

COURT No. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 1286/2022

WO Krishan Kumar Sharma ... **Applicant**
Versus
Union of India and Ors. ... **Respondents**

For Applicant : Mr. A.K. Chaudhary, Advocate
For Respondents : Mr. Satya Ranjan Swain, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C. P. MOHANTY, MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant filed this O.A. praying to direct the respondents to accept the disabilities of the applicant as attributable to/aggravated by military service and grant disability pension.

2. The applicant was enrolled in the Indian Air Force on 25.07.1981 and discharged from service on 31.01.2021 after completion of 39 years 6 months and 6 days of qualifying service. The Release Medical Board dated 02.09.2020 found that the applicant was fit to be released from service in the low medical

category A2G2 (PMT) for the disability - Primary Hypertension @30%.

3. The claim of the applicant for grant of disability pension was rejected and the same was communicated to the applicant vide letter no. RO/3305/3/Med dated 20.01.2021 stating that the aforesaid disability was considered as Not Attributable to Nor Aggravated (NANA) by Air Force Service by the Air Force Authority.
4. After rejection of the initial claim, an Application/ Representation/ Legal Notice as 1st Appeal against rejection of initial claim for disability pension as per prescribed format was submitted by the applicant vide letter dated 12.07.2021, but the same was not replied by the competent authority. Aggrieved by the aforesaid inaction, the applicant has approached this Tribunal.
5. Placing reliance on the judgement of the Hon'ble Supreme Court in ***Dharamvir Singh v. UOI & Ors* [2013 (7) SCC 316]**, Ld. Counsel for the applicant argues that no note of any disability was recorded in the service documents of the applicant at the time of his entry into the service and that he served in the Air Force in different environmental and service conditions in his prolonged

service. Therefore, any disability at the time of his service is deemed to be attributable to or aggravated by Air Force service.

6. The Ld. Counsel for the applicant also placed reliance on **Para 43 of Chapter VI of Guide to Medical Officer (Military Pensions), 2002, amended, 2008 (hereinafter referred to as GMO)** and stated that if the disablement of 'Essential Hypertension' appears to have arisen or become worse in service then the question whether service compulsion has caused aggravation must be answered. In the instant case, it has been contended that the applicant has served under service induced stress for more than 39 years till his retirement and his disability of 'Primary Hypertension' was detected in 2014 i.e., after 33 years of service. The applicant's situation therefore, fully qualifies to be considered as Attributable to or Aggravated by Air Force service as per Para 43 of the GMO.

7. Per Contra, Learned Counsel for the Respondents submits that under the provisions of Regulation 153 of the Pension Regulations for the Air Force, 1961 (Part-I), the primary condition for the grant of disability pension is Invalidation from service on account of a

disability which is attributable to or aggravated by Air Force service and is assessed @20% or more.

8. Relying on the aforesaid provision, Learned Counsel for respondents further submits that the aforesaid disabilities of the applicant were assessed as NANA by Air Force service, on the ground that the person was overweight and the onset of the disease is in peace station and as such, his claim was rejected by the competent authority. Thus, the applicant is not entitled for grant of disability pension due to policy constraints.

9. Ld. Counsel for respondents further argues that the weight of the applicant was 67 kg at the time of commissioning, and that he gradually gained weight and by the time of onset of the disability, applicant was overweight by about 11 kgs from his permissible/ideal weight; purely due to dietary indiscretion, lack of exercise and his own lack of health consciousness. Hence, the disabilities can not be held attributable to or aggravated by service as he is solely responsible for his unreasonable weight gain in violation of the service requirements of maintaining physical fitness at all times.

10. We have perused the materials available on record and also heard the submissions made on behalf of the parties.
11. It is not in dispute that the applicant was enrolled in the Indian Air Force on 25.07.1981 and discharged from service on 31.01.2021. The Release Medical Board dated 02.09.2020 found that the applicant was fit to be released from service in the low medical category A2G2 (PMT) for the disability.
12. In the instant case the applicant suffers from the disability of primary hypertension @30% which has been classified as NANA. The said disability finds however, mention under the Chapter VI of 'Guide to Medical Officers (Military Pensions), 2008, at Para 43, and its nature is explained as follows-

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

As in the case of atherosclerosis, entitlement of attributability is never appropriate, but where disablement for essential hypertension appears to have arisen or become worse in service, the question whether service compulsions have caused aggravation must be considered. However, in certain cases the disease has been reported after long and frequent spells of service in field/HAA/active operational areas. 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.

