

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

3.

OA 1245/2021 with MA 1107/2021

Ex Sub Maj Atma Singh

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : None

For Respondents : Mr. Arvind Kumar, Advocate

CORAM

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

ORDER
05.10.2023

Vide our detailed order of even date, we have partly allowed the OA 1245/2021. 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)

CHANANA

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Ex Sub Maj Atma Singh

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant :

Mr. Janak Raj Rana, Advocate

For Respondents :

Mr. Arvind Kumar, Advocate

CORAM :

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

HON'BLE LT GEN P.M. HARIZ, MEMBER (A)

ORDER

OA 1245/2021

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

- (a) To declare the action of the respondents as unjust, arbitrary and illegal; and*
- (b) To quash Records Ordinance Corps C/O 56 APO letter dated 09 Apr 2019 (Annexure A-1 : and*
- (c) To direct the respondents to grant the disability pension 40% and further rounding off the disability pension to 50% in terms of letter dated 01 May 2019; from the date of discharge ie30.04.2019; and*
- (d) To grant an interest of 18% on the delayed payment of service element of the disability pension: and*
- (e) To award exemplary costs upon the Respondents in the facts and circumstances of the record; and*
- (f) Such further order or orders, direction /directions be passed so as to this Learned Tribunal may deem fit and proper in accordance with law.*

2. The applicant Ex Sub Maj Atma Singh No. 726331L was enrolled in the Army Ordinance Corps on 22.08.1987 and discharged from service

with effect on 30.04.2019 (Afternoon) under Army Rule 13(3) 1(i)(a) on fulfilling the terms of engagement of service/age limits vide Army Ordinance Corps Records discharge order bearing No. 30004/D-2/Apr-2019/CA-4/DO-07 dated 26.02.2018. The applicant whilst serving with Selection Centre (Central), Bhopal was initially downgraded to Low Medical Category P2(T24) for the diagnosis "Primary Hypertension" with effect from 13.04.2011 vide AFMSF-15 dated 13.04.2011 whereafter he underwent Medical Board for re-categorisation and was also found to be suffering from the disability of **IVth Ventricular Epidermoid (OPTD) (Z-09)** as per the AFMSF-15A conducted on 07.04.2012. Before his discharge he was brought before a RMB held at 92 Base Hospital on 27.10.2018 vide AFMSF-16 dated 31.10.2018 in which the medical authority opined him to be placed in the LMC P2 (Permanent) with the diagnosis of "**Primary Hypertension (1-10-0)**" and **IVth Ventricular Epidermoid (OPTD)** opining that both the disabilities were neither attributable to nor aggravated by military service with composite assessment for disabilities assessed as 40% for life and net assessment qualifying for disability pension was assessed as NIL for life. The initial disability element claim of the applicant was adjudicated by the Officer-in-Charge, Army Ordinance Corps Records and rejected as the disabilities were considered as neither attributable to nor aggravated by military service. The applicant was informed of the same vide letter

dated 09.04.2019 with an advice that he may prefer an appeal to the Appellate Committee on First Appeals within six months from the date of receipt of the said letter. Service pension is being paid to the applicant in terms of the PPO no. 1872011900171 dated 12.03.2019. The applicant instead of preferring First Appeal to the Army Ordinance Corps Records approached the Chairman, Appellant Committee on Appeals Integrated Headquarters Ministry of Defence vide his First Appeal dated June 2019 for grant of disability pension to which the applicant was sent a prescribed format to file the appeal to the Appellate Committee on First Appeals which however, was not submitted by the applicant and rather the present OA was instituted. Taking into account the factum that the present OA is pending adjudication since 07.04.2021, we consider it appropriate in the interest of justice to take up the OA for consideration in terms of Section 21(1) of the AFT Act, 2007.

