

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

Suppl.

1.

OA 1306/2019

Col Yogesh Jain (Retd)

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Mr. Rajiv Manglik, Advocate

For Respondents : Ms. Jyotsna Kaushik, Advocate

CORAM

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

HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER

08.12.2023

Vide our detailed order of even date, we have allowed the OA 1306/2019. 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)

(LT GEN C.P. MOHANTY)
MEMBER (A)

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ORDER

1. The applicant vide the present O.A 1306/2019 has made the following prayers:-

- “(a) To declare the action of the respondents as unjust, arbitrary and illegal; and*
- (b) To quash and set orders dated 03 May 2019, 21 Jun 2018 and 30 Nov 2016; and*
- (b) To Direct respondents to grant the disability pension to the applicant after granting the benefit of rounding of disability of the applicant from 30% to 50% and disability element of disability pension after rounding off the disability to 50% in terms of letter dated 31 Jan 2001; and*
- (c) To direct the respondents to commute the disability element of the disability pension and pay the arrears of the disability element of the disability from the date of retirement, i.e. 01 Apr 2017; and*
- (d) To grant an interest of 18% on the arrears; and*

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(e) To award exemplary costs upon the Respondents in the facts and circumstances of the record; and
(f) To pass such further order or orders, direction/directions as this Hon'ble Tribunal may deem fit and proper in accordance with law."

2. The applicant IC-44962K Col Yogesh Jain(Retd) was commissioned in the Army on 13.06.1987 and retired from service on 31.03.2017(A/N) on reaching the age of superannuation. At the time of retirement, since the officer was in low medical category, he was brought before a duly constituted Release Medical Board on 14.09.2016. The RMB assessed the disability of the applicant of Primary Hypertension with the percentage of disablement @30% for life with Nil assessment qualifying for disability pension. The percentage of disablement in the said RMB is as under:-

“

6. What is present degree of disease/disablement as compared with a healthy person of the same age and sex?(Percentage will be expressed as Nil or as follows) 5%,10%,15% and thereafter in multiples of ten from 20% to 100%				
Disease/Disability (As numbered in Para 1 Part VI)	Percentage of disablement	Composite assessment for all disabilities (Max 100%) with duration	Disability Percentage Qualifying for Disability Pension with duration	Net Assessment Qualifying for disability Pension (Max 100%) with duration
(a)Primary Hypertension I-10	30% for life	30% for life	NIL for life	NIL for life

”

3. Furthermore, the RMB opined the said disability of the applicant as being neither attributable to nor aggravated(NANA) by military service as under:-

“

PART-V
OPINION OF THE MEDICAL BOARD

1. Causal relationship of the disability with Service conditions or otherwise.				
Disability	Attributable to service (Y/N)	Aggravated by Service (Y/N)	Not Connected with Service (Y/N)	Reason/Cause/Specific Condition & period in Service
Primary Hypertension I-10	N	N	Y	Onset of ID is in peace station. Hence ID is conceded NANA.
Note: A Disability "Not Connected with Service" would be neither Attributable nor aggravated by Service. (Auth:- Para 43 to Chapter VI GMO 2008)				

”

4. The onset of the disability is reflected in Part-IV in the Statement of Case of the said RMB as under:-

“

PART-IV
STATEMENT OF CASE

1. Chronological list of the disease/disabilities:

Disabilities	Date of Origin	Rank of the Indl	Place and Unit where serving at the time
(a)Primary Hypertension I-10	Feb 2016	Col	Bikaner(7 Raj Bn NCC Bikaner)

”

5. The applicant's posting profile in Part-1 of his Personal Statement in the RMB dated 14.09.2017 is as under:-

PART I PERSONAL STATEMENT									
1. Give details of the service (P=Peace OR F= Field/Operational/Sea Service)									
SL. NO	FROM	TO	PLACE/SHIP	P/F (HAA/Ops/Sea service /others)	SL. NO	FROM	TO	PLACE/SHIP	P/F (HAA/Ops/Sea service/ others)
(i)	13.06.87	02.02.88	Jammu	P	(ii)	03.02.88	15.08.88	Mhow	P
(iii)	16.05.88	21.06.90	Jammu	P	(iv)	22.06.90	10.03.91	Mhow	P
(v)	11.03.91	09.07.94	Dinjan	F	(vi)	10.07.94	15.06.97	Chandi Mandir	P
(vii)	16.06.97	31.03.00	Rajouri	F	(viii)	01.04.00	27.05.02	Jodhpur	P
(ix)	28.05.02	31.03.04	Mathura	P	(x)	01.04.04	30.12.06	Thiruvananthapuram	P
(xi)	31.12.06	31.07.07	Nagrota	MF/CI	(xii)	01.08.07	30.07.09	Delhi	P
(xiii)	31.07.09	08.12.11	Bikaner	P	(xiv)	09.12.11	29.11.14	Dibrugarh	F
(xv)	30.11.14	Till date	Bikaner	P					

