

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

5.
OA 222/2020

Ex Hony Lt (MCPO (Mus I) Ramesh Chand Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Amit Kumar Sachan, Advocate
For Respondents : Gp Captr. Karan Singh Bhati, Sr. CGSC

CORAM

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

ORDER
21.11.2023

Vide our detailed order of even date, we have partly allowed the OA 222/2020. 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.

[Signature]
(JUSTICE ANU MALHOTRA)
MEMBER (J)

[Signature]
(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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OA No. 222 of 2020

Ex-Hony Lt.(MAPO(Mus-I)

Ramesh Chand

... Applicant

Versus

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... Respondents

For Applicant : Mr. Amit Kumar Sachan, Advocate

For Respondents : Gp Capt K S Bhati, Sr CGSC

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ORDER

1. The applicant vide the present OA 222/2020 has made the following prayers:-

*“(a) To direct the respondents to allow the disability pension from @50% to 75% w.e.f. from his discharged from service i.e. 30.04.2018 alongwith the interest @18% on the arrears.
(b) Any other relief which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.”*

2. The applicant joined the Indian Navy on 27.04.1981 and was discharged from service on 30.04.2018 after completion of 37 years and 04 days of qualifying service and was sanctioned service pension vide PPO No.248201801878 dated 25.04.2018. The applicant whilst opening a soda bottle sustained injury to his right eye on 05.06.2000 at

his home at 2115 hours as the cap of the soda bottle hit his right eye which caused him the disability 'Closed Globe Injury(RT) Eye Effects of'(ICD No.S-05 W-05). The initial treatment of the applicant was done at INHS Asvini. The injury caused to the applicant was not considered as attributable to military service by the competent authority of the respondents. The applicant was placed in Low Medical Category S2A2(P&E) PMT at the time of his discharge. On 09.09.2001 the applicant was also found to be suffering from Primary Hypertension. The Release Medical Board dated 12.10.2017 opined in relation to the disability of the applicant to the effect:

PART V

OPINION OF THE MEDICAL BOARD

“Medical board having examined the individual and after perusing all available documents is of the consensus opinion as under:

1. Causal Relationship of the disability with service conditions or other				
Disability	Attributable to Service(Y/N)	Aggravated by Service(Y/N)	Not Connected With service (Y/N)	Reasons./cause/specific conditions and period in service.
CLOSED GLOBE INJURY(RT) EYE EFFECTS OF	NO	NO	YES	Injury sustained by the indl. n 17 Aug 2000 and is not attributable to mil service as per IAFY-2006(Injury Report) dated 30 Aug 2000(Photocopy att)
PRIMARY HYPERTENSION	NO	NO	YES	Onset of ID was in Sep 2009 at Mumbai(peace). There is no Close time association with stress And strain of Fd/HAA/CI Ops Service. Hence ID conceded as Neither attributable nor Aggravated to mil service as per Para 43 of Chap VI, GMO(Mil \ Pension), 2008 amended.

The percentage of the disablement as per said the Release Medical Board is to the effect:

“

Disabilities(as Numbered in Part I Part IV)	Percentage of Disabilities with Duration	Composite Assessment for All disabilities With duration Max 100) % v duration	Disability Qualifying for Disability pension With duration	Net Assessment qualifying Pension(Max 100%) with
1	2	3	4	5
CLOSED GLOBE INJURY(RT) EYE EFFECTS OF	6-10% for life	50% for life	NIL for life	NIL for life
PRIMARY \ HYPERTENSION	40% for life		Nil for life	

”

The disability claim of the applicant was rejected by the respondents in relation to the two disabilities having been opined to be neither attributable to nor aggravated by military service by the RMB. The applicant was informed vide letter NO.PEN/600/D/LRDO 1:04/2018/188106R dated 06.04.2018 with an option to prefer an appeal to the Appellate Committee on First Appeals(ACFA) against rejection of the disability pension claim within six months from the date of receipt of the letter. The First Appeal dated 09.07.2018 of the applicant was processed and rejected by the respondents vide letter No.PN/0134/DP/1239/18 dated 04.03.2020 and the applicant was informed that he is not entitled for the grant of the disability element of pension and he was also apprised that he may prefer the second appeal, if so desired. However, the First Appeal of the applicant having not

been disposed of within six months from the date of the appeal i.e. 29.08.2019, the instant OA was filed by the applicant on 22.01.2020 and has been pending since then. In the interest of justice thus, we consider it appropriate to take up the present OA for consideration under Section 21(1) of the Armed Forces Tribunal, 2007.