13. We have also perused the medical records of the applicant produced before us depicting the weight chart of the applicant along with the remarks of the authorities which is reproduced as under-

DATE	TYPE OF MED. EXAM	ACTUAL BODY WEIGHT (in kg)	IDEAL BODY WEIGHT (in kg)	ADVICE
12.03.1981	PRIMARY	67	-	-
02.11.1999	Extn. Of Service	76	70	-
25.09.2003	Annual	72	71.5	-
26.05.2004	Annual	80	71.5	-
21.09.2005	Extn. Of Service	79	71.5	-
09.11.2006	Annual	80	72	To reduce weight by regular exercise and diet control
03.09.2007	Annual	80	72	-
20.03.2008	Extn. Of Service	80	72	-
07.10.2010	Extn. Of Service	80	72	-
10.02.2012	Med Board	83	71	-
19.11.2014	Initial Med Board	83	72.5	To reduce weight by 4-5 kgs

21.05.2015	Re Categorisation	82	72	To reduce weight by 4-5 kgs
29.09.2016	Re Categorisation	86	72	low fat diet regular walk
21.10.2017	Re Categorisation	86	72	daily exercise
11.10.2019	Re Categorisation	86	72	daily exercise
02.09.2020 4	Release Medical Board	85	72	-

14. In light of the above facts the pertinent issues which arose for our consideration in this particular case are as follows :-

(a) Whether disability pension can be granted in cases where the disease/disability is a result of sedentary lifestyle on part of the applicant despite regular advice/warnings by the authorities to reduce weight?

(b) Whether sufficient grounds exist to overrule the findings of the expert medical body i.e the RMB and grant Disability element of Pension to the applicant suffering disability of Primary Hypertension @30%.

15. Before proceeding with the analysis of the matter in hand, it is pertinent to reproduce the fundamental provisions of the Entitlement Rules for Casualty Pensionary Awards to Armed Forces

Personnel, 1982 regarding grant of disability pension. The relevant Paras 5, 7, 8, 9 & 14 of Entitlement Rules for Grant of Casualty Pensionary Awards, 1982 are reproduced as under :

Para 5 : *The approach to the question of entitlement to Casualty Pensionary Awards and evaluation of disabilities shall be based on the following presumptions:*

(a) A member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance.

(b) In the event of his subsequently being discharged from service on medical grounds any deterioration in his health which has taken place is due to service.

Para 7 : *Where there is no note in contemporary official records of a material fact on which the claim is based, other reliable corroborative evidence of that fact may be accepted.*

Para 8 : *Attributability/aggravation shall be conceded if causal connection between death/disablement and military service is certified by appropriate medical authority.*

Para 9 : *The claimant shall not be called upon to prove the conditions of entitlements. He/She will receive the benefit of any reasonable doubt. This benefit will be given more liberally to the claimants in field/afloat service cases.*

Para 14 : *In respect of diseases, the following rule will be observed:*

(a) Cases in which it is established that conditions of Military Service did not determine or contribute to the onset of the disease but influenced the subsequent courses of the disease will fall for acceptance on the basis of aggravation.

(b) 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 military service. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examinations prior to acceptance for service, the disease will not be deemed to have arisen during service.

(c) If a disease is accepted 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.

16. Since the Applicant was discharged from service on 31.1.2021, Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008, issued as Appendix to Ministry of Defence Letter No.1(3)/2002/D(Pen/Pol) dated 18.1.2010, are applicable in the present case. The amended paras 5 & 6 of the Entitlement Rules, 2008 are also reproduced as under:

Para 5 : Medical Test at Entry Stage

The medical test at the time of entry is not exhaustive. But its scope is limited to broad physical examination. Therefore, it may not detect some dormant diseases. Besides, 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 services does not per se establish attributability to or aggravation by military service.

Para 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.

17. The aforesaid amendments in para 5 and 6 of the Entitlement Rules were primarily made to highlight the aspect of attributability and aggravation by the military service and to carve out an exception in the general principle, which provides that any undetected disease shall be rendered attributable or aggravated by the military service just because it was earlier not detected. The amendment therefore, vividly canvasses the requirement of a causal connection between the disability and military service which further has to be established by appropriate authorities.

