

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

E.
OA 1244/2021

Ex Hav Ram Kumar Singh Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Ved Prakash, Advocate
For Respondents : Mr. Avdhesh Kumar Singh, Advocate

CORAM

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

ORDER
31.10.2023

Vide our detailed order of even date; we have allowed the OA 1244/2021. 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 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)

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ORDER

The applicant Ex Hav Ram Kumar Singh no. 4275296K vide the present OA makes the following prayers:-

“(a) Quash the Impugned Letter No. 4275269K/1/DP/NE dated 13.03.2021 and Impugned letter No. 4275269K/1/DP/NE dated 11.11.2020.

(b) Direct the respondents to grant disability element of pension to the Applicant duly round off to 75% w.e.f his date of discharge.

(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 along with cost of the application in favour of the applicant and against the respondents.”

2. The applicant was enrolled in the Bihar Regiment of the Army on 28.10.1996 as an Infantry Soldier and on completion of military training was posted to various units of the Bihar Regiment and on completion of his terms of engagement with effect from 31.10.2020 (Afternoon) he was discharged from the service in terms of item III (i) of table annexed to Army Rule 13 (3) of the Army Rules 1954 on fulfilling of terms and conditions of enrolment.

3. Whilst the applicant was posted at 6 BIHAR, he was downgraded to low medical category S1H1A1P3 (T-24) E1 for six months with effect from 11.09.2017 to 24.02.2018 for diagnosis '**PITUITARY MACROADENOMA (NEPA)**' by the Medical Board held at Military Hospital, Danapur, AFMSF-15 dated 13.09.2017.

4. Subsequently the applicant underwent a Review Medical Board and his medical category was reviewed as under:-

S. no.	Details of Medical category	Period from	Period to	Remarks
(a)	S1H1A1P2 (T-24) E1 Diagnosis " PITUITARY MACROADENOMA (NEPA) "	14 March 2018	28 August 2018	Military Hospital, Danapur AFMSF- 15 (Ver 2002) dated 17 Mar 2018 (<u>Annexure R/2 refers</u>)
(b)	E3 (T-24) for the diagnosis OPTIC ATROPHY BOTH EYES (R>L) (ICD No H-47.2) and P2 (T-24) for diagnosis	04 October 2018	21 March 2019	Military Hospital, Danapur AFMSF- 15 (Ver 2002) dated 07 October 2018

	PITUITARY MACOADENOMA (NEPA) (ICD no D-35.2)			
(c)	E3 (Permanent) for the diagnosis BILATERAL OPTIC ATROPHY WITH TEMPORAL HEMIANOPIA LEFT EYE and P2(Permanent) for diagnosis PITUITARY MACOADENOMA (NEPA) (ICD No D-35.2)	09 April 2019	09 April 2021	167 Military Hospital, AFMSF-15 (Ver 2002) dated 26 April 2019

5. As the applicant was placed in low medical category E3(Permanent) for the diagnosis **BILATERAL OPTIC ATROPHY WITH TEMPORAL HEMIANOPIA LEFT EYE** and P2(Permanent) for diagnosis **PITUITARY MACOADENOMA (NEPA) (ICD No D-35.2)**, therefore, prior to discharge from Army Service, the Release Medical Board of the applicant was held at 167 Military Hospital and the medical board assessed the percentage of disabilities as under :-

(a) Disability "**OPTIC ATROPHY BOTH EYES (H47.2)**" and percentage of disablement was assessed as 50% for life.

(b) Disability "**PITUITARY MACOADENOMA (NEPA) (D-35.2)**" and percentage of disablement was assessed as 20% for life.

6. The composite assessment of both the disabilities was assessed by the medical board at 60% for life with net assessment of percentage of

qualifying Disability Pension being assessed at NIL, in as much as the Medical Board opined the disabilities that the applicant suffered from were neither attributable to nor aggravated military service.

7. The disability pension claim of the applicant was rejected vide letter dated 06.11.2020 as communicated to the applicant on 11.11.2020 with an advice to prefer an appeal against rejection of the same to the Appellate Committee on First Appeals within six months. A legal notice cum representation / appeal dated 18.01.2021 was sent on behalf of the applicant to which vide letter dated 13.03.2021 no. 4275269K/1/DP/NE, the applicant was informed that the disabilities of '**OPTIC ATROPHY BOTH EYES (H47.2)**' and '**PITUITARY MACROADENOMA NFPA (D35.2)**' were both considered as being neither attributable to nor aggravated by military service by the medical authority. In the interest of justice, in terms of Section 21 (1) of the AFT Act, 2007, we consider it appropriate to take up the OA for consideration.

