

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

B.  
OA 1516/2019

Ex MWO Shiw Shankar Prasad Gupta ..... Applicant  
VERSUS  
Union of India and Ors. .... Respondents

For Applicant : Mr. Baljeet Singh, Advocate  
For Respondents : Mr. Arvind Patel, Advocate

CORAM

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

ORDER  
31.10.2023

Vide our detailed order of even date; we have allowed the OA 1516/2019. 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)

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

**ORDER**

**OA 1516/2019**

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

*(a) To set aside the impugned order dated Air HQ/99798/5/207/2018/670153/DP/AV-III*

*(Appeals)26.06.2019.*

*(b) To direct the respondents to grant the disability pension @30% with effect from the date of discharge for life by considering the disability 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% (30% to be rounded off to 50%) with effect from the date of discharge with all consequential benefits.*

*(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. The applicant Ex MWO Shiw Shankar Prasad Gupta No. 670153 was enrolled in the Indian Air Force on 30.05.1979 and discharged from service on 31.03.2017 under the clause "On attaining the age of superannuation" after rendering total 37 years and 306 days of regular service. The applicant reported to SMC on 17.04.2011 while serving at AF Stn Adampur with complaints of chest pain and uneasiness while walking. The applicant was evaluated and managed at MH Jalandhar and AH (R&R) and he was diagnosed ID-Coronary Artery Disease and managed surgically by the cardiologist. His initial Medical Board was held at 8 Wing, AF vide AFMSF-15 dated 08.06.2011 which recommended the applicant to be placed in LMC A4G4 (T24). During subsequent review, he was placed in LMC A4G4(P) vide AFMSF-15 dated 02.04.2012. The Release Medical Board not solely on medical ground was held at HQ WAC(U), IAF vide AFMSF-16 dated 20.07.2016 which found him fit to be released from service in LMC A4G2(P) for the ID Coronary Artery Disease. RMB has considered his disability as neither attributable to nor aggravated by service.

3. The opinion of the Medical Board in Part V of the RMB is as under :-

“

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

1. Casual Relationship of the Disability with service conditions or otherwise						
Disability	Attributable	Aggravated	Not connected	Reason/	cause/	specific

	to service (Y/N)	by service (Y/N)	with service (Y/N)	condition and period in service
CAD (Old) I-21.1, Z09.0	NO	NO	YES	The disability (CAD) with onset Apr 2011 while posted on peace station (8Wing, Admapur). The disability is considered as neither attributable to nor aggravated by service as per Charter of duties dated 27 Jun 2011.

4. The RMB thus opined the disability of the applicant to be neither attributable to nor aggravated by military service also so held in terms of the Charter of Duties of the applicant dated 27.06.2011 with it having had its onset in a peace station. The said Charter of Duties of the applicant was reflected in Part II of Appendix D annexed to the RMB it as stated as under :-

“ **II Charter of Duties**

Day of week	Date	Hours		Duties performed on call/off duty
		Active Duty	Rest Period	
Sunday	03 Apr 11	-	0715-0715	Nil
Monday	04 Apr 11	0715-1415	1415-0715	Nil
Tuesday	05 Apr 11	0715-1415	1415-1515	Nil
		1515-1715	1715-0715	Nil
Wednesday	06 Apr 11	0715-1415	1415-2030	Nil
		2030-0715	-	Nil
Thursday	07 Apr 11	-	-	Nil
Friday	08 Apr 11	0715-1415	1415-0715	Nil
Saturday	09 Apr 11	0715-1415	1415-2030	Nil
		2030-0715	-	Nil
Sunday	10 Apr 11	0715-1200	1200-1415	Nil
		1415-2030	2030-0715	Nil
Monday	11 Apr 11	0715-1415	1415-0715	Nil
Tuesday	12 Apr 11	0715-1415	1415-2030	Nil
		2030-0715	-	Nil
Wednesday	13 Apr 11	-	-	Nil



		1415-2030	-	Nil
Thursday	14 Apr 11	-	0715-0715	Nil
Friday	15 Apr 11	0715-1415	1415-0715	Nil
Saturday	16 Apr 11	-	0715-0715	Nil
Sunday	17 Apr 11	-	0715-1930	Nil

5. The onset of the disability is reflected in Part IV in the statement of the case in the RMB as under :-

“  
**PART IV**  
**STATEMENT OF CASE**

1. Chronological list of disabilities.

Disabilities	Date of origin/rank	Place and unit where serving at the time
CAD (Old) I-21.1, Z09.0	17 Apr 11/WO	Adampur/8 Wing, AF

