

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

F.

OA 517/2020

Ex Sgt Devi Singh Rathore

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Mr. O P Bhadani, Advocate

For Respondents : Mr. Y P Singh, Advocate

CORAM

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

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

ORDER
20.09.2023

Vide our detailed order of even date we have allowed the OA 517/2020. 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 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)

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

O.A. No. 517 of 2020

In the matter of :

Ex Sgt Devi Singh Rathore

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri O.P. Bhadani and Shri Vikas Kochar,
Advocates

For Respondents : Shri Y.P. Singh, 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 :

(a) To set aside the impugned order Initial Rejection letter Ro. Air HQ/99798/2/710180/DAV (DP/IMB) dated 12.07.2019 passed by Respondent rejecting for grant of Disability Element of Disability Pension along with Constant Attendant Allowance;

(b) To direct the Respondents to grant Disability Element of Pension @ 100 % along with Constant Attendant Allowance with effect from the date of retirement for life along with arrears to the Applicant by treating his Disability as Attributable and Aggravated by the Air Force service.

(c) To direct the Respondents to pay the due arrears of Disability Pension with interest @12% p.a. with effect from date of retirement with all the consequential benefits.

(d) To pass such further order or orders, direction/directions as this Hon'ble Tribunal may deem fit and proper in accordance with law.

BRIEF FACTS

2. The applicant, having been found medically and physically fit after thorough medical examination, was enrolled in the Indian Air Force on 08.05.1986 and was invalided out from service on 06.06.2019 being in permanent low medical category E5/APGP. The Release Medical Board (RMB) held in 04.01.2019 assessed the applicant's disabilities (i) ISCHEMIC STROKE RIGHT MIDDLE

CEREBRAL ARTERY TERRITORY @ 27% rounded off to 30% for life; (ii) CAD/IWMI/DVD NON OBSTRUCTIVE (LAD+ RCA 99% P-PCI TO RCA (1X DES)' @ 40% for life; (iii) ISCHAEMIC OPTIC NEUROPATHY BOTH EYES WITH PROLIFERATIVE DIABETIC RETINOPATHY RT EYE S/P PRP AND NON PROLIFERATIVE DIABETIC RETINOPATHY LT EYE and (iv) PSEUDOPHAKIA BOTH EYES both IDs (iii) and (iv) @ 100% for life + CAA for life; and (v) TYPE-II DIABETES MELLITUS @ 40% for life. The composite assessment for all the disabilities is done @ 100% for life + CAA. The Net assessment qualifying for disability pension was Nil, however, Constant Attendant Allowance (CAA) for life was assessed by the RMB. The RMB held all the disabilities 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. The initial claim of the applicant for disability pension was rejected by the AOC AFRO upholding the recommendations of the RMB, vide letter dated 30.06.2019. The decision was communicated to the applicant vide letter dated 12.07.2019. The applicant, instead of filing an appeal,

sent a legal notice-cum-representation dated 28.11.2019 which was replied to and the claim for grant of disability pension was rejected by the respondents vide letter dated 21.01.2020. 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.

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 entire tenure of service, the applicant was posted to various units which included insurgency infested and Modified Field Areas (MFA); the applicant had performed various duties including being the member of medical evacuation and emergency duties with the responsibility to ensure the safety and well-being of the air force personnel and additional duties with high stress and strain were also entrusted to the applicant and the harsh, stressful and

challenging conditions of service undertaken by the applicant during his service were also explained. The learned counsel for the applicant further submitted that all this took a heavy toll on the applicant's physical and mental health and resultantly, in November, 2016, the applicant suffered an Ischemic stroke and was detected with high blood sugar level during hospitalisation; he was treated for high blood sugar and stroke and, on discharge, was recommended four weeks' sick leave and prescribed medicines for diabetes and stroke; however, on review after one month, the applicant was prescribed medicines for stroke only and at that time, the blood sugar level was not checked/tested being a case of Ischemic Stroke Right Middle Cerebral Artery Territory and hence, the medicines and treatment for managing blood sugar level was stopped. The learned counsel further submitted that, after the aforesaid sick leave was over, the applicant was again admitted to the hospital for treatment as a case of Ischemic Stroke Right Middle Cerebral Artery Territory. It was further submitted on behalf of the applicant that on 03.01.2017, a Categorisation Medical Board was held and the applicant was placed in low medical category A4G4

(T-24), however, the applicant was not considered diabetic and hence no medicine was prescribed for that ailment.

