

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

A..

OA 622/2016 with MA 453/2016

Lt Col S K Nagrath (Retd.) ..... Applicant  
VERSUS  
Union of India and Ors. .... Respondents

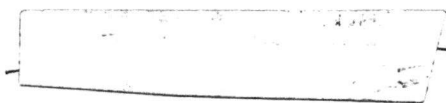
For Applicant : Mr. SM Dalal, Advocate  
For Respondents : Mr. Neeraj, Sr CGSC


CORAM

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

ORDER  
06.11.2023

Vide our detailed order of even date, we have allowed the OA 622/2016. 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. Therefore, prayer for grant of leave to appeal stands declined.

  
(JUSTICE ANU MALHOTRA)  
MEMBER (J)

  
(REAR ADMIRAL DHIREN VIG)  
MEMBER (A)

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

**O.A. No. 622 of 2016**

**with**

**M.A. No. 453 of 2016**

**In the matter of :**

**Lt Col S.K. Nagrath (Retd)**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant : Shri S.M. Dalal, Advocate**

**For Respondents : Shri Neeraj, Sr. CGSC**

**CORAM:**

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

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

**O R D E R**

**M.A. No. 453 of 2016**

Vide this application, the applicant seeks condonation of delay in filing the OA. In view of the law laid down by the Hon'ble Supreme Court in the case of **Deokinandan Prasad Vs. State of Bihar [AIR 1971 SC 1409]** and in **Union of India & Ors. Vs. Tarsem Singh [2009 (1) AISLJ 371]**, delay in filing the OA is condoned.

MA stands disposed of accordingly.

**O.A. No. 622 of 2016**

Invoking the jurisdiction of this 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) Set aside the order dt. 29.01.2016 passed by Integrated HQ of MoD (Army), Dte Gen of Medical Services (Army)/ MPRS O);***
- (b) direct the respondents to release the disability pension from the date of discharge as the same is due to service conditions as stress and strain;***
- (c) also direct to medically examine the applicant for re-assessment of the disability;***
- (d) grant cost of petition to the applicant;***
- (e) Pass any other appropriate order or direction as deemed as just and proper in the circumstances of the case.”***

**BRIEF FACTS**

2. The applicant, having been found medically and physically fit, was commissioned in the Indian Army on 05.10.1964 and retired prematurely from service, at his own

request, on 31.03.1989. Before his retirement, the applicant was brought before the Release Medical Board held on 17.12.1988, which assessed the applicant's disability, ISCHEMIC HEART DISEASE ('IHD' for short) @ 15-19% for two years, and the disability was held as 'neither attributable to nor aggravated by military service'. The applicant was not granted disability pension.

3. Against the denial of disability element of pension, the applicant requested the Army HQ vide application dated 30.09.2015 for conducting Re-Assessment Medical Board for determination of the disability for revised pensionary benefits, which was rejected by the respondents vide its letter dated 29.01.2016 stating that as per existing Govt. Policy, Armed Forces personnel who took premature retirement prior to 01.01.2006 are not eligible for disability pension. Aggrieved by the above, the applicant has filed the present original application seeking disability pension. In the interest of justice in accordance with Section 21(1) of the AFT Act, we take up the OA for consideration.

**CONTENTIONS OF THE PARTIES**

4. The learned counsel for the applicant submitted that the applicant, at the time of joining the service, was declared fully fit medically and physically and no note has been made in the service documents of the applicant regarding any disease suffered by him at that time. The learned counsel further submitted that during his service career, the applicant was posted to different places in peace and field areas; during the period from December, 1965 to 15<sup>th</sup> August, 1968 and the applicant participated in Op 'Cactus Lilly' from November, 1971 to May, 1972 and that the applicant was diagnosed with IHD in November, 1977, while he was serving in field area, due to different and challenging climatic and environmental conditions of service causing stress and strain to the applicant. The learned counsel further submitted that even after having been diagnosed with IHD, the applicant served in stressful conditions and in the year 1988, the applicant sought premature retirement, which was allowed and the applicant retired with effect from 31.03.1989. The learned counsel for the applicant relied on the verdict of the Hon'ble Supreme Court in **Dharamvir**

***Singh Vs. Union of India & Ors. [2013 (7) SCC 361],***

which has been followed in numerous cases by the Tribunal, and submitted that as per the law laid down by the Hon'ble Supreme Court, any disability detected during the service has to be deemed to be attributable to military service, if no note is made in his medical documents that he is suffering from any disease at the time of entry into service.