CONTENTIONS OF THE PARTIES

8. The applicant submits that there was no note of any disability recorded in his service records at the time of enrolment and that he remained fit in SHAPE I for a long period of more than 20 years and that the disability that he suffered from arose whilst he was posted at URI

(J&K) i.e. a field area, with the onset of both the disabilities having been in April 2017.

9. The applicant further submits that the RMB dated 04.09.2020 in Part VII thereof had opined that the disability of 'Optic Atrophy Both Eyes (H 47.2)' was due to the disability 'Pituitary Macroadenoma NFPA' and in as much as the disability of 'Pituitary Macroadenoma NFPA' had been opined to be not having any causal relation with military service. Consequentially, the disability of 'Optic Atrophy Both Eyes' was also opined as being neither attributable to nor aggravated by military service, which the applicant submits is an arbitrary opinion.

10. The applicant places reliance on his posting profile placed in Part II of the RMB which is to the effect:-

S.no.	From	To	Place/Unit	Peace/Field	Remarks
(a)	28 Oct 1996	16 Aug 1997	BRC, Danapur, Cantt	Peace	
(b)	17 Aug 1997	23 Mar 2000	6 BIHAR, Firozpur (Punjab)	Peace	
(c)	24 Mar 2000	03 Aug 2003	6 BIHAR, OP ORCHID, Dimapur (Nagaland)	Field	
(d)	04 Aug 2003	10 Mar 2006	6 BIHAR, Binnaguri (WB)	Peace	
(e)	11 Mar 2006	04 Apr 2008	6 BIHAR, URI (J&K)	Field	
(f)	05 Apr 2008	02 Feb 2011	6 BIHAR, Hyderabad (AP)	Peace	
(g)	03 Feb 2011	16 Aug 2012	6 BIHAR, Kaying (AP)	Field	
(h)	17 Aug 2012	23 Jan 2016	HQ 106 Inf Bde	Field	
(i)	24 Jan 2016	16 Aug 2016	6 BIHAR, Binnaguri (WB)	Peace	
(k)	17 Aug 2016	04 Oct 2018	6 BIHAR, URI (J&K)	Field	
(l)	05 Oct 2018	24 Feb 2020	6 BIHAR, Bakloh Cantt (HP)	Peace	
(m)	25 Feb 2020	Till dt	6 BIHAR, Sujanpur (Punjab)	Peace	

and also places reliance on Para 2 (a) of Part-II of his personal statement which is to the effect:-

"2(a) Did you suffer from any disability before joining the armed forces? NO"

Reliance is also placed on behalf of the applicant on the queries and responses in Paras 2 and 3 of Part-VII of the RMB which is to the effect:-

"2 Was the disease/disability attributable to the individual's own negligence or misconduct? NO FOR BOTH DIS"

3 If not attributable, was it aggravated by negligence or misconduct? If so, in what way and to what percentage of the total disablement? NO FOR BOTH DIS"

11. The applicant places reliance on the verdicts of the Hon'ble Supreme Court in:-

- *Dharamvir Singh vs UOI & Ors* (Civil Appeal No. 4949/2013) 2013 AIR SCW 4236 decided on 02.07.2013;
- *UOI & Ors. vs Rajbir Singh* in Civil Appeal no. 2904/2011 dated 13.02.2015 (2015) 12 SCC 264;
- in *UOI & Ors vs Angad Singh Titaria* (2015) 12 SCC 257;
- and in *UoI vs Ram Avtar* (Civil Appeal no. 418/2012) dated 10.12.2014;

to contend to the effect that in as much as the applicant suffered from no disability when he was inducted into the Indian Army on 28.10.1996, the subsequent discharge in low medical category after completing more than 24 years of service, with the onset of the disabilities in the instant case having been in April 2017 after 21 years of military service has to be

presumed to be attributable to military service and aggravated thereby, thus entitling the applicant for the grant of the disability element of pension, which the applicant seeks in terms of the percentage of disablement put forth by the RMB of the two disabilities as being compositely assessed at 60% for life as under:-

<i>Disease/Disability (As numbered in Para 1 Part IV)</i>	<i>Percentage of disablement</i>	<i>Corresponding para of GMO 2008</i>	<i>Composite assessment for all disabilities (Max 100%) with duration</i>	<i>Disease/Disability Qualifying for Disability Pension with duration</i>	<i>Net Assessment Qualifying for Disability Pension (Max 100%) with duration</i>
OPTIC ATROPHY BOTH EYES (H47.2)	50%	REF PARA 19 CH VII OF GMO 2008	60% FOR LIFE	NIL FOR LIFE BOTH DIS	NIL FOR LIFE BOTH DIS
and 'PITUITARY MACROADENOMA NFPA (D35.2)	20%				

which the applicant further seeks, that in terms of the verdict of the Hon'ble the Supreme Court in *UoI vs Ram Avtar* (supra) be broad banded to 75% for life.

