

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

H.

OA 650/2021

Ex L/NK Jaideep
VERSUS
Union of India and Ors.

..... Applicant

..... Respondents

For Applicant : Mr. Ajit Kakkar, Advocate
For Respondents : Mr. Arvind Kumar, Advocate

CORAM

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

ORDER
13.12.2023

Vide our detailed order of even date we have allowed the OA 650/2021. 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

OA No. 650/2021

Ex L/NK Jaideep

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Ms. Chhavi Yadav and Mr. Rajat Gupta,
proxy for Mr. Ajit Kakkar,

For Respondents : Mr. Arvind Kumar, Advocate

CORAM :

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

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

ORDER

1. The applicant vide the present O.A 650/2021 has made the following prayers:-

“(a) To direct the Respondents to bring all service and medical records of the Applicant including RMB.

(b) To set aside the Impugned orders dated 18.02.2021 and 18.11.2020 rejecting the applicant of disability pension.

(c) To grant disability element to the Applicant from the date of discharge i.e. 01.11.2020.

(d) To direct the Respondents to grant broad banding of the disability pension w.e.f. 01.11.2020.

(e) To direct the Respondents to issue a corrigendum PPO pertaining to the disability pension and broadbanding of the disability pension of the Applicant.

(f) To direct the Respondents to pay arrears of disability pension and broadbanded disability pension along with interest @12% from the date of discharge i.e. 01.11.2020.

(g) To grant such other relief appropriate to the facts and circumstances of the case as deemed fit and proper"

2. The applicant No. 156195997M Ex LNK Jaideep was enrolled in the Brigade of the Guards Regiment on 15.12.2004 and on completion of basic military training, he was posted to 10 GUARDS and whilst serving on 12.10.2015 he was placed in low medical category S3(T-24)H1A1P1E1(Temporary) for the diagnosis of "MIXED ANXIETY AND DEPRESSIVE DISORDER". The applicant was thereafter upgraded to medical category SHAPE-1 with effect from 28.02.2017 for the said diagnosis but subsequently he was placed in low medical category S2(T-24)H1A1P1E1(Temporary) for the diagnosis of "GENERALISED ANXIETY DISORDER" which was further downgraded to S2(T-24) H1A1P1E1(Permanent) for two years with effect from 26.01.2018. As the applicant was placed in permanent low medical category, his service was continued in sheltered appointment as available in the unit depending upon his medical restriction. Subsequently, when no sheltered appointment was available in the unit, the applicant was discharged from service on 31.10.2020 under the provisions of Army Rule 13(3) III(iii)(a)(i) of Army Rules 1954 before completion of his terms of engagement after rendering 15 years, 10 months and 17 days of service. The applicant

was thus granted service element pension with effect from 01.11.2020 vide PCDA(P), Allahabad PPO NO. 197202000701 dated 31.08.2020. Before proceeding on discharge from service his Release Medical Board(RMB) was held at the Military Hospital, Jalandhar on 05.10.2020 which assessed his disability as being neither attributable to nor aggravated by Military Service with 40% disability for life but Nil for grant of disability pension. The competent authority vide letter no. 15619597M/J/D-Pen dated 18.11.2020 rejected the applicant's claim in relation with an advice to the applicant to prefer an appeal within six months, if he was not satisfied with the decision of the Competent Authority. No such appeal was filed by the applicant but a Legal Notice dated 06.02.2021 was sent on behalf of the applicant seeking the grant of the disability element of pension alongwith the rounding off of the disability benefits, which was responded to vide letter dated 18.02.2021, whereby the applicant was apprised that the RMB had assessed his disability as being neither attributable to nor aggravated by Military Service and that the applicant was thus not entitled to the grant of the disability element of pension in terms of Para-53(a) of the Pension Regulations for the Army 2008(Part-I) which required that for the grant of the disability element of pension, it was essential that the personnel suffered from a disability which was either attributable to or aggravated by military service.

