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

2.

OA 426/2021 with MA 510/2021

Sgt Sujeet Prasad (Retd) ..... Applicant
VERSUS
Union of India and Ors. ..... Respondents

For Applicant : Mr. A K Chaudhary, Advocate
For Respondents : Mr. Rajeev Kumar, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE LT. GEN. P.M. HARIZ, MEMBER (A)

ORDER
10.11.2023

Order allowing the OA pronounced, signed and dated.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(LT. GEN. P.M. HARIZ)
MEMBER (A)

TS

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O R D E R

MA 510/2021

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 537 days in filing the present OA. In view of the judgment of the Hon'ble Supreme Court in the matter of ***Union of India and Ors*** Vs. ***Tarsem Singh*** [2009 (1) AISLJ 371] and in ***Ex Sep Chain Singh Vs. Union of India and Ors.*** (Civil Appeal No.30073/2017) and the reasons mentioned, MA 510/2021 is allowed and the delay of 537 days in filing the OA 426/2021 is thus condoned. The MA is disposed of accordingly.

2. This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant, a retired Sgt from the Air Force, who is aggrieved by the rejection of his claim for disability pension by the respondents vide order dated 04.10.2019.

3. The applicant, having been found medically and physically fit, was enrolled in the Indian Air Force on 05.08.1999 and was discharged from service on 31.08.2019. In Feb 2009, the applicant was diagnosed with disability- Primary Hypertension and the applicant received treatment for the same. At the time of discharge, the RMB held on 15.10.2018 placed the applicant in permanent low medical category i.e. A4G2 (P) for the disability- 'Primary Hypertension' and assessed it @ 30% for life and opined the same as being 'neither attributable to nor aggravated by military service' (NANA). The initial claim for disability pension of the applicant was rejected vide letter dated 31.05.2019 and communicated to the applicant vide letter dated 04.10.2019. Aggrieved by the rejection of his claim, he the preferred first appeal on 20.12.2019. However, the applicant did not receive any communication from the respondents against the first appeal preferred by him. Hence, this OA. In the interest of justice, in terms of Section 21 (2) (b) of the AFT Act, 2007, we take up this OA for consideration.

4. The learned counsel for the applicant submitted that law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh*** v. ***Union of India & Others*** reported in (2013) 7 SCC 316. The learned Counsel for the applicant has also relied on ***Union of India & Others*** v. ***Rajbir Singh*** (2015) 12 SCC 264 wherein it was held that -

> ***"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."***

5. Further, learned counsel for the applicant submitted that as per Rule 5 of the Entitlement Rules for Causality Pensionary Awards, 1982 a member is presumed to have been in sound physical and mental condition upon entering service except to physical disabilities noted or recorded at the time of entrance. Further, Rule 14 (b) of the aforesaid Rule provides that 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.

6. Per contra, learned counsel for the respondents took us through the RMB proceedings and submitted that the applicant had been denied disability pension on the ground that the disability was considered as neither attributable to nor aggravated by military service. The counsel submitted that the RMB comprises of three medical officers and is subsequently approved by higher medical authorities. Hence, no injustice has been done to the applicant. Since the rejection is justified and in order as per the policy in vogue, the counsel prayed that the OA be dismissed.

7. Having heard the rival submissions and perused the records, the question which arises for our consideration is - Whether the disability of the applicant vis "PRIMARY HYPERTENSION" is attributable to or aggravated by military service which entitles the applicant for disability pension?

8. The law of attributability is settled by the Supreme Court in this case of ***Dharamvir Singh*** Vs. ***Union of India and others*** [(2013) 7 SCC 316], which has been followed in subsequent decisions of the Hon'ble Supreme Court and in the number of orders passed by the Tribunal, wherein the Apex Court had considered the question with regard to payment of disability pension and after taking note of the

provisions of the Pension Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers, wherein it was held by the Hon'ble Supreme Court that an Army personnel shall be presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance, and in the event of his being discharged from service on medical grounds, any deterioration in his health, which may have taken place, shall be presumed to be due to service conditions. The Apex Court further held that the onus of proof shall be on the respondents to prove that the disease from which the incumbent is suffering is neither attributable to nor aggravated by military service. Relevant paras are reproduced hereunder :

> ***"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 nonbattle 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 AppendixII (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 nonentitlement 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. Moreover, it has already been observed by the Tribunal in large number of cases that most of the personnel of the armed forces, during

their service, work in the stressful and hostile environment, difficult weather conditions and under strict disciplinary norms. Therefore, these factors must be taken into account while deciding cases for grant of disability pension.

10. The applicant having been discharged from the IAF on 31.08.2019, it is the 'Entitlement Rules for Casualty Pensionary Awards, to the Armed Forces Personnel 2008, which will be applicable in the instant case. These rules which take effect from 01.01.2008 vide Paras 6, 7, 10, 11 thereof provide 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) <u>Disease:</u>

(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."

