

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

B.

OA 574/2019

Col Koutharapu Srinivas (Retd) Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Ms. Prachi Chaturvedi, proxy for
Mr. OS Punia, Advocate
For Respondents : Mr. Avdresh Kumar Singh, Advocate

CORAM

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

ORDER
20.12.2023

Vide our detailed order of even date, we have allowed the OA 574/2019. Learned counsel for the respondents makes an oral prayer for grant of leave to appeal in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007 to assail the order before the Hon'ble Supreme Court. After hearing learned counsel for the respondents and on perusal of our order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order to grant leave to appeal. Thus, 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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Col Koutharapu Srinivas (Retd.) ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Mr. O S Punia, Advocate

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

ORDER

Invoking the jurisdiction of this Tribunal; under Section 14, the applicant has filed this application and the reliefs claimed in Para 8 read as under:

- (a) ***Set aside the impugned orders regarding rejection of disability pension (copy not supplied to applicant) and letter No. 13102/IC-48942N/Sign/MP-6(C)/76/2018/1st Appeal/AG/PS-4 (Imp-II) dated 21.02.2019 regarding rejection of first appeal.***
- (b) ***Direct the respondents to accept the disabilities of the applicant as attributable to and aggravated by service @ 40% for life.***
- (c) ***Direct the respondents to give the benefits of rounding off of disability from @ 40% for life to @ 50% for life and grant disability pension wef 01.06.2016 @ 50% for life in the light of law laid down by Hon'ble Supreme Court***

***alongwith interest @ 12% per annum
alongwith all consequential benefits;
and***

- (d) To award any other/further relief which
this Hon'ble Tribunal may deem fit and
proper in the facts and circumstances of
the case along with cost of the
application in favour of the applicant
and against the respondents.***

BRIEF FACTS

2. The applicant was commissioned in the Indian Army on 10.06.1989 and superannuated from the service on 31.05.2016 in the rank of Col after completion of 27 years in the Indian Army. The Release Medical Board as confirmed by the confirming authority on 10 March 2016 held that the applicant was discharged from service in low medical category SHAPE-2y for the disabilities "(i) Rheumatoid Arthritis @20% for life and (ii) Primary Hypertension" @30% with composite disability @ 40% for life while the net qualifying element for disability pension was recorded as Nil for life, on account of both the disabilities having been assessed as neither attributable to nor aggravated by military service.

3. On adjudication, the competent authority upheld the recommendations of RMB and rejected the disability

pension claim vide letter no.13302/1C-48942N/SIGS/MP-6(C)/190/2016/AG/PS-4 dated 12 April 2016.

4. The applicant submitted the First Appeal dated 24 February 2018 which was rejected by Appellate Committee on First Appeals and the same was communicated to the applicant vide letter No.13302/1C-48942N/SIGS/MP-6(C)/76/2018/Appeal/AG/PS-4 dated 21 February 2019. Thereafter, aggrieved by the response of the respondents, the applicant has filed the instant OA. In the interest of justice, in terms of Section 21(1) of the AFT Act, 2007, we take up the same for consideration.

CONTENTIONS OF PARTIES

5. Placing reliance on the judgment of the Hon'ble Supreme Court in ***Dharamvir Singh Vs. UOI & Ors*** [2013 (7) SCC 36], the learned counsel for the applicant submitted that no note of any disability was recorded in the service documents of the applicant at the time of the entry into the service, and that he served in the Air Force at various places in different environmental and service conditions in his prolonged service and thus thereby, any disability that arose during his service has to be deemed to

be attributable to or aggravated by military service. The learned counsel for the applicant also placed reliance on the judgment 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.

6. Reliance was also placed on the order dated 28.03.2018 of the AFT (RB), Chennai in OA 9/2017 in the case of **Ex Hav G. Ramanaiah vs. Union of India & Ors.** dated 28.03.2018, wherein a similarly situated personnel was given relief for the disability of Rheumatoid Arthritis.

7. Per contra, the learned counsel for the respondents submitted that the applicant is not entitled to the disability pension as both the disabilities were held as neither attributable to nor aggravated on the ground that as per the opinion of the Medical Board, both the disabilities are idiopathic disorders and there is no exceptional stress and strain of service. The learned counsel for the respondents further submitted that while rejecting the first appeals of the applicant, the Appellate Committee on First Appeals had given detailed reasons for holding the disabilities as NANA, and as per Regulations 81 and 37 of the Pension

Regulations for the Army, 1961 (Part-1), the disabilities do not qualify for the grant of disability pension as the same were held as being NANA.

