

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

OA No. 1828 of 2019

Ex LEM(R) Raju Kumar

...Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Ved Prakash, Advocate

For Respondents : Dr Vijendra Singh Mahndiyan, Advocate

CORAM :

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

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

ORDER

The applicant vide para 8 of the present O.A 1828/2019
has made the following prayers:-

(a) Direct respondents to grant disability element of for disability No.(ii) to (iv) and to issue Corr PPO for disability element of pension duly rounded off to 75% w.e.f. his date of discharge.

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

(c) 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.

2. The applicant was enrolled in the Indian Navy on 29.01.2004 and was discharged from Naval Services on 31.01.2019 on expiry of

engagement period. The applicant was sanctioned service pension vide PPO No.248201901255 dated 11.02.2019 for the qualifying service of 15 years and 03 days. The applicant was discharged from service with medical category S3A2(S&P) (Permanent) for the disabilities (i) Bronchial Asthma ICD J45.9 (ii) Primary Hypertension ICD No.1 10.0 (iii) Dyslipidemia ICD No.E.78.9 and (iv) Moderate Depressive Episode ICD F32.1. The Release Medical Board *qua* the applicant had considered the disability No.(ii) Primary Hypertension ICD No.1 10.0 and (iv) Moderate Depressive Episode ICD F32.1. as neither attributable to nor aggravated by Naval Service with net assessment qualifying for disability element of pension @20% in relation to disability(i) Bronchial Asthma for life for which the applicant is already in receipt of the disability element of pension @20% and rounded off to @50% for life vide PPO No.248201901255 dated 11.02.2019. The claim of the applicant for the grant of the disability element of pension in relation to disability No.(ii) Primary Hypertension ICD No.1 10.0 and the disability No. (iv) Moderate Depressive Episode ICD F32.1 was considered and rejected by the Competent Authority of the respondents by opining the same as being neither attributable to nor aggravated by service and communicated to the applicant vide Letter No.PEN/600/D/LRDO1:01/2019138664Y dated 23.01.2019. Aggrieved by the action of the respondents, the applicant preferred his first appeal dated 12.04.2019 which was processed and communicated to the applicant vide letter

No.PEN/600/D/Ist Appeal/138664-Y dated 28.08.2019 but the decision on the first appeal is yet to be taken by the respondents. Since the First Appeal of the applicant has not been disposed of by the respondents till the institution of the present OA on 18.10.2019 thus we consider it appropriate to take up the present OA pending since 2019 for consideration in terms of Section 21(1) and Section 21(2)(b) of the Armed Forces Tribunal Act, 2007.

3. As regards the disability of Bronchial Asthama ICD J45.9 with percentage of disablement assessed @20% for life, the applicant is already in receipt of the disability element of pension in relation thereto which was broad banded to @50% for life.

4. During the course of submissions made on behalf of the applicant on 26.10.2023, it was submitted that the prayer through the present OA seeking the grant of the disability element of pension in relation to ID(iii) Dyslipidemia ICD No. E 78.9 with the percentage of disablement 1-5% is not pressed. The applicant thus seeks the grant of the disability element of pension in relation to the disabilities of Primary Hypertension(ICD 110) and Moderate Depressive Episode(ICD F32.1) assessed @ 30% for life and 40% for life respectively.

5. The applicant submits that he was inducted in the Indian Navy on 29.01.2004 in a fit medical condition after a thorough medical examination conducted by a board of doctors in all aspects and there was no note of any disability recorded by the respondents qua the applicant

and there was nothing to indicate as to why the said disabilities could not be detected before induction of the applicant into military service. The applicant has placed reliance on the posting profile as reflected in Part I of the Personal Statement dated 18.11.2018 which is as under:

PART I

PERSONAL STATEMENT

1. Give details of service(P=Peace Or F=Field/operation/sea service)									
S.No	From	To	Place Ship	P/F/HAA/CI/Ops Sea service	S No.	From	To	Place Ship	P/F HAA CI Ops/ Sea service others
i	29.1.04	13.7.04	Chilka/ Chilka	P	ii	14.7.04	14.5.05	Gujarat/CR Valsura	P
iii	15.5.05	23.3.06	Mumbai/ Suvarna	F	iv	24.3.06	19.4.09	Mumbai Gomati	F
v	24.4.09	28.5.11	Mumbai/ Naval EMC Centre	P	vi	29.5.11	25.1.13	Vishakhapatnam /Sandhayak	F
vii	26.1.13	29.4.16	Kochi/ Garuda	P	viii	30.4.16	Till date	Vishakhapatnam	P

to submit to the effect that from 15.05.2005 to 23.03.2006, 24.03.2006 to 19.04.2009, 29.05.2011 to 25.01.2013 he was posted onboard ships at Mumbai and Vishakhapatnam, i.e. field postings and that the onset of the disability of Primary Hypertension was in September, 2013 at Kochi soon after his field posting from 29.05.2011 to 25.01.2013 and that it has to be held to be attributable to and aggravated by military service. Likewise, it is submitted on behalf of the applicant that the disability of Moderate Depressive Episode had its onset in March 2018 when the applicant was posted at Vishakhapatnam in his 8th posting on 30.04.2016 on which date this disability had arisen after 12 years of service in the Indian Navy and after three field postings of the applicant

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

6. *Inter alia*, reliance was placed on behalf of the applicant on Para 54 of the GGMO(MP) 2008 which reads to the effect:

“54. Mental & Behavioural (Psychiatric) Disorder.

Psychiatric illness results from a complex interplay of endogenous (genetic/biological) and exogenous (environmental, psychosocial as well as physical) factors. This is true for the entire spectrum of psychiatric disorders (Psychosis & Neurosis) including substance abuse disorders. The relative contribution of each, of course, varies from one diagnostic category to another and from case to case.

The concept of attributability or aggravation due to the stress and strain of military service can be, therefore, evaluated independent of the diagnosis and will be determined by the specific circumstances of each case.”,

and thus the applicant submits that the disability of Moderate Depressive Episode is also attributable to military service in the instant case and has to be held to be attributable to and aggravated by military service.

7. The respondents on the other hand submit to the effect that the disabilities of Primary Hypertension, Dyslipidemia and the Moderate Depressive Episode being not attributable to nor aggravated by military

service as per the opinion of the Release Medical Board, the prayer of the applicant for the grant of disability element of pension cannot be acceded to in relation to these disabilities. Inter alia, the respondents submit that the onset of the disability of Primary Hypertension and the Moderate Depressive Episode were in September, 2013 whilst the applicant was posted onboard Ship INS Garuda at Kochi and the onset of the disability of Moderate Depressive Episode(ICD F32.1.) was in March, 2018 whilst the applicant was posted at TS(V) Visakhapatnam both peace stations and there was significant stress and strain on the applicant for the attributability or aggravation of the said diseases to be considered in the instant case. Reliance was also placed on behalf of the respondents on the Clinical Assessment in Part-II of the RMB in the instant case *qua* the applicant given by the Specialist Psychiatrist at INHS Kalyani on 08.10.2018 which reads to the effect:

This 34 yr old serving sailor with about 14 years of service was initially referred by med Spl in Mar 18 as he complained of forgetfulness and stress at work. Detailed history from individual revealed that he was apparently alright till 7-8 months back before previous admission while few months after posting to new unit, also repeated domestic issues relating to adjustment among spouse and in laws he gradually started having reduced sleep, mild ghabrahat and stressful feelings leading to indecisiveness, forgetfulness, pain at the back of neck, headache, sadness of mood, reduced interest in routine pleasurable activities, easily tired and

feeling of weakness, irritability, for, forgetfulness in daily activities life forgetting about place of money kept at home/forgetting to wear belt in uniform/ forgetting to wear rig of the day. He would have reduced self-confidence, would feel his mind is not constant at one place ("dimaag me kuch na kuch baatein aati rahti hai") leading to difficulty in concentration. He claims to have started occasionally consuming alcohol to get sleep(2 pegs whisky). His AFMSF-19 dated 20 Mar 18 mentioned as him social drinker, above average professional and motivation, satisfactory performance under stress, cheerful, active and outgoing disciplined, dedicated, punctual.