CONTENTIONS OF THE PARTIES

3. On behalf of the applicant, it is submitted through the present OA that he joined the Indian Army in a fit medical category with no note of any disability recorded on the records of the respondents and thus in terms of the verdict of the Hon'ble Supreme Court in *Dharamvir Singh Vs. UOI & Ors* in CA No. 4949/2013 with specific observations therein in Para-28 thereof, which reads 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."

and that thus the applicant is entitled to the grant of the disability element of pension as the onus of proof lies on the employer of the non-entitlement of the applicant, which the respondents in the instant case have been unable to discharge as detailed in Para-28(iii) in *Dharamvir Singh*(Supra). The applicant sought the broadbanding of the disability element of pension in the instant case in view of the verdict of the Hon'ble Supreme Court in *UOI & Ors. vs Ramavtar* in Civil Appeal No. 418/2012, with broadbanding of the disability of the applicant assessed @40% for life to 50% for life.

4. The respondents through their Counter Affidavit submit that there is no infirmity whatsoever in the RMB having opined to the effect that the disability that the applicant suffers from was neither attributable to nor aggravated by Military Service in view of the reasons detailed by the RMB with its said opinion to the effect:-

“

PART VII
OPINION OF THE MEDICAL BOARD

PART VII
OPINION OF THE MEDICAL BOARD

Disability	Attributable to Service(Y/N)	Aggravated by Service(Y/S)	DETAILED JUSTIFICATION
GENERALISED ANXIETY DISORDER (F-41.2)	NO	NO	Onset in peace and there is no recorded h/o denial of leave to attend domestic emergencies within 3 months of onset of disease vide para-5A Chapter-VI of GMO(MP),2008

5. The respondents have further submitted that the initial examination conducted at the time of recruitment does not involve any detailed investigations and examination by the specialists and it is limited to assess the individual's physical fitness and cannot detect any of the inherited or endogenous or constitutional or psychiatric or genetic or familial diseases or any other conditions that have not clinically manifested or are quiescent and may manifest later in life. The respondents also submit that the medical examination conducted at the time of recruitment can detect only those disabilities that are obviously visible and the diagnosis of any disease depends totally on the medical history provided by the patient. The respondents further submit that without a proper history, no disease can be diagnosed. Inter alia, the respondents submit that at the time of enrolment, the individual's statement on AFMSF-2A(Primary Medical Examination Report) is relied upon to get any past history and the family history of

any disability. The respondents also submit that the individual may unknowingly, with ulterior motive, withhold any history of such illness in the past or in the family or any evidence of the disease which would render him unfit for enrolment and that if the individual does not reveal any history, it is presumed that he is free from such a disability. The respondents thus submit that many diseases are not detectable at the time of enrolment and are in a quiescent stage becoming detectable later in adult life. The respondents have thus prayed that the OA be dismissed.

ANALYSIS

6. The applicant in the instant case was posted as per his Personal Statement in Part-II of the RMB as under:-

“

1. Give details of service (P= Peace OR F=Field/Operational/Sea Service)* *(Copy of paramount card and Part-II orders for service in FD/Mod Fd/CI Ops/HAA/ sea service/operation area/others for the indl undergoing RMB to be att)					
Ser No	From	To	Unit	Place/Ship	Peace/Field/ Operational/ Sea Service
1	15/12/2004	06/03/2006	GUARDS, RC	Kamptee	Peace
2	07/03/2006	26/07/2009	10 GUARDS	Sangrur	Peace
3	27/07/2009	20/08/2011	61 RR	J& K	Field
4	21/08/2011	01/01/2013	10 GUARDS	Pathankot	Peace
5	02/01/2013	01/01/2015	61 RR	J & K	Field
6	02/01/2015	23/07/2015	Pathankot	Pathankot	Peace
7	24/07/2016	Till dt	Kapurthala	Kapurthala	Peace

”

During the period from 27.07.2009 to 20.08.2011, the applicant is indicated to have been posted at 61 RR(J&K), a field station. Likewise from 02.01.2013 to 01.01.2015, the applicant is indicated to have been posted at 61 RR(J&K), in a field station. The onset of the disability of Generalised Anxiety Disorder is indicated to have been in September, 2015 at Pangoli, Pathankot as per the RMB which is reflected as under:-

