

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

D.

OA 1204/2020

Lt Col Prem Nath Pandey (Retd) Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Virender Singh Kadian, Advocate
For Respondents : Mr. D K Sabat, 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 1204/2020. 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 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. Thus, the prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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Lt. Col. Prem Nath Pandey(Retd)
Versus

...Applicant

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

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

ORDER

The applicant vide para 8 of the present O.A 1204/2020 has
made the following prayers:-

*(a) Quash and set aside the Impugned letter
No.B/38046A/494/2019/AG/PS-4(2nd
Appeal) dated 26.12.2019. And/or*

*(b) Direct respondents to treat the
disabilities of the applicant as attributable
to/aggravated by military service and grant
disability element of pension from the date of
retirement of the applicant alongwith benefit
of broadbanding*

*(c) 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.*

*(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 was commissioned in the Indian Army on 10.06.1995 and retired from service on 28.02.2019 on attaining the age of superannuation. The applicant, at the time of retirement was brought before the duly constituted Release Medical Board(RMB) on 08.09.2018 which assessed the disablement of the applicant vide RMB proceedings AFMSF-16 dated 20.09.2018 as under:

Sr. No.	Disability	ATTR/ AGGR/ NANA	Percentage of Disablement with Duration	Composite Assessment for Disabilities with Duration (Max 1 duration)	Disability Qualifying for Pension with duration	Net Assessment Qualifying for Disability Pension (Max 100%) with duration
(a)	PRIMARY HYPERTENSION (ICD 110.0, OLD Z 09.0	NANA	30% for life	40% for life	NIL for life	Nil for life
(b)	PSEUDOPHAKIA BOTH EYE(ICD H27m OLD Z 09.0	NANA	15-19% for life			

The initial claim for the grant of the disability element of pension was adjudicated by the Competent Authority which rejected the same vide AG/PS-4(Imp-I) letter No.13415/IC-53690W/AOC/MP-6(F)/812/2018/AG/PS-4(Imp-I) dated 13.12.2018 as the disability was opined by the RMB to be neither attributable to nor aggravated by military service(NANA).The opinion of the Release Medical Board dated 20.09.2018 as reflected in Part V thereof was to the effect:

“

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 and period in service
1. PRIMARY HYPERTERNSON (ICD) 10.0.OLD Z 09.0	NO	NO	YES	Onset Mar 18. An Idiopathic/life style disability occurring while posted at peace station Gorakhpur. There is no close time association with stress and strain of Fd/OPS and there is no delay in diagnosis and treatment. Hence neither attributable nor aggravated by service in terms of Para 43 Chapter VI of GMP(MP) 2008
2. PSEUDOPHAKIA BOTH EYE (ICD H-27 old Z .09.0)	NO	NO	YRS	Onset Apr 18. An idiopathic/lifestyle disability occurred while posted at peace station Gorakhpur. There is no close time association with stress and strain of Fd/HHA/Ops services and there is delay in diagnosis and treatment. Hence not attributable to nor aggravated by service in terms of Para 13 Chapter VI(MP) 2008
Note. A disability “Not Connected with service” would be neither Attributable nor Aggravated by service. (This is in accordance with instructions contained in “Guide to Medical Officers(Mil Pension)-2008)				

”

The percentage of disablement was put forth in the RMB as under:

“

6. What is the [present degree if disablement as compared with a healthy person of the same age and sex?(Percentage will be expressed as Nil or as follows). 1-5%, 6-10%, 11-14 %, 15-19% and thereafter in multiple of ten from 20-100%				
Disability	Percentage of disablement with duration	Composite Assessment for all disabilities with duration	Disability Qualifying for disability pension with duration	Net Assessment Qualifying for Disability pension
Primary Hypertension (ICD 110.0.OLD Z 09.0)	30% (THIRTY PERCENT)	40% (FORTY PERCENT) FOR LIFE	NIL for life	NIL for life
PSEUDOPHAKIA BOTH EYE(ICD H-27), OLD 09.0)	15-19 % (Fifteen to Ninety Percent)	40% (FORTY PERCENT) FOR LIFE	NIL for life	NIL for life