Initial General physical and systemic examination was normal. MSE revealed a fidgety individual with low tone and slow speech, did not maintain eye contact had reduced self-esteem. He described his mood as sad and anxious with anxious affect. He was preoccupied with work stress. He expressed feeling worthless at times and had worrying thoughts. No psychotic symptoms, no formal thought disorder, no perceptual oddities, psychomotor activity was reduced, judgement was intact and insight was partial. Serial ward observations revealed easy fatigability, low self-esteem, and anxious, initial reduced sleep, worried and tired. All routine blood inv(CBC/LFT/RFT/Blood glucose) were WNL Thyroid test revealed raised TSH level(7.272) for which med spl reference was done who advised him to be transferred to CH((EC) for further investigation. HBs Ag, HCV.HIV negative,, VDRL nonreactive. USG abdomen Grade I fatty liver. NCCT head was normal study. Initial BDI score was 19 indicating

significant features of Mid-clinical depression; HAM-A20 indicating significant features of moderate anxiety.

XXXXXXXXXXXXXXXXXXXXX”

Reliance was placed on behalf of the respondents on the opinion of the Medical Board in Part V of the RMB which is to the effect:

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PART V

OPINION OF THE MEDICAL BAORD

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)	Reasons/cause/specific Condition and period in service
(i) BRONCHIAL ASTHMA(ICD J 45.0)	N	Y	N	AGGRAVATED BY MILITARY SERVICE VIDE PARA 5 CHAP VI OF GMO 2008
(ii) PRIMARY HYPERTESNION	N	N	Y	NEITHER ATTRIBUTABLE NOR AGGRAVATED BY MILITARY SERVICE VIDE PARA 43, CHAP. VI OF GMO 2008. NO CLOSE TIME RELATION ASSOCIATED WITH PROLONG AFLOAT SERVICE. ONSET OF THE DISABILITY OCCURRED IN SEP.2013
(iii) DYSLIPIDEMIA (ICD E78.9)	N	N	Y	NEITHER ATTRIBUTABLE NOR AGGRAVATED BY MILITARY SERVICE AS DISABILITY IS LIFESTYLE DISEASE
(iv) MODERATE DEPRESSIVE EPISODE(ICD F32.	N	N	Y	NEITHER ATTRIBUTABLE NOR AGGRAVATED BY MILITARY SERVICE VIDE PARA 54, CHAP VI OF GMO 2008 . ONSET WHILST SERVING IN PEACE STATION AT TS(V)

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to submit to the effect that disability of Moderate Depressive Episode was inherently due to the family history of the applicant and has no connection with military service.

ANALYSIS

8. 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 on the 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*.

9. Para 43 of the GMO(Military Pension) 2008 is 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)

10. In view of the guidelines laid down vide the verdict of the Hon'ble Supreme Court in *Dharamvir Singh Vs. Union of India & Ors.(Supra)* and the factum that the non-existence of the ID of Hypertension at the

time when the applicant joined military service is not refuted by the respondents, the contention of the respondents that the disability of hypertension assessed has been rightly opined by the Release Medical Board and the AFCA at 30% as neither being attributable to nor aggravated by military service,- cannot be accepted.

11. It is essential to observe that the verdict of the Hon'ble Supreme Court in *Rajbir Singh* (supra) vide Paras 12 to 15 is to the effect:-

"12. Reference may also be made at this stage to the guidelines set out in Chapter-II of the Guide to Medical Officers (Military Pensions), 2002 which set out the "Entitlement: General Principles", and the approach to be adopted in such cases. Paras 7, 8 and 9 of the said guidelines reads as under:

"7. Evidentiary value is attached to the record of a member's condition at the commencement of service, and such record has, therefore, to be accepted unless any different conclusion has been reached due to the inaccuracy of the record in a particular case or otherwise. Accordingly, if the disease leading to member's invalidation out of service or death while in service, was not noted in a medical report at the commencement of service, the inference would be that the disease arose during the period of member's military service. It may be that the inaccuracy or incompleteness of service record on entry in service was due to a non-disclosure of the essential facts by the member e.g. pre-enrolment history of an injury or disease like epilepsy, mental disorder, etc. It may also be that owing to latency or obscurity of the symptoms, a disability escaped detection on enrolment. Such lack of recognition may affect the medical categorisation of the member on enrolment and/or cause him to perform duties harmful to his condition. Again, there may

occasionally be direct evidence of the contraction of a disability, otherwise than by service. In all such cases, though the disease cannot be considered to have been caused by service, the question of aggravation by subsequent service conditions will need examination.

