

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

3.

OA 1404/2019 with MA 2157/2019

Ex MWO (HFO) Bharat Tiwari
VERSUS

..... Applicant

Union of India and Ors.

..... Respondents

For Applicant : Mr. Ved Prakash, Advocate
For Respondents : Mr RS Chillar, proxy for Mr. K K Tyagi,
Advocate

CORAM

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

ORDER
21.11.2023

Vide our detailed order of even date, we have allowed the OA 1404/2019. 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)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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

OA 1404/2019

EX MWO (HFO) Bharat Tiwari

... Applicant

Versus

Union of India &Ors.

... Respondents

For Applicant : Mr. Ved Prakash, Advocate

For Respondents : Mr. K.K. Tyagi, advocate

CORAM :

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

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant vide the present OA makes the following prayers:-

“(a) Quash the Impugned Orders No. Air HQ/99798//1/649723/DAV/DP/CC dated 30.07.2019 and Impugned letter No. Air HQ/99798/1/649723/07/16/DAV(DP/RMB) dated 14.01.2016.

(b) Direct the respondents to grant disability element of pension duly rounded off to 50% w.e.f his date of discharge.

(c) Direct respondents to pay the due arrears of disability element of pension with interest @12% p.a from the date of retirement with all consequential benefits.

(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of

the case along with cost of the application in favour of the applicant and against the respondents."

BRIEF FACTS

2. The applicant was enrolled in the Indian Air Force on 27.11.1978 and discharged from the Air Force service on 31.07.2016 under the clause "On attaining the age of superannuation" after rendering 37 years and 248 days of regular service. The Release Medical Board dated 01.09.2015 held that the applicant was fit to be discharged from service in low medical category A4G2 (P) for the disability of Diabetes Mellitus Type-II @20% and Anaemia (Microcytic Hypochromic) @ 15-19% compositely assessed @ 40% for life while the qualifying element for disability was recorded as NIL for life on account of the disability being treated as neither attributable to nor aggravated by military service.

3. On adjudication, the AOC AFRO upheld the recommendations of the RMB and rejected the disability pension claim vide letter No. RO/3305/3/Med dated 30.11.2015. The outcome was communicated to the applicant vide letter no Air HQ 99798/1/649723/07/16/DAV/DP/RMB dated 14.01.2016 with an advice that the applicant may prefer an appeal to the Appellate Committee within six months from the date of receipt of the letter. The applicant served a Legal Notice cum Representation/Appeal dated 30.06.2019 which was replied to by the respondents vide letter no Air HQ/99798/1/649723/DAV/DP/CC dated 30.07.2019. Aggrieved by the

response of the respondents, the applicant has approached this Tribunal. In the interest of justice, it is considered appropriate to take up the present OA for consideration, in terms of Section 21(1) of the AFT, Act 2007.

CONTENTIONS OF THE PARTIES

4. The learned counsel for the applicant submitted that the prayer made in the present OA is confined to the grant of the disability element of pension in relation to Type 2 Diabetes Mellitus @ 20% for life and the prayer made for the grant of the disability element of pension in relation to the disability of Anemia (Microcytic Hypocromic) @ 15-19% is not pressed.

5. Placing reliance on the judgment of the Hon'ble Supreme Court in *Dharamvir Singh v. UOI & Ors [2013 (7) SCC 36]*, the learned counsel for the applicant submitted that no note of any disability was recorded in the service documents of the applicant at the time of the entry into the service, and that he served in the Air Force at various places in different environmental and service conditions in his prolonged service, thereby, any disability at the time of his service is deemed to be attributable to or aggravated by military service.

6. The learned counsel for the applicant also placed reliance on the verdicts of the Hon'ble Supreme Court in the case of *Union of India & Anr. Vs Rajbir* Civil Appeal No. 2904/2011 decided on 13.02.2015,

Union of India & Ors. Vs. Ram Avtar Civil Appeal No 418/2012 decided on 10.12.2014, Civil Appeal No.5605/2010 titled *Sukhvinder Singh Vs. Union of India* (2014 STPL (web) 468 SC) decided on 25.06.2014 and on *Union of India & Ors. Vs. Angad Singh Titaria* (AIR 2015 SC 1898) along with various orders passed by the Tribunal, wherein similarly situated personnel was given relief.