”

The onset of the disabilities is indicated in Part-IV of the RMB as under:

“

Disability	Date of origin	Rank of Indl	Reason and unit where serving At the time
Primary Hypertension(ICD 110.0. OLD Z 09.0	Mar 2018/Gorakhpur	Lt Col/	406 MC/MF DET, Gorakhpur
PSEUDOPHAKIA BOTH EYE(ICD H-27, OLD Z 09.0)	Apr 2018/Gorakhpur	Lt Col.	406 MC/MF DET. Gorakhpur

”

3. The disability claim of the applicant was rejected vide AG/PS-4 (Imp-I) letter No.13415/IC-53690W/AOC/MP-6(F)/812/2018/AG/PS-4(Imp-I) dated 13.12.2018, with an advice

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to the applicant to prefer an appeal to the Appellate Committee within six months of the receipt of the letter.

4. The First Appeal dated 12.02.2019 filed by the applicant was rejected vide AG/PS-4(Imp-II)m letter No.13415/IC-536902W/AOC/MP-6(F)/51/2019/Appeal/AG/PS-4(Imp-II) dated 22 May 2019 by the respondents with an advice to prefer a second appeal within six months from the date of the receipt of the letter. The reasons for rejection of the First Appeal stated in the letter dated 22.05.2019 were as under:

“

S No.	Disability(ies)	Reasons(s)
(i)	PRIMARY HYPERTENSION	ID was detected in peace area. Primary Hypertension is an idiopathic disorder with a strong genetic\prep per se not attributable to service. Aggravation may be conceded if onset occurs in Fd/CI Ops/HAA. In the instant case, ID was detected in peace area. Hence ID is conceded as neither attributable to nor aggravated by mil service in terms of Para 43 Chap VI, GMO 2002/2008
(ii)	PSEUDOPHAKIA	ID refers to having an artificial lens implanted after the natural lens is removed. In the instant case, onset was insidious with no precipitating factor and there was no evidence of infection or trauma related to service. Hence, ID is conceded as neither attributable to aggravated by mil service in terms of Para 13, Chap VI, GMO 2002/2008

”

The second appeal preferred by the applicant was also adjudicated and rejected by the respondents vide letter dated 26.12.2019 on the grounds detailed therein as under:

“

	Disability(ies)	Reasons(s)
(i)	PRIMARY HYPERTENSION	ID is an idiopathic disorder with a strong genetic preponderance and is per se not attributable to service. Aggravation is conceded if onset occurs while serving in Fd/CI Ops/HAA a float service. In the instant case, onset was in peace Station. Hence disability is conceded as neither attributable to nor aggravated by service (Para 43 Chap VI, GMO 2002/2008)
(ii)	PSEUDOPHAKIA	In the instant case, there was no evidence of infection or trauma related to service. Hence, disability is conceded as neither attributable to nor aggravated by service. (Para 13, Chap VI, GMO 2002/2008)

”

5. During the course of submissions made on behalf of the applicant on 08.08.2023, it was submitted on behalf of the applicant that the prayer for the grant of the disability element for the disability of PSEUDOPHAKIA with both eyes is not pressed and that the prayer made through the present OA is confined to seeking the grant of the disability element of pension for the disability of Primary Hypertension. In the interest of justice, we thus take up the OA for consideration in terms of Section 21(1) of the AFT Act 2007.

CONTENTIONS RAISED

6. The applicant submits that he was commissioned in the Indian Army fit in all respects on 10.06.1995 and that at the time of

entry into service, he was subjected to a thorough medical examination conducted by the board of doctors and retired from service on 28.02.2019 in Low Medical Category. The Release Medical Board constituted by the respondents found the disability ID(i) PRIMARY HYPERTENSION(ICD 110.0, Old Z 09.0) assessed @30% for life. The applicant submits that his disability of Primary Hypertension was the result of service and environmental conditions and was attributable to service. The applicant submits that he was posted at various places during his service tenure in different environmental and social conditions. *Inter alia*, in terms of the MoD letter No.F No.4(17)/2015/D(Pen/Legal) dated 29.06.2017 and in view of the spirit of the verdict of the Hon'ble Supreme Court in *Dharamvir Singh Vs Union of India & Ors* (Civil Appeal No.4949 of 2013) 2013(7) SCC 36, he is entitled to the grant of the disability element of pension alongwith the benefits of broad banding in the light of the verdict of the Hon'ble Supreme Court in Civil Appeal No.418/2012 in *Union of India & Ors Vs Ram Avtar*.