6. The RMB however, assessed the disability of the applicant of ID-ID Coronary Artery Disease (Old) I-21.1, Z09.0 with a disablement percentage of 30% for life with the net assessment qualifying for the disability pension at NIL as under:-

6. What is present degree of disablement as compared with a healthy person of the same age and Sex? (Percentage will be expressed as Nil or as follows): 1-5%, 6-10%, 11-14%, 15-19% and thereafter in multiples of ten from 20% to 100%					
Disability As numbered in question I to IV	Percentage of disablement with duration	Composite assessment for all disabilities with duration (Max 100%)	Disability qualifying for disability pension with duration	Net assessment qualifying for disability pension (Max 100% with duration)	
CAD (Old) I-21.1, Z09.0	30% life long	30% life long	Nil	Nil	

7. On adjudication, AOC AFRO upheld the recommendations of the RMB and rejected the disability pension claim vide letter No. RO/3305/3/Med dated 24.11.2016 and the applicant was informed of the same vide letter dated 17.03.2017 vide which the applicant was apprised that his disability had been found to be as being neither attributable to nor aggravated by military service by the RMB proceedings with an advise that he may prefer an appeal within six months if not satisfied, the First Appeal filed by the applicant dated 29.05.2017 against rejection of the disability pension claim was rejected vide the letter no. Air HQ/99798/207/2018/670153/DP/AV-III (Appeals) dated 26.06.2019 on the grounds with the reasons recorded to the effect :-

*"Attributability in CAD is conceded when there is evidence of underlying service related trauma, infection or in case of severe and exceptional stress and strain due to service compulsions. Attributability is also conceded when onset occurs while serving in Fd/CI Ops/HAA. Aggravation is conceded when the individual serves in such areas following onset of the ID. In the instant case, the onset of (D(i) was in peace station. He continued to serve in the peace thereafter. 14 day charter of duties preceding the onset of ID indicates that the individual was on leave prior to onset of ID. He was managed promptly and appropriately at a service hospital with no worsening of condition due to service factors. Hence the ID is conceded as being neither attributable to nor aggravated by service (Para 47, Chap VI, GMO 2002, amendment 2008)".*

8. The First Appellate Committee thus opined to the effect that the onset of the disability was in a peace station and that the applicant continued to serve in a peace station even thereafter, and that the 14 days Charter of Duties preceding the onset of the disability indicated that the applicant was on leave prior to the onset of the disability, that he had been managed promptly and appropriately at a service hospital with no worsening of condition due to service factors and thus the ID was neither attributable to nor aggravated by military service in terms of Para 47 of Chapter VI of the GMO (Military Pensions) 2002 as amended in 2008. The applicant was advised to file an second appeal against the rejection of his first appeal if required. No such second appeal was filed by the applicant. The applicant has submitted to the effect that his first appeal dated 29.05.2017 was rejected by the respondents vide the letter dated 26.06.2019 after a period of two years and thus the applicant had filed the present OA. In view of the said reasons put forth by the applicant as well as the factum that the present OA is pending since institution from 12.09.2019 we consider it appropriate to take up the OA consideration in terms of Section 21(1) of the AFT Act. 2007.

9. The applicant has submitted that the disease that he suffers from that is ID CAD develops due to stress and strain and submits that the genesis of the same was due to service conditions at the various Air Force

Stations where the applicant worked whilst posted as a Warrant Officer discharging duties of bills and budget in the trade of clerk accounts and that he was responsible for audits and internal checks of various sub sections of the account section whilst as being responsible for allocation of duties and supervision of a large number of a personnel working in the Account Section. *Inter alia* the applicant submits that he was also frequently detailed for Orderly Officer duties which involved night guard checks at odd hours.

10. *Inter alia* the applicant submits that he had been posted in different locations in different geographical conditions and the supply of ration and dietary compulsions including weather, geographical and social environments and the different nature of jobs were the causes of stress and strain due to military service.