5. The learned counsel for the applicant submitted that on 15.05.2017, the applicant was admitted to Command Hospital (SC) Pune with the complaint of diminution of vision in both the eyes which was gradually progressive and the cataract surgery was done in both the eyes, after which, the applicant was discharged on 20.05.2017 with four weeks' sick leave; that on 09.06.2017, while during review by DM (Neuro), PGIMER (Chandigarh), the applicant was placed in low medical category P2(P) for Ischemic Stroke Right Middle Cerebral Artery Territory; that further on 21.09.2017, the applicant was again admitted to Military Hospital (CTC) Pune and was diagnosed with Coronary Artery Disease and Essential Hypertension and after treatment, he was discharged on 23.09.2017; that on 27.09.2017, the applicant was again admitted at the hospital with the complaint of giddiness and blurred vision and he was discharged on 05.10.2017 with the same medicines as were advised earlier despite the fact that the applicant had acute medical condition. The learned counsel submitted that despite the

applicant having so many medical complications as explained hereinabove, his blood sugar level was not taken note of and when on 11.11.2017, the applicant was admitted to CH (SC) Pune for left eye surgery, it is only this time, the applicant was detected with Diabetes Mellitus, was referred to Endocrinologist and was prescribed medicines for treatment of blood sugar/diabetes; that on discharge, the applicant was recommended six weeks' sick leave; that after returning from sick leave, the applicant was reviewed and found that he was not able to read and write and, therefore, the VR Surgeon recommended for an Invaliding Medical Board.

6. The learned counsel for the applicant submitted that on 17.05.2018, the Invaliding Medical Board (IMB) was conducted and the applicant was recommended to be invalided out from service in permanent low medical category E5/APGP for the disabilities (i) Ischemic Stroke Right Middle Cerebral Artery Territory @ 27% rounded off to 30% for life; (ii) CAD/IWMI/DVD Non-Obstructive (LAD+ RCA 99% P-PCI TO RCA (1X DES)' @ 40% for life; (iii) Ischemic Optic Neuropathy Both Eyes with Proliferative Diabetic

Retinopathy Rt Eye S/P PRP and Non Proliferative Diabetic Retinopathy Lt Eye and (iv) Pseudophakia both Eyes, both IDs (iii) and (iv), @ 100% for life + CAA for life; and (v) Type-II Diabetes Mellitus @ 40% for life; all disabilities compositely assessed @ 100% for life + CAA, however, as all the disabilities were held as 'neither attributable to nor aggravated by military service', the applicant was not granted disability pension.

7. The learned counsel further submitted that while denying the disability pension, the respondents failed to appreciate the provisions contemplated under Rules 5 and 14(b) of the Entitlement Rules for Casualty Pensionary Awards, 1982 (hereinafter referred to as 'Entitlement Rules, 1982'), which provide that in case of discharge from service in low medical category, if no note is on record at the time of joining of service, the deterioration in health is to be presumed due to service conditions. The learned counsel further relied on various provisions of the Entitlement Rules, 1982 to submit that any disease contracted during service, would be presumed to be attributable to service and worsening of the same during service would be treated as

aggravated by military service and onus to prove otherwise lies with the respondents only. The learned counsel placed reliance on the judgments of the Hon'ble Supreme Court in ***Dharamvir Singh Vs. Union of India and Ors. [(2013) 7 SCC 316]***, which has been considered and taken note of by the Hon'ble Apex Court in many judgments, wherein the Hon'ble Supreme Court had considered the question with regard to grant 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 and Para 423 of the Regulations for the Medical Services of the Armed Forces, 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 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. Referring to Rule 9 of the Entitlement Rules for Causality Pensionary Awards, 1982, the learned counsel for the applicant submitted that the applicant should have been given the benefit of doubt and the disability should have been conceded aggravated by service only. The learned counsel further submitted that the Tribunal has already granted disability pension to many similarly situated persons.

8. *Per contra*, the learned counsel for the respondents submitted that the applicant is not entitled to the relief claimed since the IMB, being an Expert Body, found all the disabilities as Neither Attributable to Nor Aggravated by Military Service for the reasons mentioned therein. The learned counsel submitted that as the applicant's disabilities do not fulfil one of the twin conditions in terms of Regulation 153 of the Pension Regulations for the Air Force, 1961 (Part-I) of the disability 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

9. We have heard the learned counsel for the parties and have gone through the records produced before us. We find that, as each disability suffered by the applicant has 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.