5. *Per contra*, the learned counsel for the respondents submitted that the applicant is not entitled to the relief claimed since the Release Medical Board, being an Expert Body, found the disability "Neither Attributable to Nor Aggravated by Military Service". The learned counsel submitted that the disability of the applicant does not fulfill the twin conditions to be eligible to get disability pension as per Para 48 of the Pension Regulations for the Army, 1961 (Part-I) of being held as either attributable to or aggravated by military service and assessed at 20% or more. Therefore, the learned counsel prays for dismissal of the OA.

### **ANALYSIS**

6. We have heard the learned counsel for the parties and have perused the record produced before us.

7. It is undisputed that the disability of the applicant was held as neither attributable to nor aggravated by military service and the same was assessed by the Release Medical Board at less than 20% (15-19%) for two years.

8. 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 Hon'ble 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."

9. The 'Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 1982', provide vide Paras 8, 9, 13, 14 and 19 thereof as under:

**"8.       Attributability/aggravation shall be conceded if causal connection between death/disablement and military service is certified by appropriate medical authority.**

**Onus of proof:**

**9.       The claimant shall not be called upon to prove the conditions of entitlement. He/she will receive the benefit of any reasonable doubt. This benefit will be given more liberally to the claimants in field/afloat service cases.**

**Injuries:**

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

**(a)       Injuries sustained when the men is 'on duty', as defined, shall be deemed to have resulted from military service, but in cases of injuries due to serious negligence/misconduct the question of**

*reducing the disability pension will be considered.*

- (b) *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; in cases where attributability is conceded, the question of grant of disability pension at full or at reduced rate will be considered.*

**Disease:**

14. *In respect of diseases, the following rule will be reserved :-*

- (a) *Cases in which it is established that conditions of Military Service did not determine or contribute to the onset of the disease but influenced the subsequent courses of the disease, will fall for acceptance on the basis of aggravation.*
- (b) *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 individual's acceptance for military service. 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.*
- (c) *If a disease is accepted 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.*

19. **Aggravation:** *If it is established that the disability was not caused by service, attributability shall not be conceded. However, aggravation by service is to be accepted unless any worsening in his condition was not due to his*

*service or worsening did not persist on the date of discharge/claim."*

10. Furthermore, the relevant regulation with regard to 'attributability to service' in Para 15 of the Entitlement Rules, 1982 reads as under:-

*"15. The onset and progress of some diseases are affected by environmental factors related to service conditions, dietic compulsions, exposure to noise, physical and mental stress and strain. Disease due to infection arising in service, will merit in entitlement of attributability. Nevertheless, attention must be given to the possibility of pre-service history of such conditions which, if approved, could rule out entitlement regarding aggravation. For clinical description of common diseases reference shall be made to the Guide to Medical officers (military Pensions) 1980, as amended from time to time. The classification of diseases affected by environmental factors in service is given in Annexure-III to these rules.*

Further, as per Annexure-III to the Entitlement Rules, 1982 – Classification of Diseases, in Clause B, along with several diseases, at Sl. No. 12, Myocardial infarction and other forms of IHD has been mentioned, which are affected by stress and strain. The said clause reads as under :

**"B. Diseases affected by stress and strain**

1. *Psychosis and Psychoneurosis*
2. *Hypertension (BP)*
3. *Pulmonary tuberculosis*
4. *Pulmonary tuberculosis with pleural effusion*
5. *Tuberculosis (non-pulmonary)*
6. *Mitral stenosis*

7. *Pencarditis and adherent pericardium*
8. *Endocarditis*
9. *Sub-acute bacterial endocarditis, including infective endocarditis*
10. *Mycarditis (acute and chronic)*
11. *Valvular diseases*
12. *Myocardial Infarction, and other forms of IHD*
13. *Cerebral haemorrhage and cerebral infarction*
14. *Peptic ulcer."*

11. 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....."***

12. In view of the aforesaid, the service in field and high altitude areas apart from physical hardship puts considerable mental stress of solitude and separation from family leaving the individual tense and anxious. These factors jointly and severally can become a chronic source of mental stress and strain precipitating an attack of IHD. In the



present case, it is not disputed that the applicant, during the period from December, 1965 to 15<sup>th</sup> August, 1968, was posted at J&K; from November, 1971 to 4<sup>th</sup> May, 1972, the applicant participated in Op 'Cactus Lilly' and from May 1977 to 12<sup>th</sup> January, 1980, the applicant had a field posting in Punjab and thus, due to different and challenging environmental and climatic conditions in his service career and strenuous and stressful duties performed by him, he suffered with IHD, the onset of which is in November, 1977 while he was posted in a Field area, as is evident from Part-II Statement of Case in the RMB proceedings. Therefore, the disability of the applicant is held as attributable to and aggravated by military service.

