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

OA No. 648 of 2021

Ex. MWO Chandroop Sharma ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Ms. Pallavi Awasthi, Advocate
For Respondents : Mr. Anil Gautam, Sr CGSC

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

ORDER

MA 699/2021

This is an application filed under section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 3923 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of UoI & Ors Vs Tarsem Singh 2009(1)AISLJ 371 and in Ex Sep Chain Singh Vs Union of India & Ors (Civil Appeal No. 30073/2017 and the reasons mentioned, the MA 699/2021 is allowed and the delay of 3923 days in filing the OA 648/2021 is thus condoned. The MA is disposed of accordingly.

OA 648/2021

The applicant vide the present O.A. 648/2021 has made the following prayers:-

> *"(a) To direct the respondents to grant the disability pension @30% alongwith arrears to the applicant by treating the same as*

attributable and aggravated by the AF service.

(b) Direct the Respondents to grant the benefit of rounding of disability of the applicant to @50% for life in terms of law settled by Hon'ble Supreme Court of India in Civil Appeal No.418/2012 titled as UOI & Ors Vs Ram Avtar vide judgment dated 10.12.2014 as well as in a catena of judgments by this Hon'ble Tribunal

(c) To direct the respondents to pay the due arrears of disability pension with interest @18% p.a. with effect from the 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"

2. The applicant was enrolled in the Indian Air Force on 18.02.1978 and discharged therefrom on 30.04.2010 under the clause "On fulfilling the conditions of his enrolment" after rendering a total of 32 years and 72 days of regular service. At the time of enrolment the applicant underwent a primary medical examination and had been declared fit for enrolment in IAF in terms of AFMSF-2A dated 03.01.1978.

3. The applicant was initially diagnosed as case of Primary Hypertension and was placed in a low medical category category A4G4 (T-24) for ID-Primary Hypertension vide AFMSF-15 dated 15.06.2009 whilst posted at 14 Wing, AF(Chabua). The Release Medical Board(RMB) not solely on medical grounds was held at 14 Wing IAF vide AFMSF-16 on 10.08.2009 which found the applicant fit to be released from service in Low Medical Category(LMC) A4G2(P) for the ID-Primary

Hypertension assessed @30% for life and the same was mentioned in Part-V of the RMB proceedings as being neither attributable to nor aggravated by military service. The RMB assessed the composite disability i.e. Primary Hypertension @30% for life with the net assessment qualifying for disability element of pension being NIL. Thereafter, the proceedings of the Release Medical Board were approved by DPMO(S), HQ, IAF dated 30.09.2009 and on adjudication, the AOC, AFRO upheld the recommendations of the RMB and rejected the disability element of pension claim of the applicant vide letter No.RO/3305/3A/Med Cat(D) dated 13.11.2009. The outcome of the said findings were communicated to the applicant vide letter No.RO/2703/651454/04/10P&W/DP/RMB) dated 18.11.2009 with an advise to the applicant, he may, if he so desired, prefer an appeal to the Appellate Committee within six months from the date of receipt of the said letter. The applicant preferred First Appeal dated 28.08.2018 after a lapse of about 09 years from the date of initial rejection of his disability claim and the same was not processed being a time barred case and being filed after the maximum time limit of 5 years and an intimation to this effect was communicated to the applicant vide letter dated 03.12.2018. In the interest of justice, we consider it appropriate to take up the OA for consideration in terms of Section 21(1) of the Armed Forces Tribunal Act, 2007.

4. The opinion of the Medical Board in Part V thereof is to the effect:

PART V

" OPINION OF THE MEDICAL BOARD

1. Causal Relationship of the Disability with Service conditions or otherwise.				
Disability	Attributable to service(Y/N)	Aggravated by service(Y/N)	Not connected with service(Y/N)	Reason/cause/specific condition and period in service.
PRIMARY HYPERTESNION(OLD) Z.09.0	NO	NO	YES	CONSTITTUIONAL DISORDER

"

