

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

1.

OA 352/2021 with MA 436/2021

Ex MWO Bishnu DEO Shukla

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Mr. V S Kadian, Advocate

For Respondents : Mr. R S Chhillar, Advocate

CORAM

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

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

ORDER
24.11.2023

Vide our detailed order of even date we have allowed the OA 352/2021. 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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For Applicant : Mr Praveen Kumar proxy for Mr. V S
Kadian, Advocate

For Respondents : Mr. R. S. Chillar, Advocate

CORAM :

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

ORDER

MA 436/2021

This is an application filed under section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 1960 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of UoI & Ors Vs Tarsem Singh 2009(1)AISLJ 371 and in Ex Sep Chain Singh Vs Union of India & Ors (Civil Appeal No. 30073/2017 and the reasons mentioned, the MA 436/2021 is allowed and the delay of 1960 days in filing the OA 352/2021 is thus condoned. The MA is disposed of accordingly.

OA 352/2021

The applicant vide the present OA makes the following prayers:

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“(a) Quash and set aside the impugned letter Air HQ/99798/5/1st Appeal/622455/DP/DAV dated 17.12.2020 And/or

(b) Direct respondents treat the disabilities of the applicant as attributable to or aggravated by military service and grant him disability element of pension alongwith from the date of retirement alongwith benefit of broad banding

(c) Direct the 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.

(d) any other relief which the Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case”

2. The applicant was enrolled in the Indian Air Force on 20.05.1978 was discharged from service w.e.f. 31.08.2015 on attaining the age of superannuation after rendering 37 years and 102 days of regular service. The Release Medical Board assessed the disabilities of the applicant as being ID(i) Primary Hypertension(Old) assessed @30% for life. The RMB, however, recommended the ID as being neither attributable to nor aggravated by military service.

3. On adjudication, the AOC, AFRO upheld the recommendations of the Release Medical Board and rejected the disability pension claim of the applicant vide letter No.RO/3305/3/Med dated 12.06.2015 and the outcome to this effect was communicated to the applicant vide letter dated 14.06.2015 with an advice to the applicant that he may prefer an appeal

to the Appellate Committee within six months from the date of receipt of the letter.

4. Being aggrieved with the decision of the Appellate Committee rejecting his disability claim *qua* the above disability, the applicant preferred a First Appeal-cum-Legal Notice dated 01.11.2020 which was not processed being time barred by the competent authority of the respondents in terms of MoD letter 1(3)/2008/D (Pen/Pol) dated 17.05.2016 vide which the maximum time limited of five years is fixed from the date of initial adjudication rejection for making an appeal and the applicant was intimated to this effect vide letter No.Air HQ/99798/5/Ist Appeal/DP/DAV dated 17.12.2020. Being aggrieved, with the action of the respondents, the applicant has filed the instant OA, which we consider it appropriate to take up for consideration under Section 21(1) of the Armed Forces Tribunal Act, 2007.

5. The applicant submits that he joined the Indian Air Force in a fit medical condition and no note of any disability was recorded by the Medical Board of the respondents at the time of entry into the service. The applicant submits that he served the Indian Air Force at various places in different environmental and service conditions in his prolonged service and any disabilities at the time of release/retirement or during service should be deemed to have arisen due to service conditions and have to be deemed to be attributable to or aggravated by military service. The

applicant submits that the Hon'ble Supreme Court in catena of judgments has held that the persons, who joined the Defence Service in a fit medical category and retired due to some disability are required to be compensated by grant of the disability element of pension. The applicant places reliance on the Govt of India, Ministry of Defence Letter No.4(17)/2015/D(Pen/Legal) dated 29.06.2017 and the observations of the Hon'ble Supreme Court in *Dharamvir Singh Vs Union of India & Ors*(Civil Appeal No.4949 of 2013, 2013(7)/SCC 36 and on the verdicts of the Hon'ble Supreme Court in *Union of India & Anr Vs Rajbir Singh* in Civil Appeal No.2904/2011 dated 13.02.2015 reported in 2015(3) SLR 318 and in *Union of India & Ors Vs Manjit Singh*- AIR 2015 SC 2114 wherein it has been held that where service personnel are discharged from service on account of medical disabilities/disease, the disabilities must be presumed to have arisen in the course of service which must in the absence of any reasons recorded by the Medical Board be presumed to have been attributable to or aggravated by military service and that the provision for payment of disability pension is a beneficial one and ought to be interpreted liberally so as to benefit those who have been boarded out from service even if they have not completed their tenure.

6. The respondents through their counter affidavit dated 17.02.2022 submit that the Release Medical Board assessed the disability of the applicant in relation to Primary Hypertension @30% for life but

recommended the same to be neither attributable to nor aggravated by the Air Force Service. The respondents submit that the recommendations of the Release Medical Board were upheld by the AOC, AFRO and it rightly rejected the disability pension vide letter No.RO/3305/3/Med dated 12.06.2015.