18. The requirement of establishment of relationship between military service and disability was also emphasised by the Hon'ble Apex Court in the case of ***Narsingh Yadav vs UoI in Civil Appeal No. 7672 of 2019*** decided on 3.10.2019. In this case the court approved the verdict delivered by the AFT (RB), Lucknow, on 23.09.2011 and the applicant was denied Disability Pension even when he was Invalided out of Service with less than 4 years of service on account of Schizophrenia. The Apex Court in this case also analysed the verdict of ***Dharamvir Singh (supra)*** and ***Rajbir Singh (supra)*** before arriving at a considered conclusion. The

relevant portion of the Hon'ble Apex Court's order is extracted below:

Para 20: In the present case, clause 14(d) as amended in the year 1996 and reproduced above, would be applicable as entitlement to disability pension shall not be considered unless it is clearly established that the cause of such disease was adversely affected due to factors related to conditions of military service. Though, the provision of grant of disability pension is a beneficial provision but mental disorder at the time of recruitment cannot normally be detected when a person behaves normally. Since there is a possibility of non-detection of mental disorder, therefore, it cannot be said that Schizophrenia is presumed to be attributed to or aggravated by military service.

(emphasis supplied)

19. The above analysis therefore, clearly highlights the point that the applicant's claim for entitlement of disability pension can not be considered unless it is clearly established that the disease was squarely attributable to factors related to conditions of military service.

20. On perusal of the records of the applicant, this Tribunal has not been satisfied that there exists a causal connection between military service and the disability of the applicant. The disability of the applicant, as apparent from the records, was the result of the sedentary lifestyle of the applicant as the applicant was overweight

since 1999. It is pertinent to note that the applicant has constantly been overweight ranging between 6-14 kgs. during the period from 09.06.1999 to 27.06.2020, with his actual weight ranging between 76-86 kgs. as against the Ideal weight of 71-72 Kgs. However, for a few years before the onset of the disability of Primary Hypertension, the applicant is found to be overweight by approximately 10-12 kgs., with his Actual weight being 83 kgs. on 19.11.2014 as against the Ideal weight of 72 kgs.

21. It is well settled that a litigant cannot take advantage of his own wrong. This is based on the Latin maxim '*Commodum ex injuria sua nemo habere debet*'. The Hon'ble Supreme Court in ***Kusheshwar Prasad Singh vs State of Bihar & Ors. (2007) 11 SCC 447*** has held that, "*it is settled principle of law that a man cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, 'a wrong doer ought not to be permitted to make a profit out of his own wrong'.*" In the instant case, the applicant, despite repeated

caution and advice from the medical authorities, had not taken any steps towards reducing the excess weight as is evident from the weight chart reproduced above and therefore, has become personally accountable for the disability. The applicant cannot be permitted to take advantage of his own inaction in reducing his excess weight and thereafter claim disability pension.

22. At this juncture it is also pertinent to refer to Army Order (AO) 3/2001 relating to the Health Care System in the Army- Instruction for Medical Examination and Categorisation of Serving JCOs/ORs. PART IV (a) of the said policy is reproduced as under-

POLICY ON DISPOSAL OF OVERWEIGHT JCOS, NCOS AND OR

20. During ME of JCOS, NCOS and OR, the body weight will be checked as per the age, height and weight chart published at Appx 'A to this Order and disposal will be as under:-

(a) (i) If weight is more than 10 per cent but less than 20 per cent over and above the ideal body weight (IBW), the individual has no symptoms/signs of any disease and no abnormality is detected even after investigations, the individual will be advised in writing in the sick report book to reduce his weight within 12 weeks by strict dieting and physical exercises.

(ii) After 12 weeks, if the individual, has not brought down his body weight to less than 10 percent over and above his IBW, he will be placed in medical category P2(T-24)

(iii) At the end of one year, if the individual continues to be overweight by more than 10 per cent over his IBW, he will be downgraded to category P- 2(Perm) and will be debarred from promotion to the next higher rank.

(iv) After the individual is placed in permanent LMC for obesity, no sheltered employment will be given. After contractual period of service individuals may be released from service as per AR-13

23. The respondents in this case have acted in consonance with the aforesaid policy and placed the applicant in low medical category A4G4 (temp.) vide AFMSF-15 on 19.11.2014. However, upon subsequent review, the applicant's medical category was upgraded from A4G4 (temp.) to A4G2 (Permanent) vide AFMSF-15 on 29.10.2015. It is evident from successive medical examinations that the applicant had a risk factor which was well within his control but he did not address the concerns despite repeated advice from the medical authority and therefore, he has contributed towards the possible development of Primary Hypertension in our considered opinion. It is also likely that the applicant would not have contacted the disability if he had not gained weight. Hence, the disability of the applicant cannot be held to be aggravated or attributable to service conditions and is a result of his own neglect.