5. The posting profile of the applicant as put forward through the RMB in Part I is as under:-

S No	From	To	Unit Place/Ship	P/F(HAA/Ops/Sea service)/Mod Fd	S No	From	To	Unit Place/Ship	P/F(HAA/Ops/Sea service)/Mod Fd
(i)	18-02-78	16-09-79	Bangalore 5 GTS	P	(ii)	17-06-79	10-08-81	Tezpur/30 Sqn	P
(iii)	11-08-81	25-09-82	Bangalore/E& ITI	P	(iv)	26.09.82	19.4.85	Gorakhpur 1 Sqn	P
(v)	20.4.85	31.12.85	Hasimara/1 Sqn C/O16 Wg	P	(vi)	1-01-86	30-11-87	Hasimara/52 Sqn	P
(vii)	1.12-87	04-05-89	Hasimara 16 Wg	P	(viii)	05.05.89	18.7.89	Bagdogra/20 Wg	P
(ix)	19-07-80	13-10-92	Nsf/37 Sqn	P	(x)	14.10.92	28.03.97	Adampur/108 Sqn	P
(xi)	29.03.97	10.11.97	Pathankot/ 108 Sqn C/o 18 Wg	P	(xii)	11.11.97	30.11.98	Bhuj/15 Sqn	P
(xiii)	01.12.98	10.6.2001	Bhuj/27 Wg	P	(xiv	11.6.01	23.12.02	Sirsa/101 Sqn	P
(xv)	24.12.02	03.7.07	Sirsa/45 Wg	P	xvi	04.7.07	25.1.08	Chabua/14 Wg	P
(xvii	26.1.08	29.6.08	Chabua/MO FTUA	P	(xvii	30.06.08	Till date	Chabua14 Wg	P

The onset of the disability of Primary Hypertension (1-10) is indicated to be with effect from 20th May 2009 at Chabua, a peace area as reported in the RMB as under:

"

3.Give particulars of any disease, wounds or injuries from which you are suffering			
Illness,wounds, injury	First started	Where treated	Approximate dates and periods
Primary Hypertension(1-10)	20.05.2009/14 Wing, AF Chabua	162 MH	03 months

"

6. The applicant has submitted through his OA that he was enrolled in the Indian Air Force in a fit medical condition and as per the verdict of the Hon'ble Supreme Court in CA 5605/2010 titled ***Sukhvinder Singh*** Vs ***Union of India & Ors***(2014 STPL(Web) 468 SC) dated 25.06.2014 any disability not recorded at the time of recruitment must be presumed to have been caused subsequently unless proved to the contrary to be a consequence of military service.

7. The applicant through the averments made in the OA submits that in as much as the applicant was medically fit at the time of induction in the military services and has contracted the disability thereafter during the course of his employment, the responsibility lies on the shoulder of the employer and the respondents are thus, solely liable for the disability suffered by the applicant which is attributable to and aggravated by military service.

8. The applicant has also placed reliance inter alia on the order dated 17.07.2013 in TA 50/2011 of the AFT, RB, Kolkata in ***Manoj Kumar vs UOI & Ors*** in which qua the disability of hypertension, the prayer made by that applicant seeking the grant of the disability element of pension was allowed. Inter alia, the applicant has also placed reliance on the verdict in ***Omkar Singh Bawa*** Vs ***Union of India & Ors*** decided by the Hon'ble Punjab & Haryana High Court and reported in 2013(1) PLR 830 and in the case of ***Ex Naik Umed Singh*** Vs ***Union of India & Ors*** CWP

No.7277 of 2013 decided on 14.05.2014 by the Division Bench of the Punjab & Haryana High Court to the effect:

> *".....Therefore, in view of the judgment in Dharamvir Singh's case, we have no hesitation to hold that if no note is given of any disease at the time of acceptance of an individual into service, the disease would be deemed to have arisen in service. The Invalidation Medical Board or Review Medical Board has to record a categorical opinion that the disease, the reasons of invaliding out of service could not have been detected on medical examination at the time of enrolment. In the absence of any such finding of the Medical Board, the disease would be deemed to have arisen in service."*

10. Inter alia the applicant submits that in a catena of decisions of this Tribunal, the prayer made for the grant of disability element of pension for the disability of Primary Hypertension has been granted and the applicant also seeks the rounding of the disability pension to 50% from the composite assessment of 30% for life made as per the RMB proceedings in view of the verdict of the Hon'ble Supreme Court in ***Union of India Vs Ram Avtar*** Civil Appeal No. 418 of 2012.

11. The respondents through their counter affidavit have placed reliance on Rule 153 of the Pension Regulations for IAF, 1961 submitting to the effect that it is stipulated therein to the effect:-

> ***"Unless otherwise specifically provided, disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by Air Force service and is assessed at 20% or over."***

and thus, submit that disability pension is granted to those who fulfill the following two criteria simultaneously:-

(i) ***Disability must be either attributable to or aggravated by service.***
(ii) ***Degree of disablement should be assessed at 20% or more.***

It is submitted by the respondents that in as much as in the instant case, the RMB had assessed the disability of the applicant as being neither attributable to nor aggravated by service, the applicant does not fulfil the criteria no (i) as mentioned above and is not entitled for the grant of the disability pension in accordance with the prevailing rules and policies.

ANALYSIS

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

13. In view of the verdict of the Hon'ble Supreme Court in ***Dharamvir Singh Vs. Union of India & Ors.***(Supra) and the verdict of the

Principal Bench of the AFT in OA 1825/2018- ***Col R.R. Panigarhi Vs Union of India & Ors.***, adhered to by this Tribunal in a catena of decisions, and the factum that the non-existence of the ID of 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 not being aggravated by nor being attributable to military service - cannot be accepted.