3. The applicant submits that he joined the Indian Army on 22.08.1997 in a fit medical category after a thorough medical examination without any note of any disability recorded on the records of the respondents. The applicant submits that he has been posted in several peace and field stations during his service from 22.08.1987 till his date of discharge on 30.04.2019. The posting profile of the applicant as reflected through Part I of the RMB in his personal statement of the RMB dated 27.08.2018 is as under :-

PART -I
PERSONAL STATEMENT

1. Give details of service (P=Peace or F=Field/Operational/Sea Service)						
S. No	From	To	Peace/Field	Operational Area	Location	Remarks
(i)	22/08/87	29/08/88	AOC Centre, Secunderabad	Peace	Secunderabad (A.P)	
(ii)	30/08/88	13/10/88	CMM Jabalpur	Peace	Jabalpur (MP)	
(iii)	14/10/88	03/01/93	AOC Records	Peace	Secunderabad (A.P)	
(iv)	04/01/93	23/05/96	29 Inf DOU	Peace	Pathankot (P.B)	
(v)	24/05/96	03/11/99	3 Fars	Peace	Chandimandir (CHD)	
(vi)	04/11/99	03/09/01	57 Mtn DOU	Field	Silchar(AS)	
(vii)	14/09/01	16/07/04	HQ UB Area	Peace	Bareilly (U.P)	
(viii)	17/07/04	20/05/07	224 ABOD	Peace	Jodhpur (R.J)	
(ix)	21/05/07	15/10/07	501 SS&TC(Gref)	Field	Leh (J&K)	
(x)	16/10/08	06/07/12	SC Central	Peace	Bhopal (M.P)	
(xi)	07/07/12	01/11/16	COD Delhi Cantt	Peace	Delhi	
(xii)	02/11/16	Till Date	2 FOD	Field	Srinagar (J&K)	

4. The Paras 3 and 4 of Part I of the said RMB is as under:-

3. Did you suffer from any disability before joining the Armed Forces? If so give details and dates. NO
4. Give details of any incidents during your service, which you think caused or made your disability worse. NO

5. The applicant submits that as reflected in Paras 2, 3 and 5 (a), (b), (c) of Part V in the RMB proceedings:-

2. Did the disability exist before entering service? NO
3. In case the disability existed at the time of entry, is it possible that it could not be detected during the routine medical examination carried out at the time of the entry? NO
5. (a) Was the disability attributable to the individual's own negligence or misconduct? If yes, in what way? No (b) If not attributable, was it aggravated by negligence or misconduct? No If so, in what way and to what percentage of the total disablement.

(c) *Has the individual refused to undergo operation/treatment? No*

If so, individual's reason will be recorded.

Note: In case of refusal of operation/treatment a certificate from the individual will be attached.

”

6. It was clearly depicted thereby that the applicant did not suffer from any disability before joining the Indian Army and that it was not possible that the disability that he suffered from could not be detected during the routine medical examination carried out at the time of entry and further that the disability that the applicant suffered from was not due to negligence or misconduct by the applicant as reflected through the RMB itself. The applicant thus places reliance on a catena of the verdicts of the Hon'ble Supreme Court in *Dharamvir Singh Vs. Union Of India &Ors* (Civil Appeal No. 4949/2013); (2013 7 SCC 316, *Sukhvinder Singh Vs. Union Of India &Ors*, dated 25.06.2014 reported in 2014 STPL (Web) 468 SC, *UOI &Ors. Vs. Rajbir Singh* (2015) 12 SCC 264 and *UOI & Ors. Vs. Manjeet Singh* dated 12.05.2015, Civil Appeal no. 4357-4358 of 2015, to contend to the effect that the applicant is entitled to the grant of the disability element of pension in as much as he has to be deemed to be invalided out of service in the absence of any note recorded of any disability at the time of induction into military service.