[pic] The following are some of the diseases which ordinarily escape detection on enrolment:

(a) Certain congenital abnormalities which are latent and only discoverable on full investigations e.g. Congenital Defect of Spine, Spina bifida, Sacralisation,

(b) Certain familial and hereditary diseases e.g. Haemophilia, Congenital Syphilis, Haemoglobinopathy.

(c) Certain diseases of the heart and blood vessels e.g. Coronary Atherosclerosis, Rheumatic Fever.

(d) Diseases which may be undetectable by physical examination on enrolment, unless adequate history is given at the time by the member e.g. Gastric and Duodenal Ulcers, Epilepsy, Mental Disorders, HIV Infections.

(e) Relapsing forms of mental disorders which have intervals of normality.

(f) Diseases which have periodic attacks e.g. Bronchial Asthma, Epilepsy, Csom, etc.

8. The question whether the invalidation or death of a member has resulted from service conditions, has to be judged in the light of the record of the member's condition on enrolment as noted in service documents and of all other available evidence both direct and indirect.

In addition to any documentary evidence relative to the member's condition to entering the service and during service, the member must be carefully and closely questioned on the circumstances which led to the advent of his disease, the duration, the family history, his pre-service history, etc. so that all evidence in support or against the claim is elucidated. Presidents of Medical Boards should make this their personal responsibility and ensure that opinions on attributability, aggravation or otherwise are supported by cogent reasons; the approving authority should also be satisfied that this question has been dealt with in such a way as to leave no reasonable doubt.

9. On the question whether any persisting deterioration has occurred, it is to be remembered that invalidation from service does not necessarily imply that the member's health has deteriorated during service. The disability may have been discovered soon after joining and the member discharged in his own interest in order to prevent deterioration. In such cases, there may even have been a temporary worsening during service, but if the treatment given before discharge was on grounds of expediency to prevent a recurrence, no lasting damage was inflicted by service and there would be no ground for admitting entitlement. Again a member may have been invalided from service because he is found so weak mentally that it is impossible to make him an efficient soldier. This would not mean that his condition has worsened during service, but only that it is worse than was realised on enrolment in the army. To sum up, in each case the question whether any persisting deterioration on the available [pic]evidence which will vary according to the type of the disability, the consensus of medical opinion relating to the particular condition and the clinical history."

13. In Dharamvir Singh's case (supra) this Court took note of the provisions of the

Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words:

"29.1. Disability pension to be granted to an individual who is invalided 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 to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).

29.2. 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 read with Rule 14(b)].

29.3. The 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).

29.4. 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)]. [pic] 29.5. 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 [Rule 14(b)].

29.6. 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 [Rule 14(b)]; and 29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 - "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."

14. Applying the above principles this Court in Dharamvir Singh's case (supra) found that no note of any disease had been recorded at the time of his acceptance into military service. This Court also held that Union of India had failed to bring on record any document to suggest that Dharamvir was under treatment for the disease at the time of his recruitment or that the disease was hereditary in nature. This Court, on that basis, declared Dharamvir to be entitled to claim disability pension in the absence of any note in his service record at the time of his acceptance into military service. This Court observed:

"33. In spite of the aforesaid provisions, the Pension Sanctioning Authority failed to notice that the Medical Board had not given any reason in support of its opinion, particularly when there is no note of such disease or disability available in the service record of the appellant at the time of acceptance for military service. Without going through the aforesaid facts the Pension Sanctioning Authority mechanically passed the impugned order of rejection based on the report of the Medical Board. As per Rules 5 and 9 of the Entitlement Rules for Casualty Pensionary Awards, 1982, the appellant is entitled for presumption and benefit of presumption in his favour. In the absence of any evidence on record to show that the appellant was suffering from "generalised seizure (epilepsy)" at the time of

acceptance of his service, it will be presumed that the appellant was in sound physical and mental condition at the time of entering the service and deterioration in his health has taken place due to service."

