

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

B..

OA 2361/2019

Gp Capt Alok Goel (Retd)

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant :

Mr. Praveen Kumar, proxy for  
Mr. Pushpendra Kumar Dhaka,  
Advocate

For Respondents :

Mr. Shyam Narayan, Advocate

CORAM

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

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

ORDER

21.12.2023

Vide our detailed order of even date, we have dismissed the OA 2361/2019. Learned counsel for the applicant makes an oral prayer for grant of leave to appeal in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007 to assail the order before the Hon'ble Supreme Court. After hearing learned counsel for the respondents and on perusal of our order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order to grant leave to appeal. Therefore, prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)  
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)  
MEMBER (A)

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

**O.A. No. 2361 of 2019**

**In the matter of :**

**Gp Capt Alok Goel (Retd)**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant** : Shri Pushpendra Kumar Dhaka,  
Advocate

**For Respondents** : Shri Shyam Narayan, Advocate

**CORAM:**

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

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

**ORDER**

Invoking the jurisdiction of the Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 read as under :

**8.1 Declare the disability of the Applicant attributable to Air Force Service.**

**8.2 Direct the Respondents to sanction disability pension and to issue amended PPO to the applicant along with arrears with interest as due to the Applicant.**

**8.3 Declare the Applicant as 100% disable since the Applicant is permanently physically disabled.**

**Or**

**Order a resurvey medical board for fresh assessment of the disability percentage of the Applicant.**

**8.4 And pass such other Orders as deemed fit by the Tribunal.**

### **BRIEF FACTS**

2. The applicant, having been found medically and physically fit after thorough medical examination, was commissioned in the Indian Air Force on 06.12.1986 and superannuated from service on 31.06.2018 being in permanent low medical category A4G4 (P) composite. The Release Medical Board (RMB) dated 21.11.2017 assessed the applicant's disabilities (i) STROKE-ISCHEMIC (RIGHT MCA TERRITORY) @ 30% for life and (ii) CORONARY ARTERY DISEASE (AWMI) (STEMI) MILD LV DYSFUNCTION (OLD) @ 30% for life. Both the disabilities were compositely assessed @ 50% for life, however, the same were held as 'neither

attributable to nor aggravated by military service' (NANA)'. Based on the recommendations of the RMB, the disability pension has been denied to the applicant.

3. Initially, the claim for disability pension was rejected by the respondents and the decision was communicated to the applicant vide letter dated 23.08.2018. The applicant preferred the representation/first appeal dated 11.02.2019 for grant of 100% disability pension with Constant Attendance Allowance (CAA); when nothing was heard from the respondents, the applicant sent a reminder-cum-legal notice for considering his case. Thereafter, the said appeal was rejected by Respondent No. 3 vide letter dated 30.07.2019. Aggrieved by the decision of the respondents, the applicant has filed the instant OA. In the interest of justice, in accordance with Section 21(1) of the AFT Act, we take up the present OA for consideration.

#### **CONTENTIONS OF THE PARTIES**

4. The learned counsel for the applicant submitted that the applicant, at the time of joining the service, was declared fully fit medically and physically and no note was made in his medical record that the applicant was suffering from any

disease at that time. The learned counsel submitted that during his tenure of service, the applicant was posted to various challenging units as his branch was Fighter Controller including posting at forward bases in Jammu & Kashmir Sector during Kargil War and that the Fighter Controller duties involve extreme physical and stressful conditions and exposure to radiations of Radars. The learned counsel stated that whilst commanding a unit at Air Force Station, Pune, the applicant on 17.04.2005 suffered a stroke (Ischemic (Rt) MCA Infract with Post Stroke Seizure), which was caused due to very hectic and stressful life and stressful environment in service.

5. The learned counsel further submitted that due to the disabilities suffered by the applicant, he was not considered for promotion despite having undergone prestigious courses and awards etc. and finally he superannuated from service. The learned counsel for the applicant submitted that as the applicant is 100% physically incapacitated he is not able to do his daily routine work, therefore, the respondents committed grave error in considering the disabilities of the applicant as NANA and they should have granted 100%

disability pension with CAA. The learned counsel placed reliance on the orders of the Tribunal in **WO Dileep Kumar Thakur (Retd.) Vs. Union of India and Ors. [OA 5 of 2022]** order dated 07.08.2023 (PB); **Ex-Havildar Sunil Kumar Vs. Union of India & Ors. [OA 168 of 2014]** order dated 17.12.2015 (RB, Kochi) and **Ramesh Kumar Vs. Union of India and others [OA 787 of 2013]** order dated 21.01.2015 (RB, Chandigarh), wherein the applicants in those cases were granted the benefit of disability pension. The learned counsel for the applicant submitted that there are numerous judgments of the Hon'ble Supreme Court also where similarly situated persons were granted the benefit of disability pension.