7. Per contra, the learned counsel for the Respondents submits that under the provisions of Rule 153 of the Pension Regulations for the Indian Air Force, 1961 (Part-I), the primary condition for the grant of disability pension is invalidation out of service on account of a disability which is attributable to or aggravated by Air Force service and is assessed @ 20% or more. In other words, disability pension is granted to those who fulfill the following two criteria simultaneously:-

(i) Disability must be either attributable to or aggravated by service.

(ii) Degree of disablement should be assessed at 20% or more.

The learned counsel further submits that the RMB has assessed the applicant's disability as neither attributable to nor aggravated by service that does not fulfill the criteria (i) as above and hence the applicant is not entitled for grant of disability pension in accordance with prevailing rules and policies.

ANALYSIS

8. We find that the applicant has suffered from two disabilities viz. Type 2 Diabetes Mellitus (Old) @20% and Anaemia (Microcytic Hypochromic) @ 15-19% compositely assessed @ 40% for life. In so far as the disability of Anemia (Microcytic Hypochromic) @ 15-19% is concerned, the learned counsel for the applicant did not press for it.

9. On the careful perusal of the material available on record and also the submissions made on behalf of the parties, we are of the view that it is not in dispute that the extent of disability of the applicant for Type 2 Diabetes Mellitus (Old) was assessed to be 20% which is the bare minimum for grant of disability pension in terms of Regulation 153 of the Pension Regulations for the Indian Air Force, 1961 (Part-I). The only question that arises is whether disability suffered by the applicant was attributable to or aggravated by military service.

10. The issue of attributability of the disease is no longer *res integra* in view of the verdict of the Hon'ble Apex Court in ***Dharamvir Singh v. Union of India (supra)***, wherein it is clearly spelt out that any disease contracted during service is presumed to be attributable to military service, if there is no record of any ailment at the time of commission into the Military Service.

11. Applying the above parameters to the case at hand, we are of the view that the applicant has been discharged from service in low medical category on account of medical disease/disability, - the disability must be

presumed to have arisen in the course of service which must, in the absence of any reason recorded by the Medical Board, be presumed to have been attributable to or aggravated by air force service. Furthermore, Regulation 423(a) of the Regulations for the Medical Services of the Armed Forces 2010 which relates to 'Attributability to Service' provides as under:-

"423. (a). For the purpose of determining whether the cause of a disability or death resulting from disease is or not attributable to Service. It is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a Field Area/Active Service area or under normal peace conditions. It is however, essential to establish whether the disability or death bore a causal connection with the service conditions. All evidences both direct and circumstantial will be taken into account and benefit of reasonable doubt, if any, will be given to the individual. The evidence to be accepted as reasonable doubt for the purpose of these instructions should be of a degree of cogency, which though not reaching certainty, nevertheless carries a high degree of probability. In this connection, it will be remembered that proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. If the evidence is so strong against an individual as to leave only a remote possibility in his/her favor, which can be dismissed with the sentence "of course it is possible but not in the least probable" the case is proved beyond reasonable doubt. If on the other hand, the evidence be so evenly balanced as to render impracticable a determinate conclusion one way or the other, then the case would be one in which the benefit of

*the doubt could be given more liberally to the individual, in case occurring in Field Service/Active Service areas.
(emphasis supplied),__*

has not been obliterated.

12. Furthermore, Para 26, Chapter VI of the Guide to Medical Officers (Military Pensions), 2008 reads as under:-

"26. Diabetes Mellitus

This is a metabolic disease characterised by hyperglycemia due to absolute/relative deficiency of insulin and associated with long term complications called

microangiopathy (retinopathy, nephropathy and neuropathy) and macroangiopathy.

There are two types of Primary diabetes, Type 1 and Type 2. Type 1 diabetes results from severe and acute destruction of Beta cells of pancreas by autoimmunity brought about by various infections including viruses and other environmental toxins in the background of genetic susceptibility. Type 2 diabetes is not HLA-linked and autoimmune destruction does not play a role.

Secondary diabetes can be due to drugs or due to trauma to pancreas or brain surgery or otherwise. Rarely, it can be due to diseases of pituitary, thyroid and adrenal gland. Diabetes arises in close time relationship to service out of infection, trauma, and post surgery and post drug therapy be considered attributable.