11. *Inter alia* the applicant places reliance on the observations 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.*

12. The applicant also places reliance on the verdict of the Hon'ble Supreme Court in *Sukhvinder Singh Vs. Union Of India & Ors*, dated

25.06.2014 reported in 2014 STPL (Web) 468 SC therein in Para 9 to the effect :-

*“9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Thirdly, there appears to be no provisions authorising the discharge or invaliding out of service where the disability is below twenty per cent and seems to us to be logically so. Fourthly, wherever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension.”*

13. The applicant has further submitted to the effect that in the absence of any note of any disability having been recorded by the respondents on the records when he was inducted into the Indian Air Force after a thorough medical examination, it has to be held in terms of the verdict of the Hon'ble Supreme Court in ***Dharamvir Singh vs. Union of India & Ors.*** and ***Sukhvinder Singh Vs. Union Of India & Ors.*** that the disability that the applicant suffered from due to the stress and strain of military service in the absence of any cogent reasons having been given by the respondents to dispel the initial presumption in his favour.



14. *Inter alia* the applicant has also placed reliance in the verdict of the Hon'ble Supreme Court in ***Union of India & Ors. vs. Ram Avtar*** in Civil Appeal No. 418/2012 to submit to the effect that the disability of the applicant assessed at 30% for life rounded off to 50% for life and as per the Govt of India letter No. 1(2)/97/D(Pen-C) dated 31.01.2001 and GoI MoD letter No. 17(02)/2016-D(Pen/Pol) dated 04.09.2017.

15. On the other hand, the respondents through their counter affidavit dated 06.07.2020 submitted to the effect that in terms of Para 153 of the Pension Regulations for the IAF, 1961 (Part-I) the primary conditions thereof for the grant of the disability pension are that the disability either attributable to or aggravated by service and that the degree of disablement should be assessed at 20% or more but that in the instant case the RMB had assessed the disability as neither attributable to nor aggravated by Air Force service and thus the criteria required vide Rule 153 of the said Pension Regulations was not fulfilled and that the applicant is not entitled to the grant of the disability element of pension and thus consequentially no rounding off thereof can be granted. The respondents however do not refute that the applicant was inducted in a fit medical condition in the Indian Air Force but submit that mere occurrence of the disease in service does not mean that it happens due to service and submit that in terms of Para 47 of Chapter VI of the GMO 2008 it has been provided therein that



where neither immediate nor prolonged exceptional stress and strain of services is evident, in such cases the disease may be assumed to be the result of biological factors, heredity and way of life such as smoking. *Inter alia* the respondents submit that the applicant in the instant case was a Tobacco Chewer and had even been opined to be placed in LMC P3(T24) with the advice of Tobacco abstinence and that his initially medical board was held on 08.06.2011. The respondents submit that the disability of the applicant was neither attributable to nor aggravated by military service.

#### ***ANALYSIS***

16. On a consideration of the entire available record and submissions made on behalf of either side it is essential to observe that the disability of the applicant and its onset on 17.04.2011 after the induction of the applicant into the Indian Air Force on 30.05.1979 after more than 32 years of service in the 11<sup>th</sup> posting of the applicant when he was posted at Adampur/ 8 Wing from 25.09.2006 to 25.08.2011.

17. The paragraph 3 of the personal statement of the applicant is reflected in the RMB as under :-

3. Did you suffer from any disability mentioned in question 2 or anything like it before joining the Armed Forces? If so give details and dates. <b>NO N/A</b>
--

18. The posting profile of the applicant is indicated in Part I of the personal statement of the applicant as under :-

“

## PART- I

### PERSONAL STATEMENT

1. Give details of service (P-Peace Or F-Field/Operational/Sea service).									
Sl No.	From	To	Place/ Ship	P / F	S No.	From	To	Place/Ship	P / F
(i)	30.05.79	03.07.80	Belgaum/ ATS	P	(ii)	04.07.80	09.10.83	Tezpur/ Wing	11 P
(iii)	10.10.83	29.10.89	Delhi /810 SU	P	(iv)	30.10.89	15.09.91	Bangalore/ AFS Jalhalli	P
(v)	16.09.91	10.09.95	Sulur/109 SU	P	(vi)	11.09.95	21.05.00	Jodhpur/107 HU	P
(vii)	22.05.00	17.09.00	Gorakhpur/ 17 Wing	P	(viii)	18.09.00	30.11.01	Gorakhpur/ 105 HU	P
(ix)	01.12.01	21.09.03	Gorakhpur/ 17 Wingh	P	(x)	22.09.03	24.09.06	Nal/ 46 Wing	P
(xi)	25.09.06	25.08.11	Adampur/ 8 Wing	P	(xii)	26.08.11	13.09.12	Delhi/AFCAO	P
(xiii)	14.09.12	Till Date	DTE AV	P					

”

19. The paragraph 2, 3 and 5 (a), (b), (c) in Part V of the RMB are to the effect :-

“

2. Did the disability exist before entering service? (Y/N/ Could be) <b>NO</b>
3. In case the disability existed as the time of entry, is it possible that not be detected during the routine medical examination carried out at the time of entry. <b>N/A</b>
5. (a) Was the disability attributable to individuals won negligence or misconduct (If yes, in what way) <b>NO</b>
(b) If not attributable, was it aggravated by negligence or misconduct? <b>NO</b>
(c) Has the individual refused to undergo operation/treatment? <b>NO</b>
If so, individuals reason will be recorded
Note: In case of refusal of operation treatment a certificate from individual will be attached.

