

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

OA No. 1534/2019

Gp Capt(TS) Chandrashekhar Prasad Gupta (Retd) ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Mr. Ajay Bhalla, Advocate

For Respondents : Mr. Rajeev Kumar, Advocate

CORAM :

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

HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

The applicant vide the present O.A 1534/2019 has made the following prayers:-

“(a) Setting aside of impugned order dated 11 July 2019(Annexure A-1)

“(b) To quash and set orders dated 03 May 2019, 21 Jun 2018 and 30 Nov 2016; and

“(b) Direction to the respondents to grant 30% of disability element of pension to the applicant after broadbanding the same to 50% as per Broad Band Policy w.e.f. 01.02.2019 with 9% interest per annum, on the arrears.

“(c) Any other/further relief as this Hon'ble Tribunal deems fit in the facts and circumstances of the case.”

2. The applicant Gp Capt (TS) Chandrashekhar Prasad Gupta (Retd)(18508) AE(L) after having undergone the primary medical examination at the AFCME, New Delhi on 16.06.1986 was declared fit and commissioned in the Indian Air Force on 25.08.1986 and released from service on attaining the age of superannuation on 31.01.2019. The Release Medical Board held on

20.04.2018 found the applicant suffering from Primary Hypertension with its onset in December, 2012 at Kanpur, a peace posting and thus the disability of the applicant was opined as neither being neither attributable to nor aggravated by military service though the disability was assessed with percentage of disablement @30% for life with the net qualifying element for disability pension as NIL.

3. The applicant's First Appeal dated 21.01.2019 against the rejection of his initial claim for the grant of the disability element of pension was rejected vide letter No. Air HQ/99797/4082/Dis/O/DAV01(B) dated 11.07.2019 with an advise to prefer a second appeal, if he so desired. The first appeal was rejected on the ground that the disability of Primary Hypertension was not attributable to service in terms of Para 43, Chapter VI, GMO 2002/2008 but may be held to be aggravated if its onset is in Field/HAA/CI Ops. but that in the case of the applicant, the onset of the disability of Primary Hypertension was in a peace area and was thus is held to be neither attributable to nor aggravated by military service. No second appeal is indicated to have been filed by the applicant and the instant OA was instituted on 11.09.2019. However, taking into account the factum that the present OA is pending since when it was instituted on 11.09.2019, in the interest of justice, we consider it appropriate to take up the present OA for consideration in terms of Section 21(1) of the Armed Forces Tribunal Act, 2007.

CONTENTIONS OF THE PARTIES

4. On behalf of the applicant, reliance was placed on the posting profile as reflected in Part-1 of the Personal Statement as is submitted in the proceedings of the Release Medical Board dated 20.04.2019 which reads to the effect:

“

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)	22.04.88	16.9.88	2 GW TETTRA/Rajokri	P	(ii)	17.9.88	6.9.92	2201 SQN/Bhuj	F
(iii)	7.2.92	18.12.94	2229 SQN/Dhansa	P	(iv)	19.12.94	4.6.95	2229SQN/Baknaur	F
(v)	5.5.95	25.5.99	14 FBSU/Purnia	F	(vi)	26.7/99	15.8.99	14 FBSU/Purnea	F
(vii)	16.8.99	23.9.01	CTI Jalahali	P	(viii)	24.9.11	14.3.04	FIS/Tambaram	P
(ix)	15.3.04	3.3.08	DGAQA-MOD/New Delhi	P	(x)	31.3.08	28.3.10	HQ ANC/Port Blair	F
(xi)	29.3.10	26.12.10	AV MOD Unit/Kanpur	P	(xii)	27.12.10	25.12.11	402 AF STN/Kanpur	P
(xiii)	26.12.11	14.4.13	AFS/Kanpur	P	(xiv)	15.4.13	18.1.15	7 BRD/Tughlakabad	P
(xv)	19.1.15	30.7.17	AFFMU/Tughlakabad	P	(xvi)	31/7/17	Till date	17 WG/Gorakhpur	P
2. Give particulars of any disease, wounds or injuries from which you are suffering									
Illness, wounds injury		First Stated		Rank of Individual	Where treated	Approximate dates and period treated			
		Date	Place						
PRIMARY HYPERTENSION(OLD ICD 10.Z 09.0)		Dec 12	Kanpur	GP CAPT	7 AFH Kanpur	Dec. 12- Apr 13			
3. Did you suffer from any disability before joining the Armed Forces, if so give details and dates? NO									
4. Give details of any incident during service, which you think caused or made your disability. NO									

”

to submit to the effect that the applicant was posted in field areas five times in about 33 years of his entire service from 25.08.1986 till his superannuation on 31.01.2019.

5. *Inter alia*, it has been submitted on behalf of the applicant that he was commissioned in the Indian Air Force in a fit medical category without any note of any disability recorded by the respondents *qua any illness* that the applicant suffered from and thus the disability that the applicant suffered from in December, 2012 after 26 years of service in the Indian Air Force has to be held to be attributable to and aggravated by military service as caused by the stress and strain of military service. The applicant has also placed reliance on the nature of his postings which included his duties as Chief of Engineering Officer(CEO) at 14 FBSU Purnea, a field station where he was deputed for more than 04 years at a stretch from 05.05.1995 to 27.07.1999 inclusive of his posting at Port Blair from 31.03.2008 to 28.03.2010. The applicant submits that his posting at Bhuj w.e.f. 17.09.1988 to 06.09.1992, a border station was equally a stressful field posting. *Inter alia* it is submitted on behalf of the applicant that he held various high-pressure assignments in service like Commanding Officer(CO), Chief Engineering Officer(CEO), Command Communication Officer(CCO), Senior Engineer Electronics(SE(L), Station Information and Technology Officer(SITO), Head of a Joint Services Quality Assurance Training Institute and Flight Commander and these assignments have taken a toll on his health. The applicant has further submitted that his posting at Kanpur which commenced on 20.03.2010 and continued till 14.04.2013 in different units was after his posting from 31.03.2008 to 28.03.2010 at Port Blair, a hard area posting. *Inter alia* the applicant placed reliance on Para 423(a) of the Regulations of Medical Services for Armed Forces(2010) to submit to the effect that the place of