7. The respondents place reliance on Rule 153 of the Pension Regulations for the Indian Air Force 1961(Part-1) which is to the effect:

“unless otherwise specifically provided, disability pension may be granted to an individual who is invalided from service on account of a disability which is either attributable to or aggravated by Air Force service and is assessed @20% or over”.

The respondents also place reliance on Para 43 of Chapter VI- Clinical Aspects of Certain Diseases of the Guide to Medical Officer(Military Pension) 2008 in respect of the said disease which is to the effect”

“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 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 aggravated must be considered. However, in certain cases 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, CIOPs areas or prolong afloat service."

Furthermore, the respondents submit that the applicant had a family history of Hypertension(his parents were hypertensive) as per the opinion of Classified Medical Specialist dated 02.11.2010. The respondents thus submit that the OA be dismissed.

ANALYSIS

8. The consistent view of this Tribunal is based on the law laid down by the Hon'ble Supreme Court in the case of *Dharamvir Singh v. Union of India and others* (2013) 7 SCC 316, the Entitlement Rules for Casualty Pensionary Awards to Armed Forces personnel, 1982 vide observations in para-28 of the said verdict 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 no 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."

9. 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 may also 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.

10. 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.

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 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, *UOI &Ors. Vs. Rajbir Singh* (2015) 12 SCC 264 and *UOI &Ors. Vs. Manjeet Singh* dated 12.05.2015, Civil Appeal no. 4357-4358 of 2015, as laid down by the Hon'ble Supreme Court are the fulcrum of these rules as well.

11. 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), _____

and has not been obliterated.

12. On a consideration of the submissions made on behalf of either side, it is essential to observe that the factum that as laid down in the Hon'ble Supreme Court in *Dharamvir Singh vs UOI & Ors* (Civil Appeal No. 4949/2013) 2013 AIR SCW 4236 decided on 02.07.2013), a personnel of the Armed forces has to be presumed to have been inducted into military service in a fit condition ,if there is no note of record at the time of entrance in relation to any disability in the event of his subsequently being discharged from service on medical grounds,- the disability has to be presumed to be due to service unless the contrary is established, - is no more *res integra*.

13. It is essential to advert to the posting prolife of the applicant which is as under:

PERSONAL STATEMENT

1. Give details of service (P-Peace, or F-Field/Operational/Sea Service):

S. No.	From	To	Unit/place	P / F	S.N o.	From	To	Unit/-place	P / F
01	20.05.78	18.01.79	6GTS Bangalore	P	02	19.1.79	01.01.82	1 GTS Belgaum	P
03	02.01.82	11.4.86	1 Wg Srinagar	P	04	12..4.86	15.5.90	AFSC New Delhi	p
05	16.5.86	11.5.93	127 HU, Chabua	P	06	12.5.93	22.6.97	16 Sqn Gorakpur	P
07	23.6.97	15.3.02	47 Sqn Adampur	P	08	16.3.02	12.3.07	MTTI Avadi	P
09	13.3.07	28.02.10	254 SU, Naliya	F	10	01.3.10	22.5.13	IAM BANGALORE	P
11	29.5.13	TILL DATE	601 SU AF	P					

The onset of the disability of Primary Hypertension is reported in the RMB dated 06.12.2013 as under:

"2. Give Particulars of any disease, wounds or injuries from which you are suffering:

	Illness/Wound/injuries	Date	Place	Rank of Ind	Where treated	Approximate dates and period treated
(i)	PRIMARY HYPERTENSION(OLD) (ICD No.110.0, Z 09.0	May 91	Chabua	Sgt	MH Dinzan	01 May 91-12 May 91

14. The applicant during his tenure of 37 years and 102 days of service in the Indian Air Force was posted in the field area from 13.03.2007 to 28.02.2010. The onset of the disability of Primary Hypertension was after 14 years of military service. Para 43 of the GMO(MP) 2008, which the respondents rely upon through the RMB proceedings itself stipulates that in certain cases the disease of hypertension has been reported after long and frequent spells of service in field/HAA active operational 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 the tough terrains that the applicant worked at cannot be overlooked. It is thus, held that the disability of Primary Hypertension that the applicant suffers from has to be held both attributable to and aggravated by military service.

CONCLUSION

15. In view of the above referred judicial pronouncements and the parameters referred to above, the OA 352/2021 is allowed and the applicant is entitled to the grant of the disability element of pension in respect of disability 'Primary Hypertension(Old)' assessed @30% for life which is rounded off to 50% for life with effect from the date of his discharge in terms of the verdict of the Hon'ble Supreme Court in the case of *Union of India Vs. Ram Avtar* (Civil Appeal No. 418/2012), decided on 10.12.2014.

16. However, as the OA has been filed with much delay, the arrears of the disability element of pension shall commence to run from a period of three years prior to the institution of the present OA.

17. The respondents are thus directed to calculate, sanction and issue the corrigendum 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 this order.

Pronounced in the open Court on this 24th day of November, 2023.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/Chanana/