”

20. It is thus apparent that there is nothing on the records of the respondents to indicate that the applicant suffered from any disability whatsoever before induction into the Indian Air Force.

21. 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*.

22. As regards the contentions that the respondents have raised through the counter affidavit to the effect that the applicant was a Tobacco Chewer without putting on record that the disability of the applicant was due to the said Tobacco chewing, the said contention sought to be put forth by the respondents through the counter affidavit cannot be accepted. This is so as in terms of para 47 of the GMO (Military Pensions) if the factor of smoking in Ischaemic diseases is evident, neither attributability nor aggravation can be conceded. The applicant in the instant case however is not indicated to have been a smoker though it is stated that he

was a Tobacco chewer. It is also essential to observe that the diagnosis given in the RMB proceedings dated 20.07.2016 it is as under :-

**“Diagnosis: CORONARY ARTERY DISEASE I-21.1**

**Summary of the case:** 51 Yrs old serving air warrior reported to SMC on 17 Apr 2011 at 1930 hrs with complaints of chest pain and uneasiness while walking. ECG done at SMC revealed ST depression in lead II, III, aVf and V3-V6. He was transferred to MH Jalandhar on 17 Apr 2011 and placed on DIL. Patient was transferred to AH (R&R) on 20 Apr 2011. He was taken off from DIL on 20 Apr 2011. Individual was treated and sent on sick leave for four weeks from 30 Apr 2011 to 27 May 2011. On expiry of sick leave he was readmitted to MH Jalandhar for review on 27 May 2011 as advised by AH (R&R). He was opined by Col R Girish Senior Advisor (Medicine & Cardiology) on 04 Jun 2011 and recommended to be placed in low medical category P3 (T-24). He was transferred to SMC 08 Wing, AF on 06 Jun 2011 for holding medical board.

**Present Condition:** Asymptomatic. On medication with Tab Ecosprin 150 mg OD, Tab Clopidogrel 150 mg OD, Tab Atorvastatin 40 mg OD, Tab Metoprolol XL 50 mg OD, Tab Cardace 10 mg OD.”

23. Significantly, the investigations conducted state to inter alia to the effect :-

**“Negative for induced ischaemia X-ray chest PA View (11732) dated 02 Jun 2011- Cardiac structure and lung fields are clear.”**

Thus, though it has been stated that in the medical shape case sheet of the date 06.06.2011 that the applicant was a Tobacco Chewer and on 08.06.2011 he had been recommended Tobacco abstinence, there is

nothing stated in the opinion given by the Senior Advisor (Medicine & Cardiology) at MH Jalandhar to indicate that the disability of the applicant was due to chewing of tobacco in as much as, the investigations have revealed that the applicant was negative for induced ischaemia and that the Cardiac structure and lung fields are clear.

24. Reliance was placed on behalf of the respondents on the Para 47 of the GMO (Military Pensions) 2008 which read to the effect:-

*“ 47. Ischaemic Heart Disease (IHD). IHD is a spectrum of clinical disorders which includes asymptomatic IHD, chronic stable angina, unstable angina, acute myocardial infarction and sudden cardiac death (SCD) occurring as a result of the process of atherosclerosis. Plaque fissuring and rupture is followed by deposition of thrombus on the atheromatous plaque and a variable degree of occlusion of the coronary artery. A total occlusion results in myocardial infarction in the territory of the artery occluded. Prolonged stress and strain hastens atherosclerosis by triggering of neurohormonal mechanism and autonomic storms. It is now well established that autonomic nervous system disturbances precipitated by emotions, stress and strain, through the agency of catecholamines affect the lipid response, blood pressure, increased platelet aggregation, heart rate and produce ECG abnormality and arrhythmias. The service in field and high altitude areas apart from physical hardship imposes considerable mental stress of solitude and separation from family leaving the individual tense and anxious as quite often separation entails running of separate establishment, financial crisis, disturbance of child education and lack of security for family. Apart from this, compulsory group living restricts his freedom of activity. These factors jointly and severally can become a chronic source of mental stress and strain precipitating an attack of IHD. IHD arising in while serving in Field area/HAA/CI Ops area or during OPS in an indl who was previously in SHAPE-I will be considered as attributable to mil service. Entitlement in Ischemic heart disease will be decided as follows:- (a) Attributability will be conceded where:*