10. It is an undisputed fact that at the time of joining the Indian Air Force on 08.05.1986, the applicant was found medically and physically fit and was in medical category 'AYE' and the dates of the onset of the present disabilities are given as under :

Sl. No.	Disabilities	Date of origin of the disease
1.	Ischemic Stroke Right Middle Cerebral Artery Territory	13.11.2016
2.	CAD/IWMI/DVD Non-Obstructive (LAD+ RCA 99% P-PCI TO RCA (1X DES)'	17.09.2017
3.	Pseudophakia Both Eyes	April, 2017
4.	Ischemic Optic Neuropathy Both Eyes with Proliferative Diabetic Retinopathy Rt Eye S/P PRP and Non Proliferative Diabetic Retinopathy Lt Eye	April, 2017
5.	Type II Diabetes Mellitus	January, 2018

which go to show that all the disabilities have occurred during service, of which onset of the first disability was in November, 2016 i.e. after 20 years of service, and due to all the disabilities, the applicant was invalided out from service on 06.06.2019 in permanent low medical category.

11. The law on the issue of attributability of a disability is already settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Vs. Union of India* [(2013) 7 SCC 316]**, which has been followed in subsequent decisions of the Hon'ble Supreme Court and in a catena of orders of this Tribunal, wherein the Apex Court had considered the question with regard to grant 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 and Para 423 of the Regulations for the Medical Services of the Armed Forces, 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 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. The guidelines laid down vide the verdict in *Dharamavir Singh (supra)* are as under:-

"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."

12. The Hon'ble Supreme Court in the case of **Union of India & Ors. Vs. Rajbir Singh [Civil Appeal Nos. 2904 of 2011]** decided on 13.02.2015, after considering the case in *Dharamvir Singh (supra)* upheld the decision of this Tribunal granting disability pension and observed as under :

"15. Last but not the least is the fact that the provision for payment of disability pension is a beneficial provision which ought to be interpreted liberally so as to benefit those who have been sent home with a disability at times even before they completed their tenure in the armed forces. There may indeed be cases, where the disease was wholly unrelated to military service, but, in order that denial of disability pension can be justified on that ground, it must be affirmatively proved that the disease had nothing to do with such service....."

13. Admittedly, the applicant was invalidated out from service on 06.06.2019 due to being in permanent low medical category, hence, it is essential to refer to the verdict of the Hon'ble Supreme Court in the case of **Sukhvinder Singh Vs. Union of India and Ors. [2014 STPL (WEB) 468 SC]**, which has been followed by the Tribunal in numerous cases, wherein the Apex Court, after taking into consideration various statutory rules and regulations, it was observed any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. Relevant para of the aforesaid judgment reads as under :

"9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Thirdly, there appears to be no provisions authorizing the discharge or invaliding out of service where the disability is below twenty per cent and seems to us to be logically so. Fourthly, wherever a member of the Armed Forces is invalidated out of service, it perforce has to be assumed that his disability was found to be above twenty per cent. Fifthly, as per the

extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension."

14. 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 and 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.*** [(2013) 7 SCC 316], ***Union of India Vs. Rajbir Singh*** [(2015) 12 SCC 264] and ***Sukhvinder Singh Vs. Union of India and Ors.*** [2014 STPL (WEB) 468 SC], as laid down by the Hon'ble Supreme Court are the fulcrum of these rules as well.

15. 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 favour, 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)

has not been obliterated.

16. We may also refer to the Para 14 of Chapter VI of the Guide to Medical Officers (Military Pensions) 2002, amended 2008 [hereinafter referred to as 'GMO (MP) 2008'], wherein various factors including stress and strain of service irrespective of service in peace or field are established have been given which cause the brain stroke to the army personnel. The aforesaid Para 14 reads as under :

"14. Cerebrovascular Accident (Stroke). Stroke or cerebrovascular accident is a disease of acute onset leading to neurological deficit such as hemiplegia caused by intravascular events. Cerebral infarction following thrombosis and embolism accounts for a large number of cases whereas cerebral haemorrhage is the cause only in a few cases. Atherosclerotic thrombosis is of gradual onset and any permanent neurologic deficit is preceded by TIAs (Transient Ischaemic Attacks).

TIAs result mostly from embolism of thrombus or platelet material from an extra cerebral artery (Internal carotid) and some times due to stenosis of a major artery, altering hemodynamics in the event of change of posture and exertion.