12. Reliance was also placed on behalf of the applicant on Para 423 of the Regulations for the Medical Services for the Armed Forces 2010 to submit to the effect that Para 423 (a) thereof itself stipulates that 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, and what was required to be established is the existence of a causal connection between the disability in question and the military service.

13. Inter alia on behalf of the applicant, reliance was placed on the Medical Re-categorization Medical Board proceedings of the date 04.10.2018 to submit to the effect that the said Re-categorization Board proceedings reflected categorically to the effect that the disabilities were attributable to military service in terms of Para 24 (B) of Chapter VI of the GMO (Military Pensions) 2008 and that thus it was not open to the respondents to change the opinion in relation thereto.

14. Reliance was placed thus on the query and response to Para 18 of the said Re-Categorization Medical Board proceedings:-

"18. If not directly attributable to service was it aggravated by service? YES, as per para 24 (B) of chapter VI of GMO (MP) 2008 dis 15 (I) and 15 decided according to IHQ MoD letter No 76086/Re-C1/Policy/DGMS-5A dt 31 Jul 2018"

Reliance was also placed on behalf of the applicant on the responses in the paragraphs 2 and 3 of Part IV of the RMB proceedings dated 04.09.2020 which read to the effect:

*"2 Was the disease/disability attributable to the individual's own negligence or misconduct? **NO FOR BOTH DIS***

*3 If not attributable, was it aggravated by negligence or misconduct? If so, in what way and to what percentage of the total disablement? **NO FOR BOTH DIS**"*

to submit to the effect the same themselves reflect that the applicant suffered from no disability at the time of induction into the service, nor were the disabilities due to any contributory factors from the side of the applicant.

15. The respondents on the other hand rely on Para 53 (a) of the Pension Regulations for the Army, Part-I (2008) which provides to the effect:-

"9) An individual released/retired/discharged on completion of term of engagement or on completion of service limits or on attaining the prescribed age (irrespective of his period of engagement), if found suffering from a disability attributable to or aggravated by military service and so recorded by Release Medical Board, may be granted disability element in addition to service pension or service gratuity from the date of retirement/discharge, if the accepted degree of disability is assessed at 20 percent or more".

to submit to the effect that in as much as the disabilities that the applicant suffers from were neither attributable to nor aggravated by military service, the applicant is not eligible for the grant for the disability element of pension nor to the broadbanning thereof. The respondents thus seek that the present OA be dismissed.

ANALYSIS

16. 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, - i.e. the disability has to be presumed to be due to service unless the contrary is established, - is no more *res integra*.

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

"6. Causal connection:

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

7. Onus of proof.

Ordinarily the claimant will not be called upon to prove the condition of entitlement. However, where the claim is preferred after 15 years of discharge/retirement/invalidment/release by which time the service documents of the claimant are destroyed after the prescribed retention period, the onus to prove the entitlement would lie on the claimant.

10. *Attributability:*

(a) *Injuries:*

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

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

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

(b) *Disease:*

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

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

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

(ii) Disease due to infection arising in service other than that transmitted through sexual contact shall merit an entitlement of attributability and where the disease may have been contracted prior to enrolment or during leave, the incubation period of the disease will be taken into consideration on the basis of clinical course as determined by the competent medical authority.

(iii) If nothing at all is known about the cause of disease and the presumption of the entitlement in favour of the claimant is not rebutted, attributability 'should be conceded on the basis of the clinical picture and current scientific medical application.

(iv) When the diagnosis and/or treatment of a disease was faulty, unsatisfactory or delayed due to exigencies of service, disability caused due to any adverse effects arising as a complication shall be conceded as attributable.

11. **Aggravation:**

A disability shall be conceded aggravated by service if its onset is hastened or the subsequent course is worsened by specific conditions of military service, such as posted in places of extreme climatic conditions, environmental factors related to service conditions e.g. Fields, Operations, High. Altitudes etc.”