7. Specific reliance was placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in *Dharamvir Singh vs. Union of India & Ors.* on Para 28 thereof which reads as under:-

"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.*

8. Reliance was also placed on behalf of the applicant on the Regulation 53(1) Pension Regulations for the Army to submit to the effect that in as much as in view of the disabilities of the applicant of Primary Hypertension having been assessed at 30% and IVth Ventricular Epidermoid (OPTD) (Z-09) having been assessed at 20% for life has to be held that the said disabilities were attributable to and aggravated by military service which are compositely assessed 40% for life qua which the applicant is entitled to the broad banding of the said disabilities to a composite of 50% for life and in terms of the verdict of the Hon'ble Supreme Court in *Union Of India & Ors. vs. Ram Avtar* .

9. The respondents on the other hand vide the counter affidavit dated 04.09.2021 filed on their behalf places reliance on Para 53(a) of the Pension Regulations for the Army 2008 (Part-1) to submit to the effect that the disability of the applicant having been opined by the RMB dated 31.10.2018 to be neither attributable to nor aggravated by military service, the applicant does not fulfill the criteria requisite in terms of para 53(a) of the said Pension Regulations for the grant of the disability pension. Para 53(a) of the Pension Regulations for the Army 2008 reads to the effect :-

“An individual released/retired/discharged/ on completion of terms 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% or more."

10. *Inter alia* the respondents submit that in terms of para 5 and 6 of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008, the causal connection between the military service and disability has to be established by the appropriate authorities and the mere fact that the disease has manifested itself during military service does not per se establish attributability to or aggravation by military service. The respondents further submit that the medical test at the entry stage in terms of the Para 5 of the said Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008 is not exhaustive and its scope is limited to broad physical examination and thus it may not detect some dormant disease. *Inter alia* the respondents submit that certain hereditary, constitutional and congenital diseases may manifest later in life, irrespective of service conditions, the mere fact that a disease has manifested during military service does not per se establish attributability or aggravation by military service. The respondents further submit that in terms of para 6 of the said Rules for the award of disability pension/special family pension, a causal connection between disability and military service has to be established by appropriate authorities and

that in the instant case the disability pension claim had been rejected by the Officer-in-Charge, Army Ordinance Corps Records and the applicant has not chosen to file any appeal and that the OA ought to be dismissed.

ANALYSIS

11. The RMB proceedings indicate that the onset of the disabilities of the applicant was as under :-

“

PART IV **STATEMENT OF CASE**

1. Chronological list of the disabilities.

Disabilities	Date of Origin	Previous Medical Categorisation with date	Next Medical Categorisation Due
(a) PRIMARY HYPERTENSION	08 Apr 2011	SUB	SCC, Bhopal(M.P.)
(b) IVTH VENTRICULAR EPIDERMOID(OPTD) (Z-09)	03 Jan 2012	SUB	SCC, Bhopal(M.P.)

”

12. The reasons for opining the disabilities to be neither attributable to nor aggravated by military service set forth in Part V in the opinion of the Medical Board is as under:-

“

PART V **OPINION OF THE MEDICAL BOARD** **(Not to be communicated to the individual)**

Casual 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
(i) Primary Hypertension (ICD-I-10)	NO	NO	YES	No, as onset in peace vide para 43, Ch-VI of GMO-2008.
(ii) IV TH	NO	NO	YES	No, as onset in peace

Ventricular Epidermoid (OPTD) (Z-09)				vide para 12, Ch-VI of GMO-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 Officer (Mil Pension)-2002)				

”

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

“

Disability (As numbered Para 1 Part (IV))	Percentage of Disablement with duration	Composite assessment for all disabilities with duration (Max 100%) with duration	Disability Qualifying for Disability Pension with duration	Net Assessment Qualifying for disability Pension (Max 100%) with duration
(i) Primary Hypertension (ICD-I-10)	30%	30+14= 44 40% for life	NIL	NIL
(ii) IV TH Ventricular Epidermoid (OPTD) (Z-09)	20% for life		NIL	

”

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*.

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

"6. Causal connection:

For award of disability pension/special 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.

15. As laid down by the Hon'ble Supreme Court in *Union of India & Anr. vs. Rajbir Singh* in Civil Appeal No. 2904/2011 vide para 12 to 15 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."

