

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

24.

OA 1280/2019

Ex MWO (HFL) Ratti Ram Yogi Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Baljeet Singh, Advocate
For Respondents : Mr. Vijendra Singh Mahndiyan, Advocate

CORAM

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

ORDER
20.11.2023

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

(a) To set aside the Impugned Order Air HQ/99798/5/177/2018/670009/DP/AV-III (Appeals) dated 12.06.2019 (Annexure A-1).

(b) To direct the respondents to grant the disability pension @40% with effect from the date of discharge by considering both the disabilities as attributable and aggravated by the military service.

(c) To direct the respondents to grant the benefit of rounding off of the disability of the applicant @50% (40% to be rounded off to 50%) with effect from the date of discharge.

(d) To direct the respondents to pay the due arrears of disability pension with interest @12% p.a. with effect from the date of discharge till actual payment.

(e) To pass such further order or orders, direction/Directions as this Hon'ble Tribunal may deem fit and proper in accordance with law.

2. During the course of submissions, the prayer made on behalf of the applicant is confined to seeking the grant of the disability element of pension in relation to the disability of Primary Hypertension alone and the prayer made for the grant of disability element of pension in relation to Impaired Glucose tolerance is not pressed.

3. The applicant was enrolled in Indian Air Force on 26.02.1979 after an examination conducted vide AFMSF-2A dated 17.02.1979 and was discharged from service on 30.06.2017 under the clause "On attaining the age of superannuation" after rendering 38 years and 125 days of regular service. The applicant is indicated to have suffered from the disabilities of Primary Hypertension and Impaired Glucose Tolerance and as has been observed hereinabove, the prayer made through the present OA is confined to seeking the grant of the disability element of pension in relation to the disability of Primary Hypertension alone which had its onset as per the RMB dated 29.09.2016 in October 2015 at Jaipur in the 13th posting of the applicant. The onset of the disabilities is reflected as under:-

2. Give particulars of any diseases, wounds or injuries from which you are suffering:					
PRIMARY HYPERTENSION ICDI 10.OZ09.0	First started		Rank of individual	Where treated	Approximate dates and periods treated
IMPAIRED	Oct	Jaipur	MWO	MH	As an

“

GLUCOSE TOLERANCE ICD NO R 73.0 Z09.0	2015			Jaipur	OPD case OCT 2015
	Oct 2015	Jaipur	MWO	MH Jaipur	As an OPD case OCT 2015

4. The medical Board gave its opinion in relation to the disability of Primary Hypertension in Part V thereof:-

**PART V
OPINION OF THE MEDICAL BOARD**

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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
PRIMARY HYPERTENSION ICDI 10.0Z09.0	NO	NO	Yes	Onset in peace station (Jaipur). There was no delay in diagnosis. There is no close time association with stress/strain or dietary compulsions of Field/Ciops/HAA. Hence NANA as per 43 of Ch VI of GMO

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5. It has been submitted on behalf of the applicant that the posting profile of the applicant as reflected in the personal statement of the applicant in Part 1 of the RMB is as under:

“

1. Give details of service (P-Peace OR F-Field/Operational/Sea Service) attached.									
S.No	From	To	Place/ Ship	P/F	S.No	From	To	Place /Ship	P/ F
(i)	01.03.79	25.03.80	Belgaum	P	(viii)	15.09.97	17.12.2000	Tezpur	MF A
(ii)	26.03.80	22.08.82	Jorhat	MFA	(ix)	18.12.2000	11.07.04	Bangalore	P
(iii)	23.08.82	11.12.83	Hindan	P	(x)	12.07.04	12.08.07	bihta	P
(iv)	12.12.83	30.04.88	New Delhi	P	(xi)	13.08.07	11.09.11	Bhatinda	P
(v)	01.05.88	26.05.91	Srinagar	P	(xii)	12.09.11	29.09.13	Srinagar	F
(vi)	27.05.91	23.04.95	Pune	P	(xiii)	30.09.13	Till date	Jaipur	P
(vii)	24.04.95	14.09.97	Manauri	P					

”

indicates that the applicant had been posted to from 01.05.1988 to 26.05.1991 at Srinagar and from 12.09.2011 to 29.09.2013 also at Srinagar, both field postings prior to the onset of the disability of the applicant in October 2015 and thus, the contention as sought to be raised on behalf of the respondents through their counter affidavit and through the opinion of the Medical Board that the onset of the disability has in a peace station and was not relatable to any close time association with stress and strain of military service cannot be countenanced in terms of Para 43 of the Chapter VI of the GMO (MP), 2008, itself.

6. On behalf of the respondents, learned counsel for the respondents whilst urging to the effect that in terms of the opinion of the Medical Board the disability of the applicant of Primary Hypertension had been opined to be neither attributable to nor aggravated by military service, adverted to the posting

profile of the applicant to submit that the applicant was posted in the field area much prior to the onset of the disability in October 2015 and that thus the disability of the applicant was neither attributable to nor aggravated by military service.

7. Apart from the said submission, though there is no such averment on the record in the counter affidavit filed on behalf of the respondents dated 12.03.2020, on behalf of the respondents learned counsel submits that in the year 2011 and 2013 the applicant was overweight and that the disability of Primary Hypertension was due to the applicant having been overweight. In reply to a specific court query learned counsel for the applicant clearly states that in the year 2015 when the medical assessment of the applicant was done the applicant's weight was 79 kgs as per the RMB placed on record. The actual weight of the applicant as per the summary of the case is shown to be 79 kgs and ideal weight being 73 kgs. In the RMB it is stated as under:-

3 (a) Physical Capacity- Waist-83 cm Hip-91cm WHR-0.91

BMI-24.38 Kg/m2

(i) Height-180cm (ii) Weight actual-79 kg (iii) ideal Wt-73 kg

(iv) Over weight: (v) Chest Full Expiration-95cm (vi) Range of Expansion-05 cm",

with there being no mention at all of the applicant being overweight, the contention of the respondents to the effect that the disability applicant suffers from of Primary Hypertension was

to his being overweight cannot be accepted nor was it ever contended by the respondents through the records that the applicant suffered from obesity.

8. In relation to the disability of Primary Hypertension, it is essential to advert to Para 43 of the GMO (Military Pension) 2008, which reads 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."

(Emphasis supplied),_____

9. 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 may also 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.

10. 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 thereof 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 courses 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 Altitude etc."

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



12. 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.

13. In the circumstances of the instant case, the applicant is thus held entitled to the grant of disability element of pension in relation to the disability of Primary Hypertension assessed with percentage of disablement @30% broad banded to 50% for life in terms of the verdict of the Hon'ble Supreme Court in Civil Appeal No. 418/2012 titled *Union of India Vs. Ram Avtar* decided on 10.12.2014 with effect from the date of discharge 30.06.2017. The respondents are directed to issue the corrigendum PPO to the applicant and pay arrears within a period of three months failing which they shall be liable to pay interest at the rate of 6% per annum till the date of payment.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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