CONTENTIONS OF THE PARTIES

3. The applicant submits that he was enrolled in the Indian Navy on 27.04.1981 and at the time of joining the Indian Navy, he was thoroughly examined by the medical board and was found to be fit in SHAPE-1 and that there was no note of any disability recorded by the respondents at the time of induction into the Indian Navy and that there also no note recorded by the respondents as to why the disability of the applicant could not have been detected at the time of induction into military service. The applicant submits that he served the Indian Navy with all sincerity and was promoted from time to time upto the Rank of Hony Lt. The applicant submits that the Release Medical Board held at the time of time of retirement at the Base Hospital, New Delhi on 12.10.2017 assessed his disabilities in relation to "Closed Globe Injury(RT) Eye Effect of (ICD No.S-05 W20) and Primary Hypertension(ICD No.1-19.0" as neither attributable to nor aggravated by the military service, compositely assessed with the percentage of disablement @50% for life with S2A2(P) category.

The applicant's trade is indicated to be of a musician with it having been submitted by the applicant that he had performed and participated in national/international ceremonial events and also participated about 30 times in the Republic Day Parade at Rajpath, Beating Retreat at Vijay Chowk, Independence Day Parade at Red Fort and Rashtrapati Bhawan in the presence of high international dignitaries too. The applicant thus submits that the disability of the Primary Hypertension which had its onset after 28 years of military service is attributable to military service.

4. *Inter alia*, the applicant places reliance on the verdict of the Hon'ble Supreme Court in *Dharamvir Singh Vs UOI & Ors* (Civil Appeal No 4949/2013) 2013 AIR SCW 4236 with specific reliance on the observations in para-28 of the said verdict which are to the effect:-

"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."

5. The applicant also sought rounding off of the disability element of pension 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*, to 75% for life from the date of discharge in as much as the RMB had assessed the percentage of disablement compositely @50% for life in relation to the two disabilities of the applicant.

6. On behalf of the respondents, it is submitted that the present OA is liable to be dismissed in terms of Regulations 101 and 105B of Navy Pension Regulations, 1964 and the applicant was not entitled for the grant of the disability element of pension in relation to the disabilities that the applicant suffered from as they are neither attributable to nor aggravated by military service. The respondents further submit that the cause of the injury *qua* 'CLOSED GLOBE INJURY(RT) EYE EFFECT OF (ICD) No.S-05 @20) was sustained by the applicant whilst opening the soda bottle on 05.06.2000 at his home at 2115 hours as was also indicated by the Injury Report dated 17.08.2000 and as per the IAFY-2006(Injury Report) dated 30.08.2000.

7. The respondents further submit that the disability of Primary Hypertension is also neither attributable to nor aggravated by Naval Service as the onset of the said ID was in September, 2009 at Mumbai, a peace posting and there is no close time association with stress and strain of Fd/HAA/CA Ops service. The respondents submit that in terms of Regulations 101 and 105B of Navy Pension Regulations, 1964, the applicant does not fulfil the criteria for the grant of disability element of pension and thus the question of broadbanding in terms of the verdict of the Hon'ble Supreme Court in Civil Appeal No.418/2012 titled *UoI & Ors Vs Ram Avtar* is not applicable to the instant case. The respondents also

submit that the reliance placed upon by the applicant on the judgments of the Hon'ble Supreme Court in the cases of *Dharamvir Singh Vs Union of India & Ors.* (supra) and *KJS Buttar Vs Union of India & Ors*, 2011(4) SCALE is thus misplaced as the facts thereof are not in *pari materia* with the instant case. The respondents further submit that the disability in relation to Primary Hypertension is an idiopathic disorder with a strong genetic preponderance and it tends to be familial and has progressive age related onset and in terms of Para 43, Chapter VI of GMO(MP) 2008, Primary Hypertension tends to be a likely consequence of an interaction between environment and genetic factors including high salt intake, heavy consumption of alcohol, obesity and lack of exercise as is evident from the opinion of the specialist and in terms of Rule 8 of Entitlement Rules for Casualty Pensionary Awards, 1982, 'attributability/aggravation shall be conceded if a causal connection between disablement and military service is certified by the appropriate medical authority.'

ANALYSIS

8. Apparently, a perusal of the Injury Report indicates the statement of the applicant having been recorded therein with the applicant himself having stated that he sustained the right eye injury while opening a soda bottle at home and the said injury thus clearly is neither attributable to nor aggravated by military service.