7. Reliance was also placed on behalf of the applicant on Regulation 423 of the Regulations for Medical Services in the Armed Forces(RMSAF) to submit that the same ordains that service in peace or in field areas has no linkage whatsoever with attributability of disabilities to military service.

The posting profile of the applicant reflected in Part I in the Personal Statement of the applicant in the RMB dated 06.09.2018 is as under:

PART I

PERSONAL STATEMENT

1. Give details of service (P=Peace or F= Field/Operational/Sea service)

SL. NO	FROM	TO	PLACE/SHIP	P/F	SL. NO	FROM	TO	PLACE/SHIP	P/F
(i)	10 Jun 95	07 Jun 97	9 Raj Rif	F	(ii)	08 Jun 97	04 Jan 98	14 FAD	P/CI
(iii)	05 Jan 98	27 Jun 98	CMM JABALPUR	P	(iv)	28 Jun 98	16 Sep 99	14 FAD	P/CI
(v)	19 Sep 99	12 Sep 02	640 EME Bn	P	(vi)	13 Sep 02	04 Jul 04	6 Mtn DOU	P
(vii)	05 Jul 04	21 May 05	CMM Jabalpur	P	(viii)	22 May 05	24 Feb 07	18 FAD	P
(ix)	25 Feb 07	05 Mar 10	HQ 9 Sec RR	HAA /CI Ops	(x)	06 Mar 10	14 Dec 12	COD Kanpur	P
(xi)	20 Dec 12	20 Spr 15	54 Inf DOU	P	(xii)	21 Apr 15	22 May 17	27 Mtn DOU	Mod Fd
(xiii)	23 Mar 17	Till date	406 MC/MFDET	P					

The applicant submits that in Para 3 of the said statement it is reflected as under:

3. Did you suffer from any disability before joining the Armed forces? If so give details and dates. **NO**

8. Reliance was placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in *Dharamvir Singh Vs UOI & Ors*(Civil Appeal No 4949/2013) 2013 AIR SCW 4236. with

specific reliance on the observations in para-28 of the said verdict which are 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."

9. The applicant has also placed reliance on the verdict of the Hon'ble Supreme Court in *UOI & Ors. Vs Rajbir* in Civil Appeal No. 2904/2011, decided on 13.02.2015, in the case of *Sukhvinder Singh vs UOI & Ors* 2014 STPL (Web) 468 SC and in *UOI & Ors vs Manjit Singh* AIR 2015 SC 2114, to contend to the effect that in as much as in the absence of any cogent reasons recorded by the Medical Board for the cause of the disability that had arisen during the course of service of the applicant and with which the applicant did not suffer at the time of enrolment in the Military Service, the same has to be presumed to have arisen in the course of military service and due to the same, the applicant also submits that in terms of the verdict dated 10.12.2014 of the Hon'ble Supreme Court in *UOI Vs Ram Avtar* in Civil Appeal No.418/2012, the applicant is entitled to rounding off of the disability element pension assessed @30% for life *qua* the disability of Primary Hypertension to 50% for life from the date of discharge.

10. The respondents through the counter affidavit dated 25.06.2021 filed on their behalf submit that the entitlement to disability pension is governed by the eligibility conditions enumerated in Regulation 81 of the Pension Regulations for the