“

2. Give particulars of any diseases, wounds or injuries from which you are suffering				
Illness, wound, injury	First Started		Rank of Indl	Where treated
	Date	Place		
GENERALISED ANXIETY DISORDER (F-41.2)	Sep 2015 at Pangoli Pathankot (PB)		LNK	MH Pathankot C/O 56 APO
				Sep 2015 to till date

”

7. The said onset of the disability in September, 2015 is indicated to be soon after the posting of the applicant in a field station at J&K from 02.01.2013 to 01.01.2015 i.e. within 8½ months from the said posting in J&K at a field station. The Summary and Specialist opinion attached to the RMB of the Graded Specialist(PSY) at the Military Hospital, Jalandhar Cantt dated 07.07.2020, which reads as under:-

“PART II (CLINICAL ASSESSMENT)

1. History:

(a) Location of onset- Pathankot (Punjab)

(b) Date & time of onset- Sep 2015

(c) Relevant History-Perusal of available documents revealed that the indi initially came under psychiatric re in Sep 2015 at 167 MH with c/o repeated intrusive thoughts, reduced sleep, night mares, fearfulness, reduced interest in his job & a feeling of guilt since Jan 2015. AFMSF-10 dated 04 Sep 2015 mentioned him "average in profession & motivation, satisfactory in regtl performance & average performance under stress. He was initially managed at 167 MH & was subsequently transferred to this hospital for further mgt.

Detailed history then revealed that the patient was apparently asymptomatic around 02 yrs ago when he developed an insidious onset & gradually progressive worrying thoughts about all the things occurring around him like vehicle coming from behind might hit him, his relatives might be harmed by own factors. He used to get worried about small things like talking to his father, talking to seniors & pout routine activities in the unit. He would become fidgety easily, especially in tense situations. He would frequently develop heaviness of head, generalized trembling & would be unable to sleep. He used to develop increased sweating and dryness of mouth. He was unable to concentrate in conversation & had gradually developed sadness of mood, lack of confidence. He would get irritated on trivial issues. He used to have sleep disturbance in the form of multiple interruptions resulting in socio-occupational dysfunction & this triggered his subsequent psychiatric referral.

On initial admission, his physical examination at 167 MH revealed a pulse of 85/min, BP was 138/86 mm Hg. Relevant haematological; biochemical, & serological inv were WNL. Serial MSES & ward observation revealed him to be kempt, adequately groomed, cooperative individual, with an anxious affect, goal directed thoughts, free floating anxiety & reduced biorhythms. There were no depressive cognitions or suicidal ideations & no delusions of perceptual disturbance. He was diagnosed as a case of Mixed Anxiety and Depressive Disorder (F 41.2) & was managed with SSRIs, psychotherapy & other supportive measures along with problem solving & coping skills to which he responded favorably. Serial MSES & ward observation at MH JRC revealed a euthymic & optimistic individual, with normal PMA, normal affect. He had full insight in a clear sensorium with stable biodrives. On improvement he was placed in S3 (T24).

Course of Illness: During review in Mar 2016, and Sep 2016 he was noted to be asymptomatic with satisfactory unit reports. He was serially observed in LMC S3 (T-24+24), & S2 (T-24) on maintenance medication.

During his review in Feb 17, he offered no complaints, claimed complaint with medication and is functional in his trade work. However he also mentioned to have free floating anxiety whenever he missed his medication. No history to suggest any other psychopathology. Unit report dated 18 Feb 2017 mentioned him "disciplined, dedicated, and average in psycho-socio-occupational profile with satisfactory compliance and vocational performance". General physical and systemic examination was WNL. MSE revealed no overt psychopathology. In view of the longitudinal profile and symptomatology primarily characterized by significant anxiety signs and symptoms, free floating in nature, his diagnosis **Mixed Anxiety and Depressive Disorder was changed to Generalised Anxiety Disorder**. He was educated about his illness and drug adherence has been emphasized. He was upgraded to S1 for Mixed anxiety & Depressive Disorder & placed in S2 (T-24) for Generalised Anxiety Disorder.