14. It is also essential to observe that the prayer for the grant of the disability element of pension for the disability of 'Primary Hypertension' in C.A. 5840/2011 in the case of ***Flt Lt. P S Rohilla*** Vs ***Union of India*** has been upheld by the Hon'ble Supreme Court vide the verdict in ***UOI & Anr*** Vs. ***Rajbir Singh*** dated 13.02.2015 and connected matters (Civil Appeal 2904/2011).

15. The observations in the verdict of the Hon'ble Supreme Court in ***Rajbir Singh*** (supra) vide Paras 12 to 15 are to the effect:-

> *"12. Reference may also be made at this stage to the guidelines set out in Chapter-II of the Guide to Medical Officers (Military Pensions), 2002 which set out the "Entitlement: General Principles", and the approach to be adopted in such cases. Paras 7, 8 and 9 of the said guidelines reads as under:*
>
> *"7. Evidentiary value is attached to the record of a member's condition at the commencement of service, and such record has, therefore, to be accepted unless any different conclusion has been reached due to the inaccuracy of the record in a particular case or otherwise. Accordingly, if the disease leading to member's invalidation out of service or death while in service, was not noted in*

a medical report at the commencement of service, the inference would be that the disease arose during the period of member's military service. It may be that the inaccuracy or incompleteness of service record on entry in service was due to a non-disclosure of the essential facts by the member e.g. pre-enrolment history of an injury or disease like epilepsy, mental disorder, etc. It may also be that owing to latency or obscurity of the symptoms, a disability escaped detection on enrolment. Such lack of recognition may affect the medical categorisation of the member on enrolment and/or cause him to perform duties harmful to his condition. Again, there may occasionally be direct evidence of the contraction of a disability, otherwise than by service. In all such cases, though the disease cannot be considered to have been caused by service, the question of aggravation by subsequent service conditions will need examination.

[pic] The following are some of the diseases which ordinarily escape detection on enrolment:

(a) Certain congenital abnormalities which are latent and only discoverable on full investigations e.g. Congenital Defect of Spine, Spina bifida, Sacralisation,

(b) Certain familial and hereditary diseases e.g. Haemophilia, Congential Syphilis, Haemoglobinopathy.

(c) Certain diseases of the heart and blood vessels e.g. Coronary Atherosclerosis, Rheumatic Fever.

(d) Diseases which may be undetectable by physical examination on enrolment, unless adequate history is given at the time by the member e.g. Gastric and Duodenal Ulcers, Epilepsy, Mental Disorders, HIV Infections.

(e) Relapsing forms of mental disorders which have intervals of normality.

(f) Diseases which have periodic attacks e.g. Bronchial Asthma, Epilepsy, Csom, etc.

8. The question whether the invalidation or death of a member has resulted from service conditions, has to be judged in the light of the record of the member's condition on enrolment as noted in service documents and of all other available evidence both direct and indirect.

In addition to any documentary evidence relative to the member's condition to entering the service and during service, the member must be carefully and closely questioned on the circumstances which led to the advent of his disease, the duration, the family history, his pre-service history, etc. so that all evidence in support or against the claim is elucidated. Presidents of Medical Boards should make this their personal responsibility and ensure that opinions on attributability, aggravation or otherwise are supported by cogent reasons; the approving authority should also be satisfied that this question has been dealt with in such a way as to leave no reasonable doubt.

9. On the question whether any persisting deterioration has occurred, it is to be remembered that invalidation from service does not necessarily imply that the member's health has deteriorated during service. The disability may have been discovered soon after joining and the member discharged in his own interest in order to prevent deterioration. In such cases, there may even have been a temporary worsening during service, but if the treatment given before discharge was on grounds of expediency to prevent a recurrence, no lasting damage was inflicted by service and there would be no ground for admitting entitlement. Again a member may have been invalided from service because he is found so weak mentally that it is impossible to make him an efficient soldier. This would not mean that his condition has worsened during service, but only that it is worse than was realized on enrolment in the army. To sum up, in each case the question whether any persisting deterioration on the available [pic]evidence which will vary according to the type of the disability, the consensus of medical opinion relating to the particular condition and the clinical history."

13. In Dharamvir Singh's case (supra) this Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words:

"29.1. Disability pension to be granted to an individual who is invalided 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 to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).

29.2. 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 read with Rule 14(b)].

29.3. The 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).

29.4. 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)]. [pic] 29.5. 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 [Rule 14(b)].

29.6. 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 [Rule 14(b)]; and 29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 - "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."