Army, 2008(Part-I) which stipulates that unless otherwise specifically provided disability pension consisting of service element and disability element may be granted to an officer who is invalidated out of service on account of a disability which is either attributable to or aggravated by military service in non-battle casualty cases and the disability is assessed @20% or more. The respondents submit that the assessment made by the Release Medical Board is only recommendatory in nature as per Rule 17 (b) of the Entitlement Rules to Casualty Pensionary Awards to the Armed Forces Personnel, 1982(ER 82) and is subject to review by the Competent Medical Authorities as stipulated in Rules 17(a) and 27(c) thereof. The respondents place reliance on the verdict of the Hon'ble Supreme Court in case of the *Union of India & Anr Vs Ex Rfn. Ravinder Kumar* in Civil Appeal No. 1837/2009 to contend that the opinion of Medical Board should not be overruled judiciously unless there is a strong medical credence to do so with reliance on observations in para 28 of the said the judgment to the effect:

"2. The issue involved herein is no more res integra. It is not in dispute that in case the injury suffered by military personnel is attributable to or aggravated by military service, he becomes entitled for disability pension. It is also a settled legal proposition that opinion of the Medical Board should be given primacy in deciding cases of disability pension and the court should not grant such pension brushing aside the

opinion of the Medical Board”(See: Union of India & Anr v. Baljit Singh, (1996) 11 SCC 315; Union of India & Ors v Dhir Singh Chana, Colonel(Retd), (2003) 2 SCC 382; Controller of Defence Accounts(Pension) & Ors v S. Balachandran Nair, AIR 2005 SC 4391.)

11. Furthermore, the respondents place reliance on the verdicts of the Hon’ble Supreme Court in the case titled *Ex Cfn Narsingh Yadav vs Union of India & Ors* in Civil Appeal No.7672 of 2019 and on the order of this Tribunal dated 06.03.2020 in OA 522/2016 titled *Lt Col. Vinod Bhushan Arya(Retd) Vs Union of India & Ors*. and thus submit that the question of broadbanding does not arise as the verdict of the Hon’ble Supreme Court dated 10.12.2014 in Civil Appeal No.412/2012 in *Union of India & Ors Vs Ram Avtar* is not applicable to the present case.

12. The respondents further placed reliance on Paras-43 of the Clinical Aspects of Certain diseases of the Guide to Medical Officers (Military Pension) 2008, in relation to the disease of Primary Hypertension to submit to the effect that the applicant’s disability is neither attributable to nor aggravated by military service.

ANALYSIS

13. On a consideration of the submissions made on behalf of either side, it is essential to observe that the factum that as laid down by the Hon’ble Supreme Court in *Dharamvir Singh(Supra)* ,a personnel of the Armed forces has to be presumed to have been

inducted into military service in a fit condition ,if there is no note of record at the time of entrance in relation to any disability, in the event of his subsequently being discharged from service on medical grounds the disability has to be presumed to be due to service unless the contrary is established, ~ is no more *res integra*.

Para 43 of the GMO(Military Pension) 2008 is as under:

*"*43. Hypertension~ The first consideration should be to determine whether the hypertension is primary or secondary. If secondary, entitlement considerations should be directed to the underlying disease process (e.g. Nephritis), and it is unnecessary to notify hypertension separately.*

As in the case of atherosclerosis, entitlement of attributability is never appropriate, but where disablement for essential hypertension appears to have arisen or become worse in service, the question whether service compulsions have caused aggravation must be considered. However, in certain cases the disease has been reported after long and frequent spells of service in field/HAA/active operational area. Such cases can be explained by variable response exhibited by different individuals to stressful situations. Primary hypertension will be considered aggravated if it occurs while serving in Field areas, HAA, CIOPS areas or prolonged afloat service."

emphasis supplied)

14. In view of the guidelines laid down vide the verdict of the Hon'ble Supreme Court in *Dharamvir Singh Vs. Union of India & Ors.*(Supra) and the factum that the non-existence of the ID of Hypertension at the time when the applicant joined military service is not refuted by the respondents, the contention of the respondents

that the disability of hypertension has been rightly opined by the Release Medical Board and the AFCA at 30% as neither being attributable to nor aggravated by military service,~ cannot be accepted.

15. It is essential to observe that the verdict of the Hon'ble Supreme Court in *Rajbir Singh* (supra) 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 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)

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

"6. Causal connection:

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

7. Onus of proof.

Ordinarily the claimant will not be called upon to prove the condition of entitlement. However, where the claim is preferred after 15 years of discharge/retirement/

invalidment/release by which time the service documents of the claimant are destroyed after the prescribed retention period, the onus to prove the entitlement would lie on the claimant.