During subsequent review in Sep 2017, he did not offer any complaints. He was maintaining rent He attempted 2-3 occasions to reduce Tab Sertraline on his own, which led to excessive thoughts about day to day events, apprehension & restlessness. He was regular on medication AFMSF-10 dt 12 Aug 2017 mentioned him "punctual, disciplined, satisfactory compliance with et satisfactory vocational performance and abstinent from alcohol". General physical examination BL fine digital tremors. MSE did not reveal any overt psychopathology except mild anxiety en He was given indi and group psychotherapy and coping skills training and was continued on maintenance medication. He was educated about early signs of relapse. He was continued in LMC S2(T+24).

During his review/ recat in Jan 2018, he did not offer any complaints. Denied any stressors, AFMSF- 27 Jan 2018 mentioned him "punctual, disciplined, satisfactory compliance with treatment, satisfactory additional performance and abstinent from alcohol". General physical & systemic examinations were was continued on maintenance medication. He was placed in LMC S2 (P) for Generalised Anxiety disorder.

During his last review/recat in Jan 2020, he offered no complaints, claimed to be compliance with medication. AFMSF-10 dt 28 Jan 2020 mentioned him as "punctual, disciplined, satisfactory compliance treatment, satisfactory vocational performance and abstinent from alcohol". General physical examination was normal. MSE revealed no overt psychopathology. He was given intensive ind psychotherapy and coping skills training and was continued on maintenance medication. He has been educated about relapse prevention. He was continued in LMC S2 (P) for Generalised Anxiety Disorder.

Present Hospitalization: Now reported for RMB opinion. He offer no any complaints, claimed to be compliance with medication and adequately functional in socio-occupational spheres. Denied any stressors, no h/o sadness of mood. AFMSF-10 dt 06 Jul 2020 mentioned him as "punctual, disciplined, satisfactory compliance with treatment, satisfactory vocational performance and abstinent from alcohol".

Physical examination findings: General physical & systemic examinations were normal. MSE revealed a empt, cooperative indl with normal PMA, coherent and relevant speech, mood he described as "theek have reactive and euthymic affect with goal directed thinking without any delusions/depressive cognition or suicidal ideas, no perceptual anomalies in clear sensorium and stable biodrives.

3. Investigation reports:- S.Bil-1.0 mg/dl, SGOT/SGPT-31/52 IU, Urea-27 mg/dl, Creatinine-0.7 mg/dl, Hb- 6 gm/dl, TLC-8400 cumm, DLC-N-65%, L-29%, M-04%, E-02%.

4. Diagnosis: GENERALISED ANXIETY DISORDER (ICD 10: F 41.2) FOR RMB.

PART III (TREATMENT UNDERTAKEN/ ADVISED)

He was given intensive indl psychotherapy and coping skills training and was continued on maintenance medication. He has been educated about relapse prevention. He will require further review & low up, however he is due for release from service vide The Guards Records letter No-0154/07/2020- /RA dt 12 May 2020.

PART IV (RECOMMENDATIONS)

1. **Medical Classification recommended:-** In view of the above, he is recommended to be continued and sed in LMC S2 (P) of SHAPE factor for Generalised Anxiety Disorder.

22. **Advice:**

- (a) Complete abstinence from alcohol/other intoxicants.
- (b) To continue: Tab Sertraline (50 mg) 1-0-2.
- (c) Periodic review in Psychiatry OPD as per entitlement."

8. It is essential to observe that in the said summary and opinion of the Graded Specialist, there is nothing to indicate any family history of the ailment. Significantly, as has been observed herein above, the onset of the disability was in September 2015 in the applicant's 6th posting at Pathankot, a peace station soon after his 5th posting from 02.01.2013 to 01.01.2015 at 61 RR, J&K ,a

field station that the summary and opinion dated 07.07.2020 indicates that the applicant since January 2015 had been suffering from repeated intrusive thoughts, reduced sleep, night mares, fearfulness, reduced interest in his job & feeling of guilt since January 2015 with AFMSF-10 dated 04.09.2015 mentioned him to be "Average in profession & motivation, satisfactory in regimental performance and average performance under stress", coupled with the unit reports dated 18.02.2017, 12.08.2017, 27.01.2018, 28.01.2020 indicating the applicant to be "punctual, disciplined, satisfactory compliance with treatment as with satisfactory vocational performance and abstinent from alcohol.