Mural thrombus from the heart in IHD and SBE and ulcerated plaques of atherosclerotic arteries are the principal source of embolism.

Among other causes, physical trauma (heat) and mechanical trauma and arteritis associated with infection like TB, connective tissue disorder (PAN, SLE) can give rise to stroke. Service in HAA can precipitate stroke by virtue of hypercoagulable state.

About half of the strokes caused by cerebral haemorrhage are due to subarachnoid haemorrhage from rupture of a berry aneurysm (Circle of Willis) and less commonly due to arteriovenous malformation. Remaining cases of haemorrhage in cerebral substance are due to rupture of small perforating arteries/arterioles weakened by hypertension or atheromatous degenerations.

The majority cases exhibit greater degree of hemiparesis, dysphasia (if dominant hemisphere is

involved), hemianaesthesia and hemianopia. In some cases ataxia, cranial nerve palsy, nystagmus may be the presentation depending on the territory of brain involved.

It will be appropriate to award attributability if there is sufficient evidence of infection underlying the disease and physical and mechanical trauma related to service.

Aggravation can be conceded when atherosclerosis is the underlying cause and exceptional stress and strain of service is in evidence irrespective of his service in peace or field.

It nearly takes 6 months for complete recovery. However, cases showing no sign of improvement up to two years are unlikely to improve further and should be labelled as permanent."

17. With regard to the disability ID-CAD/IWMI/DVD Non-Obstructive (LAD+ RCA 99% P-PCI TO RCA (1X DES)', in Para 47 of Chapter VI of the GMO (MP) 2008, prolonged stress and strain and physical hardship caused by serving in field and high altitude areas have also been mentioned which cause the heart diseases to the army personnel. It would be relevant to reproduce Para 47 of the GMO (MP) 2008, which is as under:-

"47. Ischaemic Heart Disease (IHD). IHD is a spectrum of clinical disorders which includes asymptomatic IHD, chronic stable angina, unstable angina, acute myocardial infarction and sudden cardiac death (SCD) occurring as a result of the process of atherosclerosis. Plaque fissuring and rupture is followed by deposition of thrombus on the atheromatous plaque and a variable degree of occlusion of the coronary artery. A total occlusion results in myocardial infarction in the territory of the artery occluded. Prolonged stress and strain hastens atherosclerosis by triggering of neurohormonal mechanism and autonomic storms. It is now well established that autonomic nervous system disturbances precipitated by emotions, stress

and strain, through the agency of catecholamines affect the lipid response, blood pressure, increased platelet aggregation, heart rate and produce ECG abnormality and arrhythmias. The service in field and high altitude areas apart from physical hardship imposes considerable mental stress of solitude and separation from family leaving the individual tense and anxious as quite often separation entails running of separate establishment, financial crisis, disturbance of child education and lack of security for family. Apart from this, compulsory group living restricts his freedom of activity. These factors jointly and severally can become a chronic source of mental stress and strain precipitating an attack of IHD. IHD arising in while serving in Field area/HAA/CI Ops area or during OPS in an indl who was previously in SHAPE-I will be considered as attributable to mil service....."

[Emphasis supplied]

18. In the present case, the applicant suffered a brain stroke on 13.11.2016 for which he was treated in the Command Hospital, Pune and during that treatment he was detected to be diabetic as he was having elevated high blood sugar levels and accordingly, the applicant was prescribed medicines for brain stroke and also for blood sugar/diabetes, which is evident from Hospital Discharge Slip dated 19.11.2016. Further, when the applicant was reviewed after one month, it was mentioned in the case summary of the applicant in the Hospital Transfer Slip dated 30.12.2016, "He was found to have elevated blood sugar values...." but in the 'Diagnose' column, it was only mentioned 'ISCHEMIC STROKE RIGHT MIDDLE CEREBRAL ARTERY TERRITORY'

and the medicines were prescribed only for brain stroke only. Thereafter, his blood sugar levels were never checked. Therefore, in April, 2017, the applicant suffered from deteriorating vision in both the eyes and the applicant suffered with Ischemic Optic Neuropathy Both Eyes with Proliferative Diabetic Retinopathy Rt Eye S/P PRP and Non Proliferative Diabetic Retinopathy Lt Eye, which is a diabetes complication that affects eyes (retina) and in September, 2017, he suffered with CAD/IWMI/DVD Non-Obstructive (LAD+ RCA 99% P-PCI TO RCA (1X DES) and hence the diseases are apparently the consequence of the applicant having high blood sugar level, which was not appropriately checked/tested and treated till January, 2018 when the applicant was diagnosed with Type-II Diabetes Mellitus. Had the blood sugar level of the applicant been kept in check even after discharge from the hospital during his review treatment for brain stroke, the possibility of having so many medical complications/diseases would have been less for the simple reason that the applicant suffered from the four disabilities between November, 2016 and January, 2018 i.e. within only a year, which itself suggests that the applicant