14. *Applying the above principles this Court in Dharamvir Singh's case (supra) found that no note of any disease had been recorded at the time of his acceptance into military service. This Court also held that Union of India had failed to bring on record any document to suggest that Dharamvir was under treatment for the disease at the time of his recruitment or that the disease was hereditary in nature. This Court, on that basis, declared Dharamvir to be entitled to claim disability pension in the absence of any note in his service record at the time of his acceptance into military service. This Court observed:*

"33. In spite of the aforesaid provisions, the Pension Sanctioning Authority failed to notice that the Medical Board had not given any reason in support of its opinion, particularly when there is no note of such disease or disability available in the service record of the appellant at the time of acceptance for military service. Without going through the aforesaid facts the Pension Sanctioning Authority mechanically passed the impugned order of rejection based on the report of the Medical Board. As per Rules 5 and 9 of the Entitlement Rules for Casualty Pensionary Awards, 1982, the appellant is entitled for presumption and benefit of presumption in his favour. In the absence of any evidence on record to show that the appellant was suffering from "generalised seizure (epilepsy)" at the time of acceptance of his service, it will be presumed that the appellant was in sound physical and mental condition at the time of entering the service and deterioration in his health has taken place due to service."

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. This necessarily implies that no sooner a member of the force is discharged on medical ground his entitlement to claim disability pension will arise unless of course the employer is in a position to rebut the presumption that the disability which he suffered was neither attributable to nor aggravated by military service. From Rule 14(b) of the Entitlement Rules it is further clear that if the medical opinion were to hold that the disease suffered by the member of the armed forces could not have been detected prior to acceptance for service, the Medical Board must state the reasons for saying so. 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. The burden to establish such a disconnect would lie heavily upon the employer for otherwise the rules raise a presumption that the deterioration in the health of the member of the service is on account of military service or aggravated by it. A soldier cannot be asked to prove that the disease was contracted by him on account of military service or was aggravated by the same. The very fact that he was upon proper physical and other tests found fit to serve in the army should rise as indeed the rules do provide for a presumption that***

he was disease-free at the time of his entry into service. That presumption continues till it is proved by the employer that the disease was neither attributable to nor aggravated by military service. For the employer to say so, the least that is required is a statement of reasons supporting that view. That we feel is the true essence of the rules which ought to be kept in view all the time while dealing with cases of disability pension."

(emphasis supplied)

16. Furthermore, the 'Entitlement Rules for Casualty Pensionary Awards, to the Armed Forces Personnel 2008, which take effect from 01.01.2008 Paras 6, 7, 10, 11 thereof provide as under:-

"6. Causal connection:

For award of disability pension/special faraily 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) <u>Injuries:</u>

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 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."

Furthermore, Para 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),

has not been obliterated.

17. Thus, the ratio of the verdicts in ***Dharamvir Singh*** vs ***UOI & Ors*** (Civil Appeal No. 4949/2013) (2013) 7 SCC 316, ***Sukhvinder Singh*** vs ***UOI & Ors***, dated 25.06.2014 reported in 2014 STPL (Web) 468 SC, ***UOI & Ors. vs Rajbir Singh*** (2015) 12 SCC 264 and ***UOI & Ors*** versus ***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.

18. Thus in terms of the verdicts of the Hon'ble Supreme in ***Dharamvir Singh (supra), Rajbir Singh (supra) , Sukhvinder Singh (supra) and Manjeet Singh (supra)*** coupled with the absence of any

note having been made at the time of the applicant having been inducted into the military service of any disability suffered by him and there being nothing on the record to indicate that the disease could not have been detected on medical examination prior to acceptance in service, the disease from which the applicant suffers, has to be deemed to has arisen during military service.

19. The onset of the disability of Primary Hypertension in the instant case was on 20.05.2009 in the 18th posting of the applicant in the 31st year of military service and stress and strain and the rigours of military service even in peace areas has been held by this Tribunal to be sufficient to grant the disability element of pension. In these circumstances the applicant is entitled to the disability element of pension for Primary Hypertension assessed @30% for life, which is due to stress and strain of military service .

CONCLUSION

20. Thus, the OA 648/2021 is allowed and applicant is held entitled to the grant of the disability element of pension *qua* Primary Hypertension @ 30% assessed for life, which in terms of the verdict of the Hon'ble Supreme Court of India in Civil Appeal 418/2012 dated 10.12.2014 titled as ***UOI & Ors. Vs. Ramavtar***, the said disability is rounded off to 50% for life from the date of discharge.

21. However, as the OA has been filed with much delay, in terms of the verdict of the Hon'ble Supreme Court in ***Union of India & Ors Vs***

Tarsem Singh (2008) 8 SCC 648, the arrears of the disability element of pension shall commence to run from a period of three years prior to the institution of the present OA.

22. The respondents are directed to calculate, sanction and issue the necessary Corrigendum PPO to the applicant and pay the arrears within three months from the date of receipt of the copy of this order and in the event of default, the applicant shall be entitled to the interest @ 6% per annum till the date of payment.

Pronounced in the open Court on the 30 day of November, 2023.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

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