANGALORE | PEACE |
| (b) | 16 SEP 2006 | 31 AUG 2007 | 14 ENGR REGT | LEH (J&K) | FIELD |
| (c) | 01 SEP 2007 | 08 SEP 2010 | 14 ENGR REGT | JODHPUR | PEACE |
| (d) | 09 SEP 2010 | 30 JUN 2013 | TRG BN III, MEG & Centre | BANGALORE | PEACE |
| (e) | 01 JUL 2013 | 19 JUL 2014 | 14 ENG REGT | ASSAM | SEMI FIELD |
| (f) | 20 JUL 2014 | 09 NOV 2014 | 38 ASLT ENGR REGT | PATIALA | PEACE |
| (g) | 10 NOV 2014 | 11 SEP 2015 | 38 ASLT ENGR REGT | CHANDIMANDIR CANTT | PEACE |
| (h) | 12 SEP 2015 | 14 AUG 2018 | 14 ENGR REGT | SECUNDERABAD | PEACE |
| (i) | 15 AUG 2018 | 31 AUG 2018 | 14 ENGR REGT | SRINAGAR | FIELD |
| (j) | 01 SEP 2018 | TILL DATE | 16 ENGR BR REGT (PMS) | MEERUT CANTT | PEACE |
| | | | | | |

”

in response to para 2 of the RMB it had been stated to the effect:-

"2. (a) Did you suffer from any disability before joining the Armed Forces? NO"

The onset of the disability of the applicant and the treatment given to him is reflected in the RMB to the effect:-

| <i>Disease / Disability</i> | <i>Date of origin</i> | <i>Rank of the Indl</i> | <i>Place and unit where serving at the time</i> | <i>Date of initial AFMSF-15 for each disease / disability</i> |
|---|-----------------------|-------------------------|---|---|
| <i>MODERATE DEPRESSIVE EPISODE (F 32.1)</i> | <i>11 APR 2008</i> | <i>SPR</i> | <i>14 ENGR REGT (JODHPUR, RAJASTHAN)</i> | <i>18 AUG 2008</i> |

15. Reliance was placed on behalf of the applicant on Para 54 of the GMO Military Pensions 2008 to contend to the effect that the applicant's posting profile as already adverted to hereinabove itself indicates that the applicant was deployed from 16.09.2006 to 31.08.2007 at Leh (J&K) a field area, from 01.07.2013 to 19.07.2014 at Assam a semi field area, and from 15.08.2018 to 31.08.2018 at Srinagar a field area, and thus submits that in terms of Para 54 (a) of the GMO (Military Pensions) 2008, itself the attributability and in terms of Para 54 (d) of the said GMO, aggravation of the disability in question due to military service would have to be conceded.

16. It is essential to advert to Para 54 of the GMO (Military Pensions) 2008 which is to the effect:-

"54. Mental & Behavioural (Psychiatric) Disorders.

Psychiatric illness results from a complex interplay of endogenous (genetic/biological) and exogenous (environmental, psychosocial as well as physical) factors. This is true for the entire spectrum of psychiatric disorders (Psychosis & Neurosis) including substance abuse disorders. The relative contribution of each, of course, varies from one diagnostic category to another and from case to case.

The concept of attributability or aggravation due to the stress and strain of military service can be, therefore, evaluated independent of the diagnosis and will be determined by the specific circumstances of each case.

(a) Attributability will be conceded where the psychiatric disorder occurs when the individual is serving in or involved in:-

- (i) Combat area including counterinsurgency operational area
- (ii) HAA service.
- (iii) Deployment at extremely isolated posts
- (iv) Diving or submarine accidents, lost at sea.
- (v) Service on sea.
- (vi) MT accidents involving loss of life or Flying accidents (both as flier and passenger) in a service aircraft or aircraft accident involving loss of life in the station.
- (vii) Catastrophic disasters particularly while aiding civil authorities like earthquake, cyclone, tsunami, fires, volcanic eruptions (where one has to handle work in proximity of dead or decomposing bodies).

(b) Attributability will also be conceded when the psychiatric disorder arises within one year of serious/multiple injuries (e.g. amputation of upper/lower limb, paraplegia, quadriplegia, severe head injury resulting in hemiplegia of gross neurocognitive deficit which are themselves considered attributable to military service. This includes Post Traumatic Stress Disorder (PTSD).