9. Para-54 of Chapter-VI of the GMO(M.P.), 2008 provides as under:-

"54. Mental & Behavioural (Psychiatric) Disorders.

Psychiatric illness results from complex interplay of a endogenous (genetic/biological) and exogenous (environmental, psychosocial as well as physical) factors. This is true for the entire spectrum of psychiatric disorders (Psychosis & Neurosis) including substance abuse disorders. The relative contribution of each, of course, varies from one diagnostic category to another and from case to case.

The concept of attributability or aggravation due to the stress and strain of military service can be, therefore, evaluated independent of the diagnosis and will be determined by the specific circumstances of each case.

(a) Attributability will be conceded where the psychiatric disorder occurs when the individual serving in or involved in:-

- (i) *Combat area including counterinsurgency operational area*
- (ii) *HAA service.*
- (iii) *Deployment at extremely isolated posts*
- (iv) *Diving or submarine accidents, lost at sea.*
- (v) *Service on sea.*
- (vi) *MT accidents involving loss of life or Flying: accidents (both as flier and passenger) in a service aircraft or aircraft accident involving loss of life in the station.*
- (vii) *Catastrophic disasters particularly while aiding civil authorities like earthquake, cyclone, tsunami, fires, volcanic eruptions (where one has to handle work in proximity of dead or decomposing bodies).*
- (b) *Attributability will also be conceded when the psychiatric disorder arises within serious/multiple injuries (e.g. year amputation upper/lower limb, paraplegia, quadriplegia, severe head injury resulting in hemiplegia of gross neurocognitive deficit which are themselves considered attributable to military service. Traumatic Stress Disorder (PTSD). This includes Post Traumatic Stress Disorder (PTSD).*
- (c) *Aggravation will be considered in Psychiatric disorders arising within 3 months of denial of leave due to exigencies of service in the face of:*
 - (i) *Death of parent when the individual is the only Child/son.*
 - (ii) *Death of spouse or children.*
 - (iii) *Heinous crimes (e.g. murder, rape or dacoity) against members of the immediate family.*
 - (iv) *Reprisals or the threat of reprisals against members of the immediate family by militants/terrorists owing to the fact of the individual being a member of the Armed Forces.*
 - (v) *Natural disasters such as cyclones/earthquakes involving the safety of the immediate family.*
 - (vi) *Marriage of children or sister when the individual is the only brother thereof and specially if their father is deceased.*
- (d) *Aggravation will also be conceded when after being diagnosed as a patient of psychiatric disorder with specific restrictions of employability the individual serves in such service environment which worsened his disease because of the stress and strain involved like service in combat area including counterinsurgency operations, HAA, service on board ships, flying duties.*

(e) Attributability may be granted to any psychiatric disorder occurring in recruits and results in invalidment from service only when clearly identifiable severe stressors including sexual abuse or physical abuse are present as causative factor/factors for the illness."

9. The disability in question in the instant case of Generalised Anxiety Disorder has to be held to be aggravated by military service in terms of Para-54(a) & (c) of Chapter-VI of the GMO(MP), 2008.

10. In OA 1204/2019 in the case of *Ex-HAV(ACP-1) Satnarain Singh Vs. UOI & Ors.* vide order dated 30.05.2023 vide Para-18, it has been observed by us to the effect:-

"As Per Para-54 of the GMO,2008 referred to herein Para- 16, for the disability as mentioned in Para-54 of the GMO(Military Pensions), 2008, the concept of attributability or aggravation due to the stress and strain on military service is to be evaluated independent of the diagnosis and will be determined by the specific circumstances of each case. To the same effect, is the ratio of the verdict of the Hon'ble Supreme Court in Ex Cfn Narsingh Yadav(supra) vide Para-18 thereof, to the effect, that it has to be specifically in each case to be examined whether the duties assigned to the individual may have led to stress and strain leading to the disability which in that case was Psychosis and psychoneurosis."

coupled with the observations therein in the said order to the effect:-

"We find force in the submissions of the learned counsel for the applicant as there appears no reason to place personnel of the Armed Forces who have retired/discharged and those in service at a different footing for analyzing the aspect of the arising of the disease and disability within a period of 7 years as a delayed manifestation of a pathological process set in motion by service conditions obtaining prior to

discharge to thus recognize the disability being attributable to service. ”

The summary and opinion of the graded specialist in psychiatry dated 28.02.2015 qua the applicant already adverted to herein above, brings forth that the applicant had no past history nor any family history of the disability nor was he suffering from any addiction. In these circumstances, even in terms of Para 10(b)(iii) of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008, which is to the effect:-

“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.”