24. The issue of Lifestyle diseases and attributability to Military Service was brought to the fore wherein the AFT (RB) Jaipur vide its Order dated 9.12.2021 in OA No.102/2011 in the case of

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Cdr Birbal Singh (Retd) vs UoI & Ors denied Disability Pension benefits to a Naval Officer who superannuated from the Indian Navy after nearly 28 years of Service and who had claimed Disability on account of (i) Overweight, (ii) Dyslipidemia, (iii) Coronary Artery Disease. The Hon'ble Apex Court upheld the Order of the AFT (RB), Jaipur vide its order dated 12.7.2022 in Civil Appeal No.4699 of 2022 wherein it found no grounds to interfere with the AFT Order dated 9.12.2021. Extracts of the AFT Order (supra) is given below:

Para 7 : On perusal of Release Medical Board (Annexure R/5), it is found that the the Applicants disabilities, viz (i) Coronary Artery Disease (Antistemi, DVD, Pamilad, PCI-Ramus), (ii) Dyslipidaemia, and (iii) Obesity were assessed at 50%, 6-10% and 1-5% respectively and Composite Disability was assessed at 60% for life and Disability Qualifying for Pension was assessed as NIL. In the Medical Case Sheet, at Page No 93 of Release Medical Board, in the Personal History it is clearly mentioned "53 year old Serving Officer a case of CAD-ANT STEMI, DVD, PAMI-LAD, PCI-RAMUS (26/04/2010) has come after 4 weeks of Sick Leave. He is also in LMC for Obesity and Dyslipidemia (Since Sep 2001)"..... "Chronic Smoker x 38 years (10 Cig/day), Chronic Alcoholic (twice a week 2 pegs) x 38 years"..... weight 92 kg....". The Perusal of Medical Case Sheet clearly establishes that the Officer was Obese since 2001. Obesity is a lifestyle disease of a particular individual and it is common amongst the persons who do not exercise dietary discipline or undertake physical exercise. The disease Dyslipidemia is also a disorder of lipid metabolism and being a metabolic disorder, it is related to dietary habits and discretion and has no

relationship to service conditions. Subsequently, nine years later, he was diagnosed as Coronary Artery Disease (Anti Stemi, DVD, Pamilad, PCI-Ramus) on 26.04.2010 which is offshoot of the disability of Obesity, and thus these cannot be, by any stretch of imagination, regarded due to military service. More importantly, a soldier has a special responsibility to keep himself fully fit. Being overweight to the extent of being placed in Lower Medical Category of Obesity for nine years amounts to being negligent towards one's own health and also amounts to an invitation to lifestyle disease like Coronary Artery Disease. The Applicant was repeatedly advised by the medical authorities during Re-categorisation and Annual Medical Examination to reduce weight by diet control and regular exercise due to Obesity, however, which was ignored. The fact is mentioned clearly in Medical Case Sheet that the Applicant is a Chronic Smoker and Chronic Alcoholic for 38 years which clearly establishes that the diseases suffered by the Applicant were due to sheer negligence on part of the Applicant and are clearly not Attributable to or Aggravated by Service.

Para 9 : From the above, it is clear that the Diseases suffered by the Applicant have no causal connection to the Service. The Release Medical Board has rightly considered the Disability as NANA and we find no infirmity in its proceedings. Therefore, the Applicant is not entitled for grant of Disability Element of Pension. The Application is devoid of merit, hence Dismissed.

25. Therefore, having analysed the entire case of the applicant we cannot shy away from the fact, that the disability of 'Primary Hypertension' in this particular case is caused due to lifestyle factors and failure in maintaining the ideal body weight which can be managed by the applicant by regular exercise and restricting diet,


and the fact that the applicant is overweight from a long time signifies that the applicant has himself invited the disability. Thus, in such a case, it would be grossly unjustified for us to ignore the aforesaid facts and grant him benefit for his own wrong doings.

26. Consequently, the O.A. 1286/2022 is disallowed.

27. Pending Miscellaneous application, if any, stands closed.

28. No order as to costs.

Pronounced in the open Court on 27 day of September, 2023.


[RAJENDRA MENON]
CHAIRPERSON

[C.P. MOHANTY]
MEMBER (A)

/ps/