6. *Per contra*, the learned counsel for the respondents submitted that the applicant is not entitled to the relief claimed since the RMB, being an Expert Body, found the disabilities as Neither Attributable to Nor Aggravated by Military Service for the reasons mentioned therein. The learned counsel for the respondents submitted that the applicant was a heavy smoker and used to consume alcohol in excess and at the time of the occurrence of stroke, he

attended a late night party and on evaluation in the hospital, the applicant was diagnosed with Stroke-Ischemic (Right MCA Territory) and was managed conservatively.

7. The learned counsel for the respondents submitted that the initial medical board was held on 24.10.2005 and the applicant was placed in low medical category A4G4 (T-24) vide AFMSF-15 dated 24.10.2005 and during review, the applicant was found suffering from Ischemic Heart Disease (Silent old Anteroseptal MI), managed surgically and placed in low medical category A4G4 (P) vide AFMSF-15 dated 20.04.2006. The learned counsel submitted that at the time of retirement, the RMB was held on 21.11.2017 which assessed the disabilities of the applicant as NANA. The learned counsel further submitted that while rejecting the first appeal filed by the applicant, the Appellate Committee for First Appeal (ACFA) gave detailed reasons for considering the disabilities of the applicant as NANA. The learned counsel for the respondents also submitted that as the applicant's disabilities do not fulfil one of the twin conditions in terms of Regulation 37 of the Pension Regulations for the Air Force, 1961 (Part-I) of the same being held attributable to

or aggravated by military service, the applicant is not entitled to disability pension and, therefore, the OA deserved to be dismissed.

### **ANALYSIS**

8. We have heard the learned counsel for the parties and have gone through the records produced before us. We find that, as both the disabilities suffered by the applicant have been assessed at more than 20%, the issue which needs to be considered is as to whether the disabilities of the applicant are attributable to or aggravated by military service or not.

9. It is an undisputed fact that at the time of joining the Indian Air Force on 06.12.1986, the applicant was found medically and physically fully fit and the onset of the present disabilities being on 17.04.2005 shows that both the disabilities were suffered by the applicant during service.

10. However, on perusal of the medical documents, it has been observed that the applicant was commissioned in the Indian Air Force on 06.12.1986 and on attaining the age of superannuation, he was released from service on 30.06.2018. The RMB considered the disabilities of the applicant as NANA on the ground that the onset of the

disabilities occurred while the applicant was posted to peace station and there is no close time association with stress and strain of field/HAA/CIOPs and there was no delay in diagnosis. In the present case, the respondents have made a statement to the effect that the applicant was a heavy smoker and he used to consume alcohol in excess and, in fact, a night before the stroke occurred, the applicant had attended a late night party. The summary and opinion of Sr. Adv (Med & Neurology) enclosed with the RMB proceedings also indicates the risk factor for the diseases suffered by the applicant as smoking.

11. The medical aspects of smoking and heart disease and vascular disease is available in open domain, such as **NHLBI, NIH** article on <https://www.nhlbi.nih.gov/health/heart/smoking> updated on March 24, 2022, as is available on the internet, to the effect that smoking is harmful to nearly every organ in the body, including heart, blood vessels, lungs, eyes, mouth, reproductive organs, bones, bladder and digestive organs and thus smoking is a major risk factor for many diseases including heart disease; any amount of smoking, even occasional smoking, can cause damage to heart and blood

vessels; smoking also increases risk for peripheral artery disease (PAD); when plaque builds up in the arteries that carry blood to the head, organs, arms, and legs and people have an increased risk for coronary heart disease, heart attack and stroke. Another medical review on the webpage of **MEDICALNEWS**TODAY published on January 6, 2023 and on the website at <https://www.medicalnewstoday.com/articles/can-smoking-cause-a-stroke>, also states:

*"Smoking increases the risk of stroke because it causes inflammation and damage to the blood vessels and can lead to a build-up of plaque in the arteries. This makes it harder for the heart to pump blood. Smoking also impacts circulation throughout the body by constricting small arteries".....*

*"Tobacco smoke contains thousands trusted sources of toxic and cancer-causing chemicals that pass from the lungs into the bloodstream when a person inhales it. These chemicals alter and damage cells and increase the risk of stroke and other cardiovascular diseases".*

12. Thus, in view of scientific articles in print media and internet indicate that people who are into heavy smoking are more likely to have heart attacks, high blood pressure, blood clots and other disorders of the cardiovascular system. Since there is medical evidence that smoking increases the risk of

heart attacks including other diseases related to blood vessels and despite the same, if one decides to smoke out of his free will despite a statutory warning printed on the cigarette packet with the applicant in the instant case having also been reported to have consumed alcohol the night before the incident in question, we do not consider it appropriate to set aside the decision of the RMB in not conceding attributability or aggravation by service and declaring the diseases of the applicant as NANA.

