

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

B..

OA 2128/2021

Ex NC (E)T Chandra Pal Singh Applicant
VERSUS

Union of India and Ors. Respondents

For Applicant : Mr. O S Punia, Advocate
For Respondents : Mr. K K Tyagi, Advocate

CORAM

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

ORDER
09.11.2023

Vide our detailed order of even date we have allowed the OA 2128/2021. 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 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, the prayer for grant of leave to appeal stands declined.


(JUSTICE ANU MALHOTRA)
MEMBER (J)


(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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ORDER

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

“(a) Set aside the impugned order regarding rejection of disability element of pension claim vide letter no. Air HQ/99798/1/818975/04/19/DAV(DP/RMB) dated 22.04.2021 and rejection of first appeal vide Air HQ/99798/5/818975/DP/AV-III (Appeals) dt 14.10.2021.

(b) Direct the respondents to accept the disabilities of the applicant as attributable to and aggravated by service;

(c) Direct the respondents to give the benefits of rounding off of disability from @50% to @75% for life and grant disability element of pension w.e.f. 01.05.2019 @50% for life in the light of law laid down

*by Hon'ble Supreme Court alongwith interest @12% per annum alongwith all consequential benefits; and
(d) To award any other/further relief which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case along with cost of the application in favour of the applicant and against the respondents."*

BRIEF FACTS

2. The applicant was enrolled in the Indian Air Force on 03.04.1987 and discharged from the Air Force on 30.04.2019 under the clause "On attaining the age of superannuation" after rendering a total of 31 years and 258 days of regular service. The Release Medical Board dated 06.07.2018 held that the applicant was fit to be discharged from service in low medical category A4G2 (P) for the disabilities of (i) Bicuspid Aortic Valve (Old) @40%, (ii) Diabetes Mellitus Type-II @20% for life compositely assessed @50% for life while the net qualifying element for disability was recorded as NIL for life on account of both the disabilities being treated as neither attributable to nor aggravated by military service.

3. On adjudication, the AOC AFRO has upheld the recommendations of the RMB and rejected the disability pension claim of the applicant vide letter No. RO/3305/3/Med dated 30.01.2019 and the same was communicated to the applicant vide letter No. Air HQ/99798/1/818975/04/19/DAV(DP/RMB) dated 22.04.2019 with an advice that the applicant may prefer an appeal to the Appellate

Committee within six months from the date of receipt of letter. The applicant preferred the first appeal for grant of disability pension dated 08.02.2021 which was rejected by Appellate Committee on First Appeal (AFCA) vide letter no. Air HQ/99798/5/818975/DP/AV-III dated 04.10.2021 (beyond the period of six months of the date of the appeal and after institution of the present OA on 28.09.2021) stating that the disability which the applicant suffers from is neither attributable to nor aggravated by military service. Aggrieved by the decision of the respondents, the applicant has filed the present OA. In the interest of justice thus, in terms of Section 21 (2) (b) of the AFT Act, 2007, it is considered appropriate to take up the present OA for consideration.

CONTENTIONS OF THE PARTIES

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

5. The learned counsel for the applicant placed reliance on the judgment of the Armed Forces Tribunal, Regional Bench, Lucknow *Ex*

Hav Pramod Kumar Yadav Vs Union of India & Ors. (OA 323 of 2015

decided on 30.08.2017 and in OA 871/2021 titled as *WO Mukti Pada Das (Retd) Vs. Union of India & Ors.*, wherein similarly situated personnel were given relief.

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

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

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

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

ANALYSIS

7. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, we find that the applicant has suffered from two disabilities viz. (i) Bicuspid Aortic Valve (Old) @40% for life & (ii) Diabetes Mellitus Type-II @ 20% for life. In so far

as the disability of Bicuspid Aortic Valve (Old) is concerned, the learned counsel for the applicant did not press for it.

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

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

10. Applying the above parameters to the case at hand, we are of the view that the applicant has been discharged from service in low medical category on account of medical disease/disability, - the disability must be presumed to have arisen in the course of service which must, in the absence of any reason recorded by the Medical Board, be presumed to have been attributable to or aggravated by air force service. Furthermore, Regulation

423(a) of the Regulations for the Medical Services of the Armed Forces

2010 which relates to 'Attributability to Service' provides as under:-

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

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

has not been obliterated.

11. Furthermore, Para 26, Chapter VI of the Guide to Medical Officers

(Military Pensions), 2008 reads as under:-

"26. Diabetes Mellitus

This is a metabolic disease characterised by hyperglycemia due to absolute/relative deficiency of insulin and associated with long term complications called microangiopathy (retinopathy, nephropathy and neuropathy) and macroangiopathy.

There are two types of Primary diabetes, Type 1 and Type 2. Type 1 diabetes results from severe and acute destruction of Beta cells of pancreas by autoimmunity brought about by various infections including viruses and other environmental toxins in the background of genetic

susceptibility. Type 2 diabetes is not HLA-linked and autoimmune destruction does not play a role.

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

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

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

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

12. 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 contacted 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, *Union of India &Ors Vs Rajbir Singh* (2015) 12 SCC 264 and *Union of India &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. It is also essential to observe that vide the verdict of the Hon'ble Supreme Court in Civil Appeal no. 5970/2019 titled as *Commander Rakesh Pande Vs Union of India &Ors*, dated on 28.11.2019, wherein the applicant thereof was suffering from **Non-Insulin Dependent Diabetes Mellitus(NIDDM)** and **Hyperlipidaemia**, the grant of disability pension for life @ 20% broad banded to 50% for life was upheld by the Hon'ble Supreme Court.

14. The disability of Type II DM in respect of Ex-NC (E) T Chandra Pal Singh even though had its origin in peace area but the disability was due to the stress and strain of service which occurred during active service in adverse conditions which has not been refuted by the respondents.

15. Regarding broadbanding benefits, we find that the Hon'ble Supreme Court in its order dated 10.12.2014 in *Union of India Vs. Ram Avtar, Civil Appeal No. 418 of 2012* and connected cases, has observed that individuals similarly placed as the applicant are entitled to rounding

off the disability element of pension. We also find that the Government of India vide its Letter No. F.No.3(11)2010-D (Pen/Legal) Pt V, Ministry of Defence dated 18th April 2016 has issued instructions for implementation of the Hon'ble Supreme Court order dated 10.12.2014 (supra).

CONCLUSION

16. Therefore, in view of our analysis, the OA 2128/2021 is allowed and the respondents are directed to **grant benefit of disability element of pension @20% for life** (for DM Type II (Old), **rounded off to 50% for life** in view of judgment of the Hon'ble Apex Court in *Union of India Vs. Ram Avtar (supra)* from the date of discharge i.e. 30.04.2019.

17. Accordingly, the respondents are directed to calculate, sanction and issue necessary PPO to the applicant within three months from the date of receipt of copy of this order, failing which, the applicant shall be entitled to interest @ 6% p.a. till the actual date of payment.

18. No order as to costs.

Pronounced in the open Court on this 9 day of November, 2023.


[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/nmk/