(c) Aggravation will be considered in Psychiatric disorders arising within 3 months of denial of leave due to exigencies of service in the face of:

- (i) Death of parent when the individual is the only Child/son.
- (ii) Death of spouse or children.
- (iii) Heinous crimes (e.g. murder, rape or dacoity) against members of the immediate family.

(iv) Reprisals or the threat of reprisals against members of the immediate family by militants/terrorists owing to the fact of the individual being a member of the Armed Forces.

(v) Natural disasters such as cyclones/earthquakes involving the safety of the immediate family.

(vi) Marriage of children or sister when the individual is the only brother thereof and specially if their father is deceased.

(d) Aggravation will also be conceded when after being diagnosed as a patient of psychiatric disorder with specific restrictions of employability the individual serves in such service environment which worsened his disease because of the stress and strain involved like service in combat area including counterinsurgency operations, HAA, service on board ships, flying duties.

(e) Attributability may be granted to any psychiatric disorder occurring in recruits and results in invalidment from service only when clearly identifiable severe stressors including sexual abuse or physical abuse are present as causative factor/factors for the illness."

(emphasis supplied)

17. Significantly in terms of Para 54 (d) of the GMO Military Pensions 2008 itself, it has been stipulated to the effect that aggravation would be conceded when after being diagnosed as a patient of a psychiatric disorder with specific restrictions of employability, the applicant being an armed force personnel is deployed in combat areas including counter insurgency operations, HAA service, on board ships or flying duties and in the instant case after being diagnosed with the disability of moderate depressive episode in April 2008, the applicant in the instant case is indicated to have been deployed from 01.07.2013 to 19.07.2014 at Assam

at a semi field area and from 15.08.2018 to 31.08.2018, at Srinagar in a field area and the same thus apparently makes it apparent that the aggravation of the disability of the applicant in the instant case would have to be held to be due to military service.

18. Though the disability of the applicant had its onset in April 2008, it cannot be overlooked that immediately prior to his posting from 01.09.2007 to 08.09.2010 at Jodhpur in a peace area, the applicant for the period from 16.09.2006 to 31.08.2007 had been posted in the 14 Engineer Regiment at Leh (J&K) a field area.

19. In terms of Para 54 (a) of the GMO (Military Pensions) 2008, it has been stipulated to the effect that attributability will be conceded where the psychiatric disorder occurs when the individual is serving in or involved in:-

"(i) Combat area including counterinsurgency operational area

(ii) HAA service.

(iii) Deployment at extremely isolated posts

(iv) Diving or submarine accidents, lost at sea.

(v) Service on sea.

(vi) MT accidents involving loss of life or Flying accidents (both as flier and passenger) in a service aircraft or aircraft accident involving loss of life in the station.

(vii) Catastrophic disasters particularly while aiding civil authorities like earthquake, cyclone, tsunami, fires, volcanic eruptions (where one has to handle work in proximity of dead or decomposing bodies)."

and thus the factum of the disability having its onset in April 2008 within a year of the posting at Leh (J&K) a field posting from 16.09.2006 to

31.08.2007 has essentially to be held to be a factor resulting into attributability also of the disability in question. ←

20. As regards the contention raised on behalf of the respondents that the medical ailment from which the applicant suffers from could not have been detected before induction into military service, it is essential to observe that in terms of the verdict of the Hon'ble Supreme Court in ***Union of India and another Vs. Rajbir Singh*** (supra) as observed vide paras 12 to 15 thereof which reads 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 be 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 e.g. 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.

[pic] 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, Congenital Syphilis, Haemoglobinopathy.

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

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

(e) Relapsing forms of mental disorders which have intervals 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 or 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 service 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)

21. It is apparent that the onus lies on the respondents to dislodge the presumption that arises in favor of the applicant that the deterioration in health of the member of the service is on account of military service or aggravated by the same and that even in cases where the disease is wholly unrelated to military service, in order that denial of the disability pension can be justified on that ground, it must affirmatively prove that the disease had nothing to do with such service.

22. As Per Para-54 of the GMO (Military Pensions) 2008 referred to hereinabove in para no.16 for the disability as mentioned in Para-54 of the GMO (Military Pensions), 2008, the concept of attributability or aggravation due to the stress and strain on military service is to be evaluated independent of the diagnosis and will be determined by the specific circumstances of each case. To the same effect, is the ratio of the verdict of the Hon'ble Supreme Court in in *Ex Cfn Narsingh Yadav Vs. UOI & Ors*, in Civil Appeal No. 7672/2019 vide Para-18 thereof, to the effect, **that it has to be specifically in each case to be examined whether the duties assigned to the individual may have led to stress and strain leading to the disability which in that case was Psychosis and psychoneurosis.**

23. In the instant case, the applicant's disability is shown to have its onset on 11.04.2008 whilst the applicant was posted at 14 ENGR REGT at Jodhpur between 01.09.2007-08.09.2010. Prior to this peace area, the

posting of the applicant from 16.09.2006 to 31.08.2007 was at 14 ENGR REGT at LEH (J&K) which the applicant submits was a field area with strenuous and hostile environmental conditions.