13. We have noted that it is nowhere denied by or on behalf of the applicant was a heavy smoker and used to consume alcohol in excess, as has been stated by the respondents. Moreover, the 14-day charter of duties as Commanding Officer and also branch duties as Fighter Controller filed along with the counter affidavit by the respondents also does not show anything which can be said to have caused stress and strain on the applicant. On the contrary, the charter of duties clearly shows that the applicant has worked for normal duty hours and, in fact, the applicant has also failed to show the duties which put heavy stress and strain on the applicant. As for working in close

proximity to Radars and effect of radiation on the applicant being a fighter controller, we do not find any significant proof or document to show the adverse effects of the radiation on the heart. Moreover, the fighter controllers in the IAF are required to sit on the console of the Radar inside the ATC Tower/ops room of a Squadron and are completely protected from the radiation hazards of the Radar. It is well known and also indicated in various reviews available on the internet that heart attacks and strokes are closely related. One such review article on <https://www.healthgrades.com/right-care/stroke/heart-disease-and-stroke-whats-the-connection> updated on April 21, 2021 as available on the internet suggests to the effect :

***“Heart disease and stroke may seem like different diseases, but they’re actually closely related and caused by the same disease process in your arteries.”.....***

***“Atherosclerosis is a slow build-up of fatty plaque inside your arteries. Plaque can build up at the same time in the arteries that supply blood to a person’s heart and brain; atherosclerosis narrows your arteries and reduces blood supply to your heart and brain. This makes it more likely that a blood clot will form and completely block blood flow. When a clot forms in the arteries of your heart, it causes a heart attack. When a clot forms in your brain, it causes a stroke.”***

They also share many of the same risk factors, including lifestyle.

14. Therefore, whilst considering the issue of attributability/aggravation, all these factors cannot be overlooked by us. In this regard, we may refer to the order of the AFT, RB, Jaipur in the case of **Cdr Birbal Singh (Retd) Vs. Union of India & Ors. [O.A. No. 102/2011]** decided on 09.12.2021, wherein the disability element of pension was declined to the applicant thereof on the ground, *inter alia*, in relation to Coronary Artery Disease (Anti Stemi, DVD, Pamilad, PCI-Ramus) observing to the effect :

***“The fact is mentioned clearly in Medical Case Sheet that the Applicant is a Chronic Smoker and Chronic Alcoholic for 38 years which clearly establishes that the disease suffered by the Applicant were due to sheer negligence on part of the Applicant and are clearly not Attributable to or Aggravated by Service.”***

The challenge to this order before the Hon'ble Supreme Court was dismissed vide order dated 12.07.2022 of the Hon'ble Supreme Court in Civil Appeal No. 4699 of 2022.

15. It is essential to observe that the reliance placed on behalf of the applicant on the orders of the Tribunal in *WO Dileep Kumar Thakur (Retd) (supra)*, *Ex-Havildar Sunil Kumar (supra)* and *Ramesh Kumar (supra)* is wholly misconceived, as the facts thereof are not in *pari materia* to the facts of the instant case. This is so in as much as in the instant case, the applicant was stated to be a heavy smoker and even a night before the incident, he attended a late night party and used to consume alcohol in excess. On 17.04.2005, he developed sudden onset of left upper and lower limb weakness while talking on the phone and slowly slipped on to the ground which was first noticed by his son and he was shifted to CH (SC) Pune. In the instant case, the specialist opinion attached with the RMB proceedings dated 21.11.2017 also indicated smoking as the risk factor for the onset of diseases. In fact, onset of both the diseases i.e. Stroke-Ischemic (Right MCA Territory) and Coronary Artery Disease (AWMI) (STEMI) Mild LV Dysfunction, is on the same date i.e. 17.04.2005. We have already explained, by way of scientific articles reproduced hereinabove, the harsh and adverse effects of smoking and even drinking on many organs

including heart, brain, blood vessels, lungs etc. and that the people who are smokers are more likely to have heart attacks, high blood pressure, blood clots and other disorders of cardiovascular system. However, in none of the cases relied upon by the applicant, it was indicated that the applicants therein were smokers, which is a major reason for cause of a heart and brain stroke related diseases. Therefore, the orders relied upon by the applicant will not be of much help to the applicant and are not applicable in the instant case.

16. Accordingly, after considering all related aspects, we are of the view that there is no infirmity in the opinion of the RMB in denying the disability element of pension to the applicant as the disabilities of the applicant were opined as NANA by the RMB.

17. In view of our analysis hereinabove, since the disabilities of the applicant were considered as neither attributable to nor aggravated by service by the RMB and as we find no infirmity in the opinion of the RMB, we hold that the applicant is not entitled to the grant of the disability element of pension for the disabilities 'Stroke-Ischemic (Right

MCA Territory) and Coronary Artery Disease (AWMI) (STEMI) Mild Dysfunction'.

### CONCLUSION

18. In light of the above, OA 2361 of 2019 is dismissed being devoid of merit.

19. There is no order as to costs.

Pronounced in open Court on this 21<sup>st</sup> day of December, 2023.

[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)

[JUSTICE ANU MALHOTRA]  
MEMBER (J)

/ng/