posting has no relevance for the onset of any disability and all that is required to be considered is whether the work assigned was relevant for the attributability or aggravation of his disability. The applicant further submits that it is the cumulative effect of the entire service profile which is to be taken into account while deciding the attributability or aggravation of disability rather the close time association of the posting profile prior to the onset of the disability.

6. The applicant has also placed reliance on the order dated 13.07.2018 of this Tribunal in OA 728/2017 titled *Air Cmde MDN Prasad Vs Union of India & Ors.* and the order dated 09.07.2015 in OA 482/2014 of the AFT(PB), New Delhi in *Gp Capt D.P.S. Tomar Vs Union of India & Ors.* in which cases the disability element of pension was granted in relation to the disability of Primary Hypertension.

ANALYSIS

7. The opinion given by the Release Medical Board dated 20.04.2018 in Part V thereof is to the effect:

PART-V
OPINION OF THE MEDICAL BOARD

“

1.Causal relation 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)	Reasons/Cause/Specific condition and period in Service.
PRIMAY HYPERTENSION (ICD 110, Z 09.0)	NO	NO	YES	<i>The onset of Disability was in Dec.2012 at AFS Kanpur, a peace station and there is no close time association with stress/strain of field/HAA/CI Ops of Service. Hence, the Disability is considered as neither Attributable nor aggravated by Military service. As per Para 43 of Chapter VI of Guide to Medical Officers(Military Pension)-2008</i>

”

“

3. Did you suffer from any disability before joining the Armed Forces. If so give details and dates ?	NO
4. Give details of any incident during service, which you think caused or made your Disability..	NO
5. In of wound or injury, state how they happened and whether or not (a) Med board or Court of inquiry was held (b) Injury report was submitted.	N/A

”

The percentage of disablement put forth through the RMB is 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 Para 1 Part IV)	Percentage of Disablement with Duration	Composite Assessment for all Disabilities with Duration (Max 100%) with duration	Disability Qualifying for Disability pension With duration	Net assessment Qualifying for Disability pension (Max 100%) with Duration
PRIMARY HYPERTENSION (ICD 10, Z 09.0)	30% for lifelong	30% for lifelong	Nil for lifelong	Nil for lifelong

”

Thus through the opinion of the Release Medical Board, it is brought forth that the disability did not exist before the applicant was inducted in the Indian Air Force nor was there any reason put forth as to why the disability could not be detected during the routine medical examination conducted at the time of entry into service.

7. 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*.

8. 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:-

(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 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.

9. 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.

and has not been obliterated.

10. 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)

11. 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 for more than 04 years at a stretch from 05.05.1995 to 27.07.1999 inclusive of his posting at Port Blair from 31.03.2008 to 28.03.2010. The applicant submits that his posting at Bhuj w.e.f. 17.09.1988 to 06.09.1992, a border station was equally a stressful field posting. 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 of Chapter VI of the GMO(M) 2008 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 areas for a duration of approximately 5 years, 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/CIOPS 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.

12. The nature of the postings of the applicant as have been put forth through the OA as being the factors for stress and strain of the service *qua* the

applicant have not been effectively refuted by the respondents. The onset of the disability was in the 26th year of service of the applicant in the Indian Air Force after the applicant had already held five field postings as already adverted hereinabove in para 4. It cannot also be overlooked that the onset of the disability of Primary Hypertension was in December, 2012 after one year and 09 months of the posting of the applicant at Port Blair, a field area.

13. Thus, in the instant case, as the nature of duties of the applicant involved stress and strain coupled with the factum that the applicant was posted on five field postings with the duration of such postings being approximately four years, 07 months; four years, one month, and two years i.e. a total period of about 05 years of field postings in difficult terrain, coupled with the factum that the onset of the disability of Primary Hypertension was in December, 2012 at Kanpur, thus, in the instant case, where the statement of the Commanding Officer specifically stipulated that the duties of the applicant involved 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.", though the disability of the applicant had its onset in 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 which itself stipulates categorically to the effect that the onset of the disabilities in the peace area/CIOPS Area/HAA or field area is *per se*

immaterial to ascertain the aspect of attributability of a disability to military service and what is required to be established is whether there exists a causal connection between the onset of the disability with military service or not in the facts and circumstances of the instant case.

CONCLUSION

14. The OA 1534/2019 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. 31.01.2019, in terms of the verdict of the Hon'ble Supreme Court in *UOI & Ors. vs Ramavtar* in Civil Appeal No. 418/2012.

15. The respondents are directed to issue the corrigendum PPO to the applicant and to pay the arrears within a period of three months from the date of receipt of a copy of this order, *failing which*, the respondents would be liable to pay interest @6% p.a. on the arrears due from the date of this order.

Pronounced in the open Court on the 6 day of December, 2023.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

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