*A myocardial infarction arises during service in close time relationship to a service compulsion involving severe trauma or exceptional mental, emotional or physical strain, provided that the interval between the incident and the development of symptoms is approximately 24 to 48 hours. IHD arising in while serving in Field area/HAA/CI Ops area or during OPS in an indl who was previously in SHAPE-I will be considered as attributable to mil service. Attributability will also be conceded when the underlying disease is either embolus or thrombus arising out of trauma in case of boxers and surgery, infectious diseases. E.g. Infective endocarditis, exposure to HAA, extreme heat. (b) Aggravation will be conceded in cases in which there is evidence of:- IHD occurring in a setting of hypertension, diabetes and vasculitis, entitlement can be judged on its own merits and only aggravation will be conceded in these cases. Also aggravation may be conceded in persons having been diagnosed as IHD are required to perform duties in high altitude areas, field areas, counter insurgency areas, ships and submarines due to service compulsions. There would be cases where neither immediate nor prolonged exceptional stress and strain of service is evident. In such cases the disease may be assumed to be the result of biological factors, heredity and way of life such as indulging in risk factors e.g. smoking. Neither attributability nor aggravation can be conceded in such cases."*

25. The same itself specifies to the effect that prolonged stress and strain hastens atherosclerosis by triggering of neurohormonal mechanism and autonomic storms. **In the instant case the applicant had suffered from the disability which had its onset after 32 years of service in the Indian Air Force.** Apparently, the same has to be accepted as being a cause for the onset of the disability. As regards the contentions that the respondents seek to raise, placing reliance on the Charter of Duties of the applicant to contend to the effect for the period from 03.04.2011 to 17.04.2011 till the time of the onset of the disability on 17.04.2011, the



applicant had taken leave and thus there was no immediate stress and strain which resulted into the disability, it is essential to observe that the period of more than 32 years of service in the IAF is a factor indicating accumulative stress and strain during the course of military service. Significantly, in his first appeal dated 29.05.2017, the applicant had averred to the effect that the disability was due to being over burdened with work due to scarcity of staff as well as other problems like not getting leave on time.

26. In terms of para 47 of the GMO (Military Pensions) also adverted to hereinabove, it has been specifically stipulated to the effect that the aspect of separation of family leave the individual tensed and anxious, inter alia becoming a chronic source of neutral stress and strain, precipitating an attack of IHD. Undoubtedly, the said parameters in para 47 of the GMO (Military Pensions) 2008 are referred to where the Armed Forces Personnel was in field and high altitude areas and in the instant case the applicant was posted in a peace station at the time of the onset of the disability on 17.04.2011 and the applicant is not indicated to have been posted in any area other than peace area before and prior to after the onset of the disability. However, merely because the disability arose in a peace station does not suffice to dislodge to the factum that the disability of the applicant arose after 32 years of military service. It is essential to



observe that it has been laid down by the Hon'ble Supreme Court in *Dharamvir Singh vs. Union of India & Ors.* vide observations in Para 423 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."*

Further 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."*

26. It has thus to be held that the demarcation between a peace area or a field area or CIOPs area has virtually been obliterated in relation to the aspect of consideration of the onset of the disability and what is required to be established is the extent of a causal connection between the onset of a disability and military service.

27. 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. 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.

28. In the facts and circumstances in the instant case, it is thus held that the disability of the applicant ID Coronary Artery Disease (Old) I-21.1, Z09.0 was attributable to and was aggravated by military service.

## CONCLUSION

29. The OA 1516/2019 is allowed. The applicant is thus entitled to the grant of the disability element of pension in relation to the disability ID Coronary Artery Disease (Old) I-21.1, Z09.0 assessed @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 directed to be broad banded to 50% for life, from the date of discharge.

30. 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 3<sup>rd</sup> day of October, 2023.

[REAR ADMIRAL ~~DHREN~~ VIG]  
MEMBER (A)

[JUSTICE ANU MALHOTRA]  
MEMBER (J)

/yogita/