(emphasis supplied)_____

11. Thus, the ratio of the verdicts in ***Dharamvir Singh*** vs ***Union of India & Ors***, (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 ***Union of India & 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.

12. 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.

(emphasis supplied)_____

and has not been obliterated.

13. It is essential to observe that vide para-33 of the verdict of the Hon'ble Supreme Court in ***Dharamvir Singh*** (supra) observes to the effect:-

"33. As per Rule 423(a) of General Rules for the purpose of determining a question whether the cause of a disability or death resulting from disease is or is 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 service/active service area or under normal peace conditions. "Classification of diseases" have been prescribed at Chapter IV of Annexure I; under paragraph 4 post traumatic epilepsy and other mental changes resulting from head injuries have been shown as one of the diseases affected by training, marching, prolonged standing etc. Therefore, the presumption would be that the disability of the appellant bore a casual connection with the service conditions."

(emphasis supplied)_____

14. The Coordinate Bench of this Tribunal in the case of ***Col R.R. Panigrahi*** Vs. ***Union of India & Ors. [O.A. No. 1825 of 2018]*** decided on 01.08.2019 allowed the OA granting disability pension for hypertension and observed that:

"9. The issue in this case is as to whether "Primary Hypertension can be considered as aggravated if it occurs while serving in field areas. As per amendment to Chapter VI of 'Guide to Medical Officers (Military Pensions), 2008, at Para 43, Primary Hypertension will be considered aggravated if it occurs while serving in Filed Areas, HAA, CIOPS areas or prolong float service. The same reads 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 hyperextension 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 the disease has been reported after long and frequent spells of services 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."

10. Thus, in our view, "Primary Hypertension "can be considered as aggravated if it occurs while serving in field areas etc. Admittedly, the applicant was serving in modified filed area as mentioned in Board proceedings (AnnexureA-2), at the time of onset of the disease "Primary Hypertension"

11. Even otherwise, in the light of the relevant rules and the judgment of the Hon'ble Supreme Court rendered in Dharamvir Singh's case(supra), which has been followed in subsequent decision of the Hon'ble Supreme Court. In Dharmvir Singh's case, it has, inter alia been held as under:

'I. The question whether a disability is attributable to or aggravated by military service is to be determined under "Entitlement Rules for Casualty Pensionary Awards, 1982"

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

III. If no note of any disability or disease was made at the time of individual's acceptance be deemed to have arisen in the service.

IV. 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.'

15. On a consideration of submissions made on behalf of either side, and the law laid down vide the verdict of the Hon'ble Supreme Court in ***Dharamvir Singh*** vs ***Union of India & Ors*** and the verdict of the

Principal Bench of the AFT in OA 1825 of 2018- ***Col R R Panigrahi*** vs ***Union of India & Ors,*** and the fact that the non-existence of the ID-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 by the Release Medical Board to be 30% as for life as *not being aggravated nor being attributable to military service* cannot be accepted. Moreover, it cannot be said that there is no stress or strain of service in military stations located in peace areas. Therefore, the disability of the applicant vis "PRIMARY HYPERTENSION" is held attributable to military service. It cannot be also overlooked that in the instant case the onset of the disability of primary hypertension was in February, 2009 during the posting of the applicant from 22.08.2005 to 06.07.2008 in a field posting at 797 SU, AF, NAL and thus the onset of primary hypertension in the instant case falls clearly within the ambit of Para 43 of chapter VI of the GMO (Military Pensions), 2008 which spells out to the effect:

> *"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 various response exhibited different individuals to stressful situations."*

16. As far as percentage of disability in question is concerned, in terms of Para 21 clause (f) of Chapter VII of the GMO, 2008 provides that uncomplicated primary hypertension has to be assessed @ 30%. The RMB too has assessed the disability @ 30% for life. Accordingly, the disability in the present case i.e. Primary Hypertension, falls with the ambit of Regulation 37 (a) of the Pension Regulations for the Air Force, 1961 and fulfils the twin conditions to be eligible for grant of disability pension of being held as attributable to/aggravated by service and assessed @ 20% or more.

17. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is entitled to the grant of the disability element of pension for the disability 'Primary Hypertension'. Accordingly, we allow this application holding that the applicant is entitled to the disability element of disability pension with regard to the disability of Primary Hypertension @ 30% for life rounded off to 50% for life from the date of his discharge i.e. 31.08.2019 in terms of the judicial pronouncement 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.

18. The respondents are thus directed to calculate, sanction and issue the necessary Corrigendum PPO to the applicant within a period of three months from the date of receipt of copy of this order and the amount of arrears shall be paid by the respondents, failing which, the applicant will be entitled for interest @ 6% p.a. from the date of receipt of copy of the order by the respondents.

19. There is no order as to costs.

Pronounced in open Court on this 16 day of Nov, 2023.

[LT GEN P. M. HARIZ]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/ashok/