(emphasis supplied),__

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

18. Furthermore, Para 423 (a) 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.

*(emphasis supplied),*___

has not been obliterated.

19. It is essential to observe that Para 24 (b) of the GMO (Military Pensions) 2008 of which there is mention made in the Re-categorization Board Proceedings of the date 04.10.2018 is as under:-

"24. Diseases of Retina.

(b) Optic Neuropathy. *Optic neuritis encompasses morphological variants such as retro bulbar neuritis, papillitis, neuro retinitis and optic atrophy. It is a degenerative disease with multiple sclerosis accounting for majority of cases. However, choroiditis, sinus infection, head injury, penetrating injury eye, certain drugs (ethambutol, chloramphenicol), tobacco, alcohol, atherosclerotic embolism of artery concerned, Cerebral malaria can cause this. Optic neuropathy may be a complication to SLE and temporal arteritis. When optic neuropathy develops due to trauma related to service, infection and drug therapy, attributability is conceded.*

(emphasis supplied)

As per Para 24 (b) of Chapter VI of the GMO (Military Pensions) 2008 itself when Optic neuropathy develops due to trauma related to service infection and drug therapy, attributability is to be conceded. As observed

vide para no. 19 here in above trauma related to service is one of the factors for optic neuropathy, in terms of Para 24 (b) of the GMO (Military Pensions) 2008.

20. In the instant case, the onset of the disabilities has been in April 2017 whilst the applicant was posted at URI in Jammu and Kashmir in a field area which onset of the disability has been after 21 years of service.

21. The history and the opinion of the Senior ADV (Medical & Endocrinologist) dated 10.03.2018 of the Army Hospital R&R is to the effect:-

"History- This 41 yrs old serving NCO was diagnosed to have pituitary macroadenoma in APR 2017 when he presented with diminished vision in form of temporal field defects right > left for 2 months. Clinically he had no features of hormone excess or deficiency Evaluation at 92BH revealed. Clinically visual acuity is RE-6/60, LE- 6/36, pituitary MRI sella showed macroadenoma (24x32.4x34.6mm). He was referred for further management to AHRR. He has bitemporal hemianopia and hormonal profile was WNL (as in table below). He underwent TNS on 22MAY2017. Post op there was no hormonal deficiency and he was sent on sick leave after uneventful recovery, on arrival from S/L, he has improvement in vision and, visual acuity is RE- 6/60, LE 6/18; MRI sella showed residual lesion(23x19x17mm), Perimetry shows improved visual fields B/E as compared to previous reports done at 92 BH. Presently he is asymptomatic clinically and biochemically euthyroid, eucortisolemic and eugonadal. His repeat imaging revealed a residual lesion with no change in size, signal characteristics and extension of the residual sellar mass lesion. Neurosurgical consult taken and advised no active intervention at present. He will require medical observation."

The same does not reveal any congenital or hereditary or contributory causative factors from the side of the applicant for the onset of the

disability in terms of Para 9, 10 and 12 of the GMO (Military Pensions)

2008 on which the respondents have relied through the rejection of the first appeal of the applicant which read as under:-

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

The recognized causative agents for carcinogenesis are:-

- (a) Viral infection*
- (b) Radiation from nuclear sources*
- (c) Ultra violet rays*
- (d) Chemicals*
- (e) Acquired chromosomal abnormalities*
- (f) Trauma (chronic irritation leading to dermatological cancers*
eg: kangri cancer)

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

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

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

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

10. Malignancies Considered Attributable to Service

*(a) **Due to Occupational Hazards:***

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

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

(ii) Any cancer in those exposed to chemical especially Petroleum products or other chemicals:-

- (aa) Carcinoma bladder
- (ab) Renal cell carcinoma
- (ac) Carcinoma of Renal Pelvis

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

- (aa) Bronchogenic Carcinoma
- (ab) Pleural Mesothelioma

(b) Due to Viral Infection:

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

11. Blank

12. Malignancies Not Attributable and Not Aggravated

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

22. The opinion of Lt Col Naresh Bansal, CI Spl (Med) & Endocrinologist dated 01.04.2019 at the Army Hospital R&R is to the effect:-