13. In this case, the RMB had assessed the disability of the applicant i.e. IHD, at less than 20% (15-19%). As discussed above, we have already held that the disability of IHD is attributable to/aggravated by military service. Since the applicant retired on 31.03.1989, although the GMO (MP), 1980 and the Entitlement Rules framed 1982 are applicable to his case, however, there being no specified guidelines for the medical officers for making assessment

for the disability i.e. IHD, which are available in sub-clause (b) of Clause (e) of Para 21 Chapter VII of the GMO (MP), 2008, by virtue of which, the minimum assessment for the disability ID 'IHD' has to be made at 30%, we find it appropriate to refer to the same in this case also. The relevant sub-clause (b) of Clause (e) of Para 21 reads as under:

**"DISEASES OF CIRCULATORY SYSTEM"**

**21. Assessment of the degree of disablement in cardiovascular diseases should be broad based and should take into account the functional status, left ventricular function, the cardiac rhythm, objective assessment of ischaemia (morphological characteristics as assessed by echocardiographic/angiographic evaluation and treatment modality offered.**

(a) to (d)                      xxx                      xxx

(e) Assessment for IHD.

(a)                      xxx                      xxx

(b) Disablement for IHD.

(i) No Symptoms and or symptoms brought on only by strenuous activity and or No or mild ischaemia and or normal LV function                      30%

(ii) Symptoms brought on by ordinary activity and or moderate ischaemia and or normal LV function and or mild LV dysfunction                      40 - 50 %

(iii) Symptoms brought on by ordinary activity and or moderate ischaemia, and or moderate LV dysfunction                      50 - 60%

(iv) Symptoms brought on by less than ordinary activity and or moderate to severe ischaemia, and or moderate LV dysfunction, untreated severe triple vessel or left main disease                      60 - 80%

(v) Symptoms at rest and or unstable angina, moderate to severe ischaemia, and or severe LV dysfunction with or without congestive cardiac failure                      80-100%

**(vi) Presence of atrial fibrillation or complex  
ventricular arrhythmias Add 20-30%**

which brings forth that the assessment of the percentage of disablement for IHD is not less than 30% therein.

14. Further, with regard to the fact that the duration of disablement assessed by the RMB was for two years only, it is brought forth vide the verdict of the Hon'ble Supreme Court in **Commander Rakesh Pande Vs. Union of India & Ors. [Civil Appeal No. 5970 of 2019]** decided on 28.11.2019, wherein the Hon'ble Apex Court while upholding the decision of the Armed Forces Tribunal granting disability pension for five years to the applicant, taking note of the policy letter dated 07.02.2001, granted the disability for life with the following observations :

***"Para 7 of the letter dated 07.02.2001 provides that no periodical reviews by the Resurvey Medical Boards shall be held for reassessment of disabilities. In case of disabilities adjudicated as being of permanent nature, the decision once arrived at will be for life unless the individual himself requests for a review. The appellant is afflicted with diseases which are of permanent nature and he is entitled to disability pension for his life which cannot be restricted for a period of 5 years. The judgment cited by Ms. Praveena Gautam, learned counsel is not relevant and not applicable to the facts of this case.***



***Therefore, the appeal is allowed and the appellant shall be entitled for disability pension @ 50% for life.***

***[Emphasis supplied]***

15. In the light of the afore-referred judicial pronouncements and essential parameters given above, we hold that the applicant's disability 'IHD' is attributable to/aggravated by the military service and the same is being assessed @ 30% for life and, therefore, the applicant is held entitled to the grant of disability pension.

### **CONCLUSION**

16. The OA 622 of 2016 is allowed. The respondents are directed to grant the disability element of pension to the applicant for the disability of IHD @ 30% for life which is directed to be rounded off to 50% for life 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. However, as the applicant has approached the Tribunal after a considerable delay, in view of the law laid down in *Tarsem Singh's case (supra)*, arrears will be



restricted to commence to run from three years prior to the date of filing of this OA i.e. 31.05.2016.

17. Accordingly, the respondents are directed to calculate, sanction and issue necessary PPO to the applicant within a period of three months from the date of receipt of a copy of this order, *failing which*, the applicant shall be entitled to interest @ 6% per annum till the date of payment.

18. There is no order as to costs.

Pronounced in open Court on this 6 day of November, 2023.

[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)

[JUSTICE ANU MALHOTRA]  
MEMBER (J)

/ng/