6. The disability pension claim of the applicant was rejected in terms of Regulation 37 of the Pension Regulations for the Army, 2008 Part-1 in view of the RMB having opined the disability as being neither attributable to nor aggravated by military service and the applicant was informed of the same vide Letter no, AG/PS-4/13302/IC-44962K/SIGS/MP-6(C)/615/2016/AG/PS-4(Imp-I) dated 30.11.2016. The First appeal dated 24.03.2017 filed by the applicant against rejection of his disability claim was rejected by the Appellate Committee on First Appeal (ACFA) vide Letter no. 13302/IC-

44962K/SIGS/MP-6(C)/83/2017/Appeal/AG/PS-4(Imp-II)dated

21.06.2018, with the following reasons as under:-

“

S.No	Disability(es)	Reason(s)
(i)	PRIMARY HYPERTENSION	ID is an life style disorder and is per se not attributable to mil service. Onset of ID was in a peace station. Hence, the ID is conceded as neither attributable to nor aggravated by mil service in terms of Para 43, Chapter VI, GMO 2002/2008 and ER-2008.

”

7. The second appeal dated 18.09.2018 filed by the Applicant was rejected vide letter no. B/38046A/438/2018/AG/PS-4(2nd Appeal) dated 03.05.2019 on the grounds:-

“Veteran officer was detected to have raised blood pressure in Feb 2016 at Bikaner (Peace) during routine medical examination. He was evaluated and was placed in low medical category and managed with anti-hypertensives. At RMB, he was normotensive on medication with no evidence of target organ damage. ID Primary Hypertension is an idiopathic disorder with a strong genetic preponderance and is per se not attributable to service, Aggravation is conceded when the onset of the ID is in Fd/CI Ops/HAA/afloat service. In the Instant case, onset was in a peace station and no stressors of service were documented. The veteran has claimed in his appeal that the ID was detected during his Fd tenure at Dibrugarh from Dec 2011 to Nov 2014. However, there is no documentary support placed on file corroborating the same. Moreover, the ID was incidentally detected during routine medical examination in Feb 2016, 1½ years after de-inducting from field area. There was no worsening of ID after onset till RMB. Hence, ID is conceded as neither attributable to nor aggravated by military service (Para 43, Chap VI, GMO 2002, amendment 2008).”

CONTENTIONS OF THE PARTIES

8. The applicant submits that he joined the Corps of Signals in the Indian Army on 13.06.1987 in a fit medical category without any no note of any disability recorded on the records of the respondents and thus submits that the disability that he suffers from has to be held attributable to and aggravated by military service, in terms of the verdict of the Hon'ble Supreme Court in *Dharamvir Singh Vs. Union Of India & Ors* (Civil Appeal No. 4949/2013). Inter alia, the applicant places reliance on observations on the guiding canons laid down by the Hon'ble Supreme Court in Para-28 which are to the effect:-

"28. A conjoint reading of various provisions, reproduced above, makes it clear that:

- (i) Disability pension to be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable or aggravated by military service to be determined under "Entitlement Rules for Casualty Pensionary Awards, 1982" of Appendix-II (Regulation 173).*
- (ii) A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service. [Rule 5 r/w Rule 14(b)].*
- (iii) Onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a*

right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally. (Rule 9).

(iv) If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service. [Rule 14(c)].

(v) If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service. [14(b)].

(vi) If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons. [14(b)]; and

(vii) It is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II of the "Guide to Medical (Military Pension), 2002 – "Entitlement: General Principles", including paragraph 7,8 and 9 as referred to above."

Likewise, reliance was placed on behalf of the applicant on the Letter No. 1(2)/97/D(Pen-C) dated 31.01.2001 to contend to similar effect.

9. The applicant has further submitted to the effect that his posting profile as adverted to herein above in Para-5 indicates that he was posted from 11.03.1991 to 09.07.1994 at Dinjan, from 16.06.1997 to 31.03.2000 at Rajouri, from 31.12.2006 to 31.07.2007 at Nagrota, Mod Fd/CI and from 09.12.2011 to 29.11.2014 at Dibrugarh i.e. all of which are field postings and it is further been submitted on behalf of the applicant that the onset of disability of Primary Hypertension was on 17.02.2016; about 1½ years from his

14th posting which was a field posting at Dibrugarh from 09.12.2011 to 29.11.2014. The applicant thus submits that the onset of the disability of Primary Hypertension was due to the stress and strain of military service which was also so reflected through the statement of Commanding Officer of the applicant dated 11.08.2016 wherein the applicant had joined the said unit on 13.11.2014, with the Commanding Officer having stated to the effect:-

“5. Did the duties involve Service/Exceptional stress and strain? Yes

(a) Since when : 30 Nov 2014

(b) On special day/occasions: --- ”,

thus, making it apparent that the duties of the applicant who was a CO in the Signals Regt were stressful and strenuous. Inter alia, it was submitted on behalf of the applicant that Regulation 423 of the Regulations for the Medical Services of the Armed Forces Personnel, 2010 brings forth that it is immaterial whether the Armed Forces Personnel posted in a peace area, CI Ops/HAA or Field area at the time of onset of the disability and what is required to be established is the existence of a causal connection between military service and the onset of the disability which the applicant submits is clearly brought forth through the facts and circumstances of the instant case.