9. The averments made by the applicant in para 4.4. of the OA are not refuted by the respondents *qua* the factum that the applicant, a musician in the Indian Navy during his 37 years of military service has participated in the Republic Day Parade at Rajpath, Beating Retreat at Vijay Chowk and at Rashtrapati Bhawan and also participated in national ceremonial events attended inclusive by international dignitaries.

10. As regards the disability of Primary Hypertension that the applicant suffered from, the only reason given by the respondents in the Release Medical Board is that the said disability is neither attributable to nor aggravated by military service as it had its onset in a peace area on 19.09.2009 at INS Kunjali, Mumbai and that there was no close time association with stress and strain of field/HAA/CI Ops area and that thus disability was neither attributable to nor aggravated by military service in terms of Para 43 Chapter of GMO(MP) 2008 amended.

11. On a consideration of the submissions that have been made on behalf of either side, it is essential to observe that the 'Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008' which take effect from 01.01.2008 provide in 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 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.

12. It is further essential to observe that despite the 'Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 1982' having been superseded by the 'Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008' which have been made effective from 01.01.2008 as per letter dated 18.01.2010 F.No.1(3)/2002/Vol-1/D(Pen/) of the Government of India, Ministry of Defence Department of Ex-Servicemen Welfare, the factum that the ratio of the verdicts in *Dharamvir Singh (supra)*, *Sukhvinder Singh (supra)*, *Rajbir Singh (supra)* and *Manjeet Singh (supra)* form the fulcrum of the 'Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008' cannot be overlooked. This is so in as much as the observations of the Hon'ble Supreme Court in the verdicts referred to hereinabove in relation to

the aspect of causal connection between disability or death and military service are based on the nexus between the injury and military service and the onset of the disease during the period of the military service which has been caused by the conditions of employment in military service. Significantly, it has been stipulated in Rule 11 of the said Rules of 2008 which deals with 'attributability' that the disability has to be conceded as aggravated by the service if its onset is hastened or the subsequent course is worsened by specific conditions of military service as much as posted in places of *extreme climatic conditions, environmental factors related to service conditions example fields, operations, High altitude etc.*"

(Emphasis supplied)

13. Furthermore, it cannot be overlooked that vide Regulation 423 of the Regulations for the Medical Services of the Armed Forces, 2010 the revised version which is in force, it has been stipulated to the effect:-

“

(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."

It is thus, essential to observe that the aspect of determination of the disability resulting from the disease being attributable to service apart from being governed by the 'Entitlement Rules for Casual Pensionary Awards to the Armed Forces Personnel, 2008' is also governed by Regulation 423 of the Regulations for the Medical Services of the Armed Forces, 2010 which is still in operation. Regulation 423 (a) specifically provides that it is, immaterial for the purpose of determining whether the cause of a disability or death resulting from disease is or is not attributable to service, *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.*

(emphasis supplied)

14. That peace stations have their own pressure of rigorous military training and associated stress and strain of service and that most of the personnel of the Armed Forces have to work in stressful and hostile environment, difficult weather conditions and under strict disciplinary norms has already been taken into consideration by this Tribunal in a catena of cases at the time of consideration of the grant of the prayer for disability elements of pension. Furthermore in terms of para 43 of chapter VI of the 'Guide to Medical Officers (Practice Military Pension, 2008) it has been provided as under:-

"43. Hypertension – The first consideration should be to determine whether the hypertension is primary or secondary. If (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."

The applicant suffered from the disability of Primary Hypertension on 09.09.2009, after about 28 years of induction in the Indian Army on 17.08.2000 and thus the stress and strain of the long tenure of military service in the trade of a musician has to be held to have been the causative precipitative factor for the disability of Primary Hypertension in the instant case.

15. The disability that the applicant suffers from of Primary Hypertension, assessed with a disablement percentage @40% for life is held attributable to military service.

CONCLUSION

16. Thus the OA 222/2020 is partly allowed. In these circumstances, the applicant is held entitlement to the grant of the disability element of pension in relation to the disability of Primary Hypertension assessed @ 40% for life which in terms of the verdict of Hon'ble Supreme Court Civil Appeal No. 418 of 2021 titled as

Union of India Vs Ram Avtar has essentially to be broad banded to 50% for life.

17. The prayer made for the grant of disability element of pension in relation to Closed Globe Injury(RT) Eye Effects assessed @ 6-10% for life is declined.

18. The respondents are thus, directed to calculate sanction and issue the necessary PPO with directions to the respondents 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 the receipt of the copy of this order.

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

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

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