may have been suffering from diabetes throughout that period. Even the Annexure III to Appendix II –Classification of Diseases, to the Pension Regulations for the Army, 1961 stipulates certain diseases which are affected by stress and strain including heart diseases like Myocardial Infarction and other forms of IHD, Cerebral Haemorrhage, hypertension etc. which can be taken cognizance of in respect of the Air Force service also. The applicant had undergone cataract surgery in both the eyes in May, 2017. In Para 13 of GMO, 2008, aggravation of cataract is to be conceded if the diabetes is brought about by service. The Tribunal in numerous cases itself has taken a view that the Type II Diabetes Mellitus is attributable/aggravated due to stress and strain of service. Besides, as per the Para 26 Chapter VI of GMO, 2008, Type 2 Diabetes Mellitus is to be conceded as aggravated if the onset occurs while serving in Field/CIOPS/HAA/prolonged afloat service and having been diagnosed as 'Type II Diabetes Mellitus' who are required to serve in these areas. Furthermore, inter alia stress and strain because of service reasons are stated therein to be known factors which can

precipitate diabetes or cause uncontrolled diabetic state.

Specific relevant portions of Para 26 read 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."

Furthermore, the Hon'ble Supreme Court also in the case of ***Commander Rakesh Pande Vs. Union of India & Ors.*** [Civil Appeal No. 5970 of 2019] decided on 28.11.2019, has upheld the decision of the Armed Forces Tribunal granting disability pension in respect of diabetes to the applicant for life.

19. In the present case, it is not disputed that the applicant, in his entire service career, was posted in different stations having different climatic and environmental conditions. Although the disabilities were noted when the applicant was in a peace area, the probability of earlier service in field and high altitude areas having contributed to mental stress and strain resulting in the disabilities cannot be overlooked. It has already been observed by the Tribunal in large number of cases that military services in peace station have their own pressure of rigorous military training and associated stress and strain of the service in peace station which should be taken into consideration for the purpose of granting disability pension. It may also be taken into consideration that the 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. Moreover, there is no note made in the medical documents of the applicant that he was suffering from any disease at the time of joining the service. There is no record to show that the applicant has suffered the disabilities due to hereditary reasons and admittedly, all the disabilities have occurred after serving for a long period. The respondents, in their counter affidavit or arguments, failed to show any specific or cogent ground to prove that the disabilities had no connection with the military service. We are, therefore, of the considered view that the benefit of doubt in these circumstances should be given to the applicant in view of the settled law by virtue of the verdict of the Hon'ble Supreme Court as referred to above on the point of attributability/aggravation and thus the disabilities suffered by the applicant should be held attributable to/aggravated by the military service.

20. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is held entitled for the disability element of pension in respect of all the disabilities mentioned in Para 2 of this order, compositely

assessed @ 100% along with Constant Attendant Allowance for life from the date of invalidment.

CONCLUSION

21. Therefore, the OA 517/2020 is allowed. The respondents are directed to grant the disability element of pension to the applicant @ 100% for life with Constant Attendant Allowance for life from the date of his invalidment from service for the disabilities (i) Ischemic Stroke Right Middle Cerebral Artery Territory @ 27% rounded off to 30% for life; (ii) CAD/IWMI/DVD Non-Obstructive (LAD+ RCA 99% P-PCI TO RCA (1X DES)' @ 40% for life; (iii) Ischaemic Optic Neuropathy Both Eyes With Proliferative Diabetic Retinopathy Rt Eye S/P PRP and Non-Proliferative Diabetic Retinopathy Lt Eye and (iv) Pseudophakia Both Eyes both IDs (iii) and (iv) @ 100% for life + CAA for life; and (v) Type-II Diabetes Mellitus @ 40% for life, along with Constant Attendant Allowance (CAA).

22. 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% per annum till the date of payment.

23. There is no order as to costs.

Pronounced in open Court on this 28 day of September, 2023.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

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