10. *Attributability:*

(a) Injuries:

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

(i) Injuries sustained when the individual is 'on duty', as defined, shall be treated as attributable to military service, (provided a nexus between injury and military service is established).

(ii) In cases of self-inflicted injuries while 'on duty', attributability shall not be conceded unless it is established that service factors were responsible for such action.

(b) Disease:

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

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

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

(ii) Disease due to infection arising in service other than that transmitted through sexual contact shall merit an entitlement of attributability and where the disease may have been 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."

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

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

"423.(a). For the purpose of determining whether the cause of a disability or death resulting from disease is or not attributable to Service. It is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a Field Area/Active Service area or under normal peace conditions. It is however, essential to establish whether the disability or death bore a causal connection with the service conditions. All evidences both direct and circumstantial will be taken into account and benefit of reasonable doubt, if any, will be given to the individual. The evidence to be accepted as reasonable doubt for the purpose of these instructions should be of a degree of cogency, which though not reaching certainty, nevertheless carries a high degree of probability. In this connection, it will be remembered that proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. If the evidence is so strong against an individual as to leave only a remote possibility in his/her favor, which can be dismissed with the sentence "of course it is possible but not in the least probable" the case is proved beyond reasonable doubt. If on the other hand, the evidence be so evenly balanced as to render impracticable a determinate conclusion one way or the other, then the case would be one in which the benefit of the doubt could be given more liberally to the individual, in case occurring in Field Service/Active Service areas.

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

(c). *The cause of a disability or death resulting from a disease will be regarded as attributable to Service when it is established that the disease arose during Service and the conditions and circumstances of duty in the Armed Forces determined and contributed to the onset of the disease. Cases, in which it is established that Service conditions did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, will be regarded as aggravated by the service. A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in Service if no note of it was made at the time of the individual's acceptance for Service in the Armed Forces. However, if medical opinion holds, for reasons to be stated that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.*

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

(e). *To assist the medical officer who signs the Death certificate or the Medical Board in*

the case of an invalid, the CO unit will furnish a report on :

- (i) AFMSF – 16 (Version – 2002) in all cases*
- (ii) IAFY – 2006 in all cases of injuries.*

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

(emphasis supplied),—

has not been obliterated.

18. It has already been observed by this Tribunal in a catena of cases that peace stations have their own pressure of rigorous military training and associated stress and strain of the service. It has also to be taken into consideration that most of the personnel of the armed forces have to work in the stressful and hostile environment, difficult weather conditions and under strict disciplinary norms. The onset of the disability of Primary Hypertension as reflected in the RMB is in March 2018 at Gorakhpur, after 23 years of service in the Indian Army. The applicant was deputed to various postings at different

stations in the Indian Army before the onset of the disability which include one field posting, one HAA/CI and two peace/CI postings out of 13 postings. The cumulative stress and strain of the service tenure where the applicant was exposed to severe conditions cannot be overlooked. Further para 43 of the GMO (MP) 2008 itself provides that in certain cases the disease has been reported after long and frequent spells of service in field/HAA active operational area and that such cases can be explained by variable response exhibited by different individuals due to stress and strains. The applicant is thus held entitled to the grant of the disability element of pension *qua* the disability of Primary Hypertension @ 30% for life.

CONCLUSION

19. The OA 1204/2020 is allowed and the applicant is held entitled for the grant of the disability element of pension in relation to ID Primary Hypertension @30% for life which in terms of the verdict of the Hon'ble Supreme Court of India in Civil Appeal 418/2012 dated 10.12.2014 titled as *UOI & Ors. Vs. Ramavtar*, is directed to be broad banded to 50% for life from the date of discharge.

20. The respondents are directed to calculate, sanction and issue the necessary Corrigendum PPO to the applicant within three months from the date of receipt of the copy of this order and in the

event of default, the applicant shall be entitled to the interest @6% per annum on the arrears till the date of payment.

Pronounced in the open Court on the 5th day of December, 2023.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/chanana/