"History. This 42 yrs Old Serving NCO was diagnosed to have Pituitary Macroadenoma in APR 2017 when he presented with diminished vision in form of temporal field defects right>left for 2 months. Clinically he had no features of hormone excess or deficiency. Evaluation at 92BH revealed Clinically visual acuity is RE-6/60, LE-6/36, pituitary MRI sella showed macroadenoma (24x32.4x34.6mm). He was referred for further management to AHRR. He had bitemporal hemianopia and hormonal profile was WNL (as in table below). He underwent NTS on 22MAY 2017. Post op there was no hormonal deficiency and he was sent on sick leave after uneventful recovery. On arrival from S/L, he had improvement in vision and visual acuity was RE-6/60, LE6/18 while MRI sella showed residual lesion (23x19x17mm) and Perimetry showed improved visual fields B/E as compared to previous reports done at 92 BH. He underwent GKS in 28 Oct 2017. In Sep 2018, he remained clinically and biochemically euthyroid, eucortisolemic and eugonadal. His repeat imaging revealed a residual lesion with no change in size, signal characteristics and extension of the residual sellar mass lesion. Neurosurgical consult taken and was advised no active intervention. He complained of progressive loss of vision in Right Eye while Left eye vision had remained static. Repeat MRI sella revealed no significant change in size, signal characteristics and extension of the residual sellar mass lesion. Initially thought of radiation induced optic nerve injury leading to visual compromise. Advised no active intervention from Neurosurgery side. Radiation oncology consult was taken and they opined that GKS was unlikely to be the reason for vision loss. Eye Spl (VK expert) was consulted which revealed partial optic atrophy Right Eye with DV of 6/60, N36 in Rt Eye and 6/12(6/6-with glasses) N6 in Left Eye. He was advised monthly follow up with visual fields by Eye spl. His Hormonal profile was essentially normal. In last 6 months patient continues to have progressive vision loss with diminution of vision to 1/60 in Rt Eye and 6/18 in Lt Eye (6/9 Aided with glasses). His pituitary hormonal profile is WNL. He has been found to be having Vit D deficiency this time and started on replacement for same. MRI brain done revealed no significant change in size of lesion (24x21x16mm) compared to previous imaging (24x19x17mm). Neurology opinion was also taken this time in view of progressive vision loss. VEP was bilaterally prolonged with OCT s/o bilateral optic atrophy. Opinion of neurophysician was that the optic atrophy is probably secondary to long term compression from pituitary macroadenoma. Opinion of Eye Spl obtained and recommended to be placed in E3 (P) for

Bilateral Optic atrophy. He will require observation in LMC as a case of NFPA."

23. The opinion given in Part III by the said specialist in Medicine and Endocrinologist reads to the effect:-

***"Opinion:** A case of Pituitary Macroadenoma - NFPA post endoscopic TNS, Post GKS, with residual vision loss and sellar lesion had reported for recat. He has optic atrophy of both Eyes. He is biochemically euthyroid, eucortisolemic and eugonadal. He does not warrant any active neurosurgical or neurological intervention. Opinion of Eye Spl for Bilateral Optic atrophy obtained. Detected to have Vitamin D deficiency ad started on replacement for same. However he will require observation in LMC*

***ADV:** Recommended to be placed in P2(Perm) for Pituitary Macroadenoma- NFPA(Non functioning Pituitary adenoma)*

Calcirol sachet 60,000units weekly x 12weeks then monthly

Tab Neurobion forte 1 OD

To review in MIR if develops persistent severe headache, worsening of vision, seizure or neuroophthalmic deficit.

Monthly review in MOPD / 6 monthly review in Endo OPD. Next recat at AH (R&R) Endocrinology Centre. Transfer to 167 MH for holding MED Board and further disposal."

24. In these circumstances, in as much as the respondents have been unable to dislodge the initial presumption in favor of the applicant that arises in terms of Para 7 of the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel 2008 already adverted to para no.17 hereinabove, coupled with the factum that in terms of Para 10 (b) (iii) of the attributability clause provided in the said rules, the cause of the disability not being known, with the initial presumption having not been

rebutted by the respondents, the disability that the applicant suffers from in the facts and circumstances of the instant case would have to be held to have arisen due to military service.

CONCLUSION

25. In the circumstances, the **OA 1244/2021** is allowed and the applicant is held entitled to the grant of the disability element of pension qua the disabilities of the applicant i.e. **"OPTIC ATROPHY BOTH EYES (H47.2)"** and **"PITUITARY MACROADENOMA NFPA (D35.2)"** compositely assessed at 60% for life, which is directed to be broad banded to 75% for life in terms of the verdict of the Hon'ble Supreme Court in *Ram Avtar* (supra) 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.

26. No order as to costs.

Pronounced in the Open Court on the 31 day of October 2023.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/AP/