24. It is the contention of the learned counsel for the applicant placing reliance on the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008 vide Para-8 thereof which reads to the effect:-

"8. Post discharge claims:

(a) Cases in which a disease was not present at the time of the member's retirement/discharge from service but arose within 7 years thereafter, may be recognized as attributable to service if it can be established by the competent medical authority that the disability is a delayed manifestation of a pathological process set in motion by service conditions obtaining prior to discharge."

to submit to the effect that even in cases where the member of the Armed Forces has retired or has been discharged from service any disability which was not present at the time of the member's retirement/ discharge from service but arose within 7 years thereafter, may be considered as attributable to service if it can be established by the competent medical authority that the disability is a delayed manifestation of a pathological process set in motion by service conditions obtaining prior to discharge.

25. It has thus been submitted on behalf of the applicant that the spirit and principle incorporated in Para-8(a) of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008 ought to equally apply to cases of the Armed Forces Personnel in service, to assess

the aspect of attributability to service and aggravation by service of the disease from which the said personnel is afflicted during service, if it arises within a period of 7 years after discharge/ retirement and if it, can be established by the competent Medical Authority that the disability is a delayed manifestation of a pathological process set in motion by service conditions obtaining prior to discharge. It is thus submitted on behalf of the applicant in as much as prior to the onset of the disability of the applicant in the instant case on 11.04.2008, during the period 06.04.2006 to 07.05.2008, i.e. about a period of 1 year prior to the onset of the disability in question, the applicant was posted in a field area between 16.09.2006-31.08.2007 at 14 ENGR REGT which is a hostile environment, thus in terms of Para-54(d) of the GMO (Military Pension), 2008, the Para-54(a)(i),(iii) thereof and Para-54(d), attributability and aggravation consequentially of the disability due to military service by service in a counter insurgency/operational area with worsening of the disease thereafter has to be conceded.

26. We find force in the submissions of the learned counsel for the applicant as there appears no reason to place personnel of the Armed Forces who have retired/discharged and those in service at a different footing for analyzing the aspect of the arising of the disease and disability within a period of 7 years as a delayed manifestation of a pathological

process set in motion by service conditions obtaining prior to discharge to thus recognize the disability being attributable to service.

27. The summary and opinion of the Senior Advisor (Psychiatry of MH Meerut) dated 25.02.2020 indicates that there was no past history of psychiatric illness. In these circumstances, even in terms of Para 10(b)(iii) of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008, which is to the effect:-

“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.”

the presumption of the entitlement in favour of the claimant, the applicant herein, having not been rebutted and there being nothing at all known about the cause of the disease, attributability has to be conceded in the instant case. Furthermore, Para-11 of the said rules of 2008 is to the effect:-

“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.”

28. As observed herein above, in terms of Para-8(a) of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008, the aggravation of the disability in the instant case has to be held to have been caused due to the applicant having been posted in field area for a period of 16.09.2006 to 31.08.2007 about 1 year prior to the onset of the

disability in question in 11.04.2008. The Pension Regulations for the Army (Part-I) , Para-86 thereof are also virtually to similar effect except that it states the period therein, within which the disease is to be in existence is a period of 10 years from the date of retirement which in terms of Para-8(a) of the 2008 Rules would have to be read for a period of 7 years, the same however does not detract from the principles adverted to herein above of the provisions of Para-8(a) of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008 being made applicable to service personnel in service for reassessment of the aspect of the attributability and aggravation of the disability which arises within a period of 7 years prior to its onset as per the medical records, as has been held by this Tribunal in OA 1204/2019 titled as *Ex-HAV (ACP-I) Satnarain Singh vs UOI & Ors* dated 30.05.2023.

CONCLUSION

29. In the circumstances, the **OA 1158/2021** 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. **“MODERATE DEPRESSIVE EPISODE (F32.1)”** 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.

30. No order as to costs.

Pronounced in the Open Court on the 22 day of November, 2023.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/AP/