15. The legal position as stated in Dharamvir Singh's case (supra) is, in our opinion, in tune with the Pension Regulations, the Entitlement Rules and the Guidelines issued to the Medical Officers. The essence of the rules, as seen earlier, is that a member of the armed forces is presumed to be in sound physical and mental condition at the time of his entry into service if there is no note or record to the contrary made at the time of such entry. More importantly, in the event of his subsequent discharge from service on medical ground, any deterioration in his health is presumed to be due to military service. This necessarily implies that no sooner a member of the force is discharged on medical ground his entitlement to claim disability pension will arise unless of course the employer is in a position to rebut the presumption that the disability which he suffered was neither attributable to nor aggravated by military service. From Rule 14(b) of the Entitlement Rules it is further clear that if the medical opinion were to hold that the disease suffered by the member of the armed forces could not have been detected prior to acceptance for service, the Medical Board must state the reasons for saying so. Last but not the least is the fact that the provision for payment of disability pension is a beneficial provision which ought to be interpreted liberally so as to benefit those who have been sent home with a disability at times even before they completed their tenure in the armed forces. There may indeed be cases, where the disease was wholly unrelated to military service, but, in order that denial of disability pension can be justified on that ground, it must be affirmatively proved that the disease had nothing to do with such service. The burden to establish such a

disconnect would lie heavily upon the employer for otherwise the rules raise a presumption that the deterioration in the health of the member of the service is on account of military service or aggravated by it. A soldier cannot be asked to prove that the disease was contracted by him on account of military service or was aggravated by the same. The very fact that he was upon proper physical and other tests found fit to serve in the army should rise as indeed the rules do provide for a presumption that he was disease-free at the time of his entry into service. That presumption continues till it is proved by the employer that the disease was neither attributable to nor aggravated by military service. For the employer to say so, the least that is required is a statement of reasons supporting that view. That we feel is the true essence of the rules which ought to be kept in view all the time while dealing with cases of disability pension."

(emphasis supplied)

12. Furthermore, the 'Entitlement Rules for Casualty Pensionary Awards, to the Armed Forces Personnel 2008, which take effect from 01.01.2008 vide Paras 6, 7, 10, 11 thereof state 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 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."

Thus, the ratio of the verdicts in *Dharamvir Singh vs UOI & 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.

13. Furthermore, Regulation 423 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.

(b). Decision regarding attributability of a disability or death resulting from wound or injury will be taken by the authority next to the Commanding officer which in no case shall be lower than a Brigadier/Sub Area Commander or equivalent. In case of injuries which were self-inflicted or due to an individual's own serious negligence or misconduct, the Board will also comment how far the disablement resulted from self-infliction, negligence or misconduct.



(c). *The cause of a disability or death resulting from a disease will be regarded as attributable to Service when it is established that the disease arose during Service and the conditions and circumstances of duty in the Armed Forces determined and contributed to the onset of the disease. Cases, in which it is established that Service conditions did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, will be regarded as aggravated by the service. A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in Service if no note of it was made at the time of the individual's acceptance for Service in the Armed Forces. However, if medical opinion holds, for reasons to be stated that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.*

(d). *The question, whether a disability or death resulting from disease is attributable to or aggravated by service or not, will be decided as regards its medical aspects by a Medical Board or by the medical officer who signs the Death Certificate. The Medical Board/Medical Officer will specify reasons for their/his opinion. The opinion of the Medical Board/Medical Officer, in so far as it relates to the actual causes of the disability or death and the circumstances in which it originated will be regarded as final. The question whether the cause and the attendant circumstances can be accepted as attributable to/aggravated by service for the purpose of pensionary benefits will, however, be decided by the pension sanctioning authority.*

(e). *To assist the medical officer who signs the Death certificate or the Medical Board in*

the case of an invalid, the CO unit will furnish a report on :

- (i) AFMSF – 16 (Version – 2002) in all cases*
- (ii) IAFY – 2006 in all cases of injuries.*

(f). In cases where award of disability pension or reassessment of disabilities is concerned, a Medical Board is always necessary and the certificate of a single medical officer will not be accepted except in case of stations where it is not possible or feasible to assemble a regular Medical Board for such purposes. The certificate of a single medical officer in the latter case will be furnished on a Medical Board form and countersigned by the Col (Med) Div/MG (Med) Area/Corps/Comd (Army) and equivalent in Navy and Air Force.”