10. On behalf of the respondents it was submitted that the RMB had opined the disability of the applicant to be neither attributable to nor aggravated by military service and that the said opinion of the medical authority was required to be given due weight and credence. Inter alia, it was submitted on behalf of the respondents that both the first and second appeal of the applicant had been rejected in as much as the disability was a lifestyle disorder and *per se* not attributable to military service and that though the applicant had contended in his second appeal that the ID was detected during his field tenure at Dibrugarh from December, 2011 to November, 2014 and there was no documentary support in relation thereto and that the ID was incidentally detected during routine medical examination in February 2016 i.e. after approximately 1½ years after de-inducting from the field area and that there was no worsening of the ID after the onset of the RMB. The respondents thus prayed that the present OA be dismissed.

ANALYSIS

11. 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*.

12. 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:-

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

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

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

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

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

11. Aggravation:

A disability shall be conceded aggravated by service if its onset is hastened or the subsequent course is worsened by specific conditions of military service, such as posted in places of extreme climatic conditions, environmental

factors related to service conditions e.g. Fields, Operations, High Altitudes etc.”
(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.

13. Regulation 423 of the Regulations for the Medical Services of the Armed Forces 2010, provides to the effect:-

“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.

has not been obliterated.

14. The verdict of the Hon'ble Supreme Court in ***Dharamvir Singh Vs. UOI & Ors.*** vide Para-33 thereof, also stipulates to the effect:-

"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." - (emphasis supplied)

15. It is essential to advert to Para-43 of Chapter-VI of Clinical Aspects of certain diseases of GMO(MP), 2008, which relates to Hypertension which reads as under:-

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

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

The same itself is a clear indicator that stress and strain are causative factors of the onset of the disability of Primary hypertension and in the facts and circumstances of the instant case, it cannot be overlooked that the applicant was posted on three field postings and one Modified Field/Counter Insurgency posting with the total duration of such postings being 3½ years, 2½ years, 7 months and 3 years i.e. total period of about 9 years 7 months on field postings and difficult terrains, coupled with the factum that the onset of the disability of Primary Hypertension was on 17.02.2016 i.e. 1½ years after his 14th posting from 09.12.2011 to 29.11.2014 at Dibrugarh, a field area. Thus in the instant case, where the statement of the Commanding

Officer dated 11.08.2016 specifically stipulated that the duties of the applicant involve service/exceptional stress and strain coupled with the factum that the Para-43 specifically stipulates to the effect:-

“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.”

and thus in the instant case, the applicant has had frequent spells of service in field/CI Ops areas for a duration of approximately 9 years 7 months, the probability of the disability of Primary Hypertension having had its onset due to stress and strain of military service, cannot be overlooked. In the circumstances of the instant case, though the disability of the applicant had its onset in a peace area, the same has to be held to be attributable to military service. In terms of Regulation 423 of the Regulations for the Medical Services of the Armed Forces 2010 itself, it is stipulated categorically to the effect that the arising of the onset of disabilities in the peace area/CI Ops Area/HAA or Field area *per se* is immaterial to the ascertain the aspect of attributability of a disability to military service and what is required to be established whether there exists a causal connection between the arising of the disabilities with military service or not. In these circumstances, it is thus held that the disability of the Primary Hypertension in the instant

case has to be held to be attributable to and aggravated by military service.

CONCLUSION

16. The OA 1306/2019 is allowed. The applicant is thus entitled to the grant of disability element of pension @30% for life for the disability of Primary Hypertension with rounding off to 50% for life, from the date of discharge i.e. 31.03.2017, which in terms of the verdict of the Hon'ble Supreme Court in *UOI & Ors. vs Ramavtar* in Civil Appeal No. 418/2012.

17. The respondents are thus directed to calculate, sanction and issue the necessary PPO to the applicant within a period of three months from the date of receipt of copy of this order and the amount of arrears shall be paid by the respondents, failing which the applicant will be entitled for interest @6% p.a. from the date of receipt of copy of the order by the respondents.

Pronounced in the open Court on the 8 day of Decembers, 2023.

[LT. GEN. C.P. MOHANTY]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/TS/