19. The presumption of the entitlement in favour of the claimant, the applicant herein, having not been rebutted and there being nothing at all known about the cause of the disease, attributability has to be conceded in the instant case.

Furthermore, Para-11 of the said rules of 2008 is to the effect:-

“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.”

As observed herein above, in terms of Para-8(a) of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008, the aggravation of the disability in the instant case has to be held to have been caused due to the applicant having been posted in field area for a period of 06.04.2006 to 07.05.2008 about 3 years prior to the onset of the disability in question on 23.04.2011. The Pension Regulations for the Army (Part-I) , Para-86 thereof are also virtually to similar effect except that it states the period therein, within which the disease is to be in existence is a period of 10

years from the date of retirement which in terms of Para-8(a) of the 2008 rules would have to be read for a period of 7 years, the same however does not depart from the principles adverted to herein above of the provisions of Para-8(a) of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008 being made applicable to service personnel in service for reassessment of the aspect of the attributability and aggravation of the disability which arises within a period of 7 years prior to its onset as per the medical records. The reliance placed by the respondents on the verdict in Ex AG PO(GS) GSI Anil(Supra) in OA 205/2017 is thus misplaced in the facts and circumstances of the instant case.”

The factum that the disability of Generalised Anxiety Disorder had its onset within a period of 8½ months after the field posting of the applicant in J&K has to be held to be a causative stressful factor for the onset of the disability in September, 2015, and the same cannot be overlooked.

10. On a consideration of the submissions made on behalf of either side, it is essential to observe that the factum that as laid down by 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*.

11. That the applicant suffered from no disability before induction into the military service is brought forth through the Counter Affidavit of the respondents themselves. There is nothing in the Summary and Opinion of the Graded Specialist dated 07.07.2020 to indicate any contributory factors of any kind of, even of family history for the onset of the disability in question, as already observed in para 8 herein above.

12. Reliance was placed on behalf of the applicant on the case of *Ex Nk Than Singh vs UOI & Ors.* of the AFT (RB), Lucknow in OA 128/2022 to contend to the effect that the prayer made for the grant of disability element of pension for the disability of Generalised Anxiety Disorder had been granted thereby.

13. Reliance was placed on behalf of the respondents on the order dated 31.05.2023 in the case of *Sub Anil Kishor(Retd.) vs. UOI & Ors.*, in OA 2058/2021 with specific reliance on observations in Para-10 & 11 thereof to the effect:

"10. Before coming to a considered opinion, it would be pertinent to refer to the judgement of the Hon'ble Apex Court in Civil Appeal No 7672 of 2019 (Diary No 27850 of 2017), decided on 03/10/2019, in the case of Ex Cfn Narsingh Yadav Vs UOI & Others, wherein the Apex court had upheld the decision of AFT, Regional Bench, Lucknow in OA No. 235 of 2010 dated 23.09.2011 denying Disability Pension to a soldier

medically boarded out with Schizophrenia. The Supreme Court was pleased to opine-

"20. In the present case, clause 14 (d), as amended in the year 1996 and reproduced above, would be applicable as entitlement to Disability Pension shall not be considered unless it is clearly established that the cause of such disease was adversely affected due to factors related to conditions of military service. Though, the provision of grant of Disability Pension is a beneficial provision but mental disorder at the time of recruitment cannot normally be detected when a person behaves normally. Since there is a possibility of non-detection of mental disorder, therefore, it cannot be said that Schizophrenia is presumed to be attributed to or aggravated by military service.

21. Though, the opinion of the Medical Board is subject to judicial review, the Courts are not possessed of expertise to dispute such a report unless there is strong medical evidence on record to dispute the opinion of the Medical Board which may warrant the constitution of the Review Medical