*Type 1 Diabetes results from acute beta cell destruction by immunological injury resulting from the interaction of certain acute viral infections and genetic beta cell susceptibility. If such a relationship from clinical presentation is forthcoming, then Type 1 Diabetes mellitus should be made attributable to service. Type 2 diabetes is considered a life style disease. **Stress and strain, improper diet non-compliance to therapeutic measures because of service reasons, sedentary life style are the known factors which can precipitate diabetes or cause uncontrolled diabetic state.***

Type 2 Diabetes Mellitus will be conceded aggravated if onset occurs while serving in Field, CIOPS, HAA and prolonged afloat service and having been diagnosed as Type 2 diabetes mellitus who are required serve in these areas.

Diabetes secondary to chronic pancreatitis due to alcohol dependence and gestational diabetes should not be considered attributable to service."

13. 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 contracted 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."

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 UOI &Ors***, dated 25.06.2014 reported in 2014 STPL (Web) 468 SC, ***UOI &Ors. vs Rajbir Singh*** (2015) 12 SCC 264 and ***UOI &Ors*** versus ***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.

14. It is also essential to observe that vide the verdict of the Hon'ble Supreme Court in Civil Appeal no. 5970/2019 titled as ***Commander RakeshPandevs UOI &Ors.***, dated on 28.11.2019, wherein the applicant thereof was suffering from **Non-Insulin Dependent Diabetes Mellitus(NIDDM)** and **Hyperlipidaemia**, the grant of disability pension for life @ 20% broad banded to 50% for life was upheld by the Hon'ble Supreme Court.

15. The disability of Type 2 Diabetes Mellitus (Old) in respect of HFO Brahmpal Sharma (Retd) even though had its origin in peace area but the disability was due to the stress and strain of service which occurred during active service in adverse conditions which has not been refuted by the respondents.

16. As regards the reliance placed by the respondents on the order dated 11.09.2023 of the AFT (RB) Chennai in OA No. 121/2021 in the case of Ex Sub M Vijayakannan Vs. Union of India & Ors., it is essential to observe that vide Para 16 thereof it was observed to the effect:-

“16. The Tribunal finds that not even an iota of evidence linking Military Service as a cause of attributability has been brought to the fore in this OA which gives us no leeway in considering a lenient view while deciding this case”,

which makes it apparent that the facts of that case are wholly distinguishable from the facts of the instant case and is wholly misplaced.

The onset of the disability of Diabetes Mellitus Type II in the instant case was in March 1991, after a period of about 13 years of enrolment of the applicant in the Indian Air Force on 27.11.1978, in his sixth posting. There is nothing that the respondents have placed on record to bring forth any contributory factors from the side of the applicant for causation of the said disability.

17. Regarding broadbanding benefits, we find that the Hon'ble Supreme Court in its order dated 10.12.2014 in *Union of India v. Ram Avtar, Civil Appeal No. 418 of 2012* and connected cases, has observed that individuals similarly placed as the applicant are entitled to rounding off the disability element of pension. We also find that the Government of India vide its Letter No. F.No.3(11)2010-D (Pen/Legal) Pt V, Ministry of

- Defence dated 18th April 2016 has issued instructions for implementation of the Hon'ble Supreme Court order dated 10.12.2014 (supra).

CONCLUSION

18. Therefore, in view of our analysis, the OA 1404/2019 is allowed and the Respondents are directed to **grant benefit of disability element of pension @20% for life** (for Type 2 Diabetes Mellitus (old), rounded off to 50% for life in view of judgment of the Hon'ble Apex Court in **Union of India versus Ram Avtar (supra)** from the date of discharge i.e. 31.10.2017. The arrears shall be disbursed to the applicant within three months of receipt of this order failing which it shall earn interest @ 6% p.a. till the actual date of payment. However, in as much as the instant OA has been filed with delay, the arrears in view of the verdict of **UOI & Ors Vs Tarsem Singh (supra)** has to commence from the period of three years prior to institution of the present OA, instituted on 20.08.2019.

19. No order as to costs.

Pronounced in the open Court on 21st day of November, 2023.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)