(emphasis supplied),—

has not been obliterated.

14. It has already been observed by this Tribunal in a catena of cases that peace stations have their own pressure of rigorous military training and associated stress and strain of the service. It has also to be taken into consideration that most of the personnel of the armed forces have to work in the stressful and hostile environment, difficult weather conditions and under strict disciplinary norms. The onset of the disability of Primary Hypertension as reflected in the RMB is in was in September, 2013 after three field postings of the applicant after 09 years of the applicant having been inducted in the Indian Army and after three field postings held by him for about of 06 years, has to be held to

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be attributable to and aggravated by military service in terms of Para 43 of GMO 2008. It is stipulated in para 43 of Chapter VI of the GMO(MP) 2008 Chapter VI in some cases, the said disability is shown arisen after long spells of service in field/HAA active operation areas, and that such cases can be explained by variable responses exhibited by different individuals to stress and strain. Apparently, in the facts and circumstances of the instant case, the probability of the onset of the disability of Primary Hypertension in the instant case being due to tough terrains that the applicant had worked it cannot be overlooked and thus the disability of Primary Hypertension assessed @30% for life that the applicant suffers from, has to be held both attributable to and aggravated by military service.

15. As regards the disability of Moderate Depressive Episode that it had its onset in March, 2018 after the induction of the applicant in military service on 29.01.2004 i.e. after 14 years of service in the Indian Navy cannot be overlooked in the facts and circumstances of the instant case. As per the clinical assessment conducted on 08.10.2018, the applicant was apparently alright till 7-8 months prior to his previous admission and as per the detailed history revealed by the applicant he was having repeated domestic issues relating to adjustment among with spouse and in-laws and the applicant had stress feelings leading to pain at the back of neck, headache, sadness, reduced interest in routine pleasurable activities, easily tired

and feeling of weakness, forgetting the place of work and forgetting about the place of money left at home, forgetting to wear the belt in uniform and also forgetting to wear rig of the day and also started occasionally consuming alcohol to get sleep. The AFMSF-10 dated 20.03.2018 qua the applicant described the applicant as a social drinker, average professional and motivation, satisfactory performance under cheerful, active and outgoing disciplined dedicated and punctual and thus in the circumstances of the instant case, the disability of Moderate Depressive Episode cannot be held to be attributable to or aggravated by military service. The prayer made by the applicant in relation thereto for the grant of disability element of pension is thus declined as the same does not fall within the ambit of Para 54 of Chapter VI of the GMO(MP) 2008 in any manner.

CONCLUSION

16. Thus, the OA 1828/2019 is partly allowed and the applicant is held entitled to the grant of the disability element of pension qua the disability of Primary Hypertension @ 30% for life which in terms of the verdict of the Hon'ble Supreme Court of India in Civil Appeal 418/2012 dated 10.12.2014 titled as *UOI & Ors. Vs. Ramavtar*, has to be rounded off to 50% for life from the date of discharge.

17. As already observed the onset of the disability in relation to Primary Hypertension is broad banded from 30% for life to 50% for life and thus in the circumstances of the instant case, the composite

assessment in relation to the disabilities of Bronchial Asthma computed as per the assessment of the disabilities as placed in Para 6 of the RMB IS @20% which comes to 44% in total. The said computation can be rounded off only to @50% for life which the applicant is already in receipt.

18. The respondents are directed to calculate, sanction and issue the necessary corrigendum PPO to the applicant within three months from the date of receipt of the copy of this order.

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

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

[JUSTICE ANU MALHOTRA]
MEMBER (J)

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