16. It is essential to observe that in the case of *UOI & Ors. Vs. Manjeet Singh* Civil Appeal no. 4357-4358 of 2015 in which case the grant of the disability element of pension in relation to the disabilities identified as generalized tonic-clonic seizure and neurotic depression was upheld, it was observed by the Hon'ble Supreme Court vide paras 22, 23, 24, 25 as under:-

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

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

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

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

25. The last in the line of the rulings qua the dissensus has been pronounced in a batch of Civil Appeals led by Civil Appeal No. 2904 of 2011; Union of India & Others vs. Rajbir Singh in which this Court on an exhaustive and insightful exposition of the aforementioned statutory provisions had observed with reference as well to the

enunciations in Dharamvir Singh vs. Union of India 2013(7) SCC 316, that the provision for payment of disability pension is a beneficial one and ought to be interpreted liberally so as to benefit those who have been boarded out from service, even if they have not completed their tenure. It was observed that there may indeed be cases where the disease is wholly unrelated to Army service but to deny disability pension, it must affirmatively be proved that the same had nothing to do with such service. It was underlined that the burden to establish disability 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 was on account of Army service or had been aggravated by it. True to the import of the provisions, it was held that a soldier cannot be asked to prove that the disease was contracted by him on account of Army service or had been aggravated by the same and the presumption continues in his favour till it is proved by the employer that the disease is neither attributable to nor aggravated by Army service. That to discharge this burden, a statement of reasons supporting the view of the employer is the essence of the rules which would continue to be the guiding canon in dealing with cases of disability pension was emphatically stated. As we respectfully, subscribe to the views proclaimed on the issues involved in Dharamvir Singh (supra) and Rajbir Singh(supra) as alluded hereinabove, for the sake of brevity, we refrain from referring to the details. Suffice it to state that these decisions do authoritatively address the issues seeking adjudication in the present appeals and endorse the view taken by us."

17. The contention raised on behalf of the applicant is that the disabilities of the applicant had their onset whilst the applicant was posted in peace area at Bhopal and thus the disabilities could not be assessed to be neither attributable to nor aggravated by military service cannot be accepted, in view of the observations of the Hon'ble Supreme

Court in Para 33 of the verdict in *Dharamvir Singh vs. Union of India &*

Ors. which are as under :-

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

18. 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),__

and the same has not been obliterated.

19. Furthermore in terms of para 43 of the Chapter VI of the ‘Guide to Medical Officers (Practice Military Pension, 2008) it has been provided as under:-

“43. Hypertension – The first consideration should be to determine whether the hypertension is primary or secondary. If (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.”

20. It is essential to observe that the onset of the disability of Primary Hypertension was on 22.04.2011 in the tenth posting of the applicant after 24 years of service and it could not be overlooked that vide Para 423 of the GMO (Military Pensions) 2008 itself, it is stipulated that in certain cases the diseases has been reported after long in frequent spells of service in field/HAA/Active Operational Area and such cases can be explained by variable response exhibited by different individuals to stressful conditions. In the instant case the applicant is indicated to have been posted from 04.11.1999 to 03.09.2001 at 57 Mtn DOU and 21.05.2007 to 15.10.2008 at 501 SS&TC (GREF) both field stations with the posting from 21.05.2007 to 15.10.2008 being immediately preceding to the tenth posting of the applicant from 16.10.2008 to 06.07.2012 at SC Central when the onset of the disability of Primary Hypertension as well as IVth Ventricular Epidermoid (OPTD) (Z-09) had their onset. The applicant is also indicated to have been posted in a field station from 02.11.2016 onwards till his release on 30.04.2019. As has been held by this Tribunal in a catena of orders the accumulated stress and strain on the applicant of such a long service under varied conditions of climate and geographical locations cannot be overlooked. It is thus held that the

disability of Primary Hypertension of the applicant suffers assessed at 30% for life from which had its onset on 08.04.2011 after induction of the applicant into the Indian Army on 22.08.1987 after 24 years of military service is held attributable to military service.