ANALYSIS

8. The law on attributability of a disability pension has already been settled 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, 1982, and 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 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."

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.

7. Onus of proof:

Ordinarily the claimant will not be called upon to prove the condition of entitlement. However, where the claim is preferred after

15 years of discharge/retirement/invalidment/ release by which time the service documents of the claimant are destroyed after the prescribed retention period, the onus to prove the entitlement would lie on the claimant.

10. Attributability:

(a) Injuries:

In respect of accidents or injuries, the following rules shall be observed:

- i) Injuries sustained when the individual is 'on duty', as defined, shall be treated as attributable to military service, (provided a nexus between injury and military service is established).**
- ii) In cases of self-inflicted injuries while 'on duty', attributability shall not be conceded unless it is established that service factors were responsible for such action.**

(b) Disease:

(i) For acceptance of a disease as attributable to military service, the following two conditions must be satisfied simultaneously:-

- (a) that the disease has arisen during the period of military service, and**
- (b) that the disease has been caused by the conditions of employment in military service.**

(ii) Disease due to infection arising in service other than that transmitted through sexual contact shall merit an entitlement of attributability and where the disease may have been 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. Further as per amendment to Chapter VI of the 'Guide to Medical Officers (Military Pension), 2008 at para-43, it is provided as under:-

“43. Hypertension - The first consideration should be to determine whether the hypertension is primary or secondary. If (e.g. Nephritis), and it is unnecessary to notify hypertension separately.

As in the case of atherosclerosis, entitlement of attributability is never appropriate, but where disablement for essential hypertension appears to have arisen or become worse in service, the question whether service compulsions have caused aggravation must be considered. However, in certain cases the disease has been reported after long and frequent spells of service in field/HAA/active operational area. Such cases can be explained by variable response exhibited by different individuals to stressful situations. Primary hypertension will be considered aggravated if it occurs while serving in Field areas, HAA, CIOPS areas or prolonged afloat service.”

13. The disability of **Primary Hypertension** in respect of Col Koutharapu Srinivas (Retd.) even though had it's origin in a peace area but the said disability had its onset on

30.09.2010 after 21 years of the applicant's enrolment in the Indian Army and was due to the stress and strain of service which occurred during active service in adverse conditions which has not been effectively refuted by the respondents and therefore the disability of Primary Hypertension has to be held to be attributable to and aggravated by military service.

14. In so far as the disability of "**Rheumatoid Arthritis**" is concerned, Para 30 (a) of Chapter VI of the 'Guide to Medical Officers (Military Pension), 2008, is relevant and is as under:-

"(a) Arthritides. This include spondylo-arthropathy (seronegative) and Rheumatoid arthritis (Sero-positive). Spondylo-arthropathy have a constellation of diseases like unclassified spondylo-arthropathy, ankylosing spondylitis, reactive arthritis, psoriatic arthritis, Reiter's syndrome and enteropathic arthritis. All these are aggravated by physical stress of service like training, marching and prolonged standing etc."

15. The onset of the disability of Rheumatoid Arthritis was in October 2003, when the applicant was posted in Modified field area at 19 Inf Bde Sig Coy. During his entire career, the applicant has done five tenures in field areas as follows:-

(i) 29 Inf Div Sig Regt from 10.06.1098 to 30.06.1991,

(ii) 55(I) Inf Bde Gp Sig Coy from 28.01.1994 to 24.08.1995,

(iii) 64 Mtn Bde Sig Coy from 16.01.1998 to 01.05.2000,

(iv) 19 Inf Bde Sig Coy/ 26 Inf Div Sig Regt from 24.05.2002 to 23.11.2004 and

(v) 58 Wireless Experimental Unit from 24.11.2004 to 03.01.2007,

where carrying out day to day duties involves physical stress apart from the fact that these areas have hostile climatic and environmental conditions. The physical stress endured by the applicant during such a long service in field areas and its effect on the applicant cannot be overlooked and the disability of the Rheumatoid Arthritis' has to be held to be aggravated by the military service.

CONCLUSION

16. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is held entitled to the disability element of pension in respect of both the disabilities viz 'Rheumatoid Arthritis' and Primary Hypertension. Accordingly, we allow this application holding

that the applicant is entitled to disability element of pension for Rheumatoid Arthritis @ 20% and Primary Hypertension @ 30%, the composite assessment of which @ 40% is broad banded to @50% for life with effect from the date of his discharge 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.

17. The respondents are thus directed to calculate, sanction and issue the necessary 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.

Pronounced in the open Court on this day of 2 December, 2023.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER(J)

/pooja/