21. As regards the disability of **IVth Ventricular Epidermoid (OPTD) (Z-09)** assessed with disablement percentage of 20% for life by the RMB for which it was opined with the opinion of the RMB to the effect that the disability of the applicant had its onset in a peace area and thus in term of Para 12 of Ch-VI of GMO (Military Pensions) 2008, it was held that the disability was neither attributable to nor aggravated by military service.

22. Para 12 of Chapter VI of GMO (Military Pensions) 2008 reads as under :-

“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.”

23. Qua the same, it is essential to advert to the opinion of the Lt Col Manish Sharma Graded Specialist Surgery and Neurosurgeon of the Army Hospital (R&R) dated 29.03.2012 which reads as under:-

“This 46 yrs old serving personnel is a case of IV ventricular epidermoid (for review after sick leave).”

He became symptomatic about 8 mths ago with imbalance while walking, instability of gait and slurring of speech. He also had difficulty in approaching objects.

On examination he was found to have broad based gait and cerebellar signs in the form of gaze evoked nystagmus, past pointing and dysidiachokinesia. He was investigated and CEMRI brain was suggestive of IV ventricular epidermoid.

He was taken up for midline suboccipital craniectomy and total excision of epidermoid was done on 30 Jan 12.

Post-op period was uneventful and he has symptomatically improved. At present he does not offer any complaints and is subjectively better. His gait has become normal and presently has no past pointing. Subtle dysidiachokinesia is present. There is no focal motor or sensory neurological deficit present.

Post-op MRI No. 1731/12 at 19 Mar 12 shows a small focus of residue near (Lt) wall of IV ventricle. No active intervention is required for the same.

He requires sheltered appointment.

Recommended to be placed in low medical category P3/T-24)

Adv

1 Avoid work involving fine motor activity.

2 Not to handle firearms

3 Not to drive

4 Review of this centre after 6 mths with fresh CEMRI Brain."

24. As per the website of Pacific Neuroscience Institute www.pacificneuroscienceinstitute.com, an Epidermoid cyst is caused when skin (epidermal) cells move under the skin surface, or are covered over by it instead of shedding and these cells continue to multiply, like skin as normally and they form a wall around themselves (cyst) and secrete normal skin fluids (keratin). Epidermoid cysts also known as inclusion cysts are benign growths that develop behind the skin. They arise from the epithelial cells that line the outer most layer of the skin, (epidermis). These cysts are typically slow growing and contain a thick

and yellowish material called keratin and can cause symptoms from increasing pressure on brain structures. The exact cause of epidermoid cysts is not fully understood, but they are believed to develop as a result of a blocked hair follicle or skin trauma that causes the epidermal cells to be trapped beneath the skin's surface.

25. Significantly, as per the opinion of the graded specialist dated 29.03.2012 there has been total excision of the epidermoid on 30 Jan 2012. The applicant having been discharged from service on 30.04.2019. The opinion of the graded specialist referred to hereinabove also showed that there was a small speck of residue near the (Lt) wall of IV ventricle but no active intervention was required for the same.

26. Apparently, through the scientific terminology put forth in relation to the IVth Ventricular Epidermoid, the said disability does not appear to have any causal connection with military service to bring it within the ambit of attributability or aggravation due to military service. The prayer made by the applicant seeking the grant of the disability element of pension in relation to **IVth Ventricular Epidermoid (OPTD) (Z-09)** is thus declined.

CONCLUSION

27. The OA 1245/2021 is partially allowed. The applicant is held entitled to the grant of the disability element of pension in relation to the

disability of “**Primary Hypertension**” assessed at 30% for life which in terms of the verdict of the Hon’ble Supreme Court in *Union of India & Ors. vs. Ram Avtar* in Civil Appeal No. 418/2012 is broad banded to 50% for life, from the date of discharge.

28. 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 till the date of payment.

Pronounced in the Open Court on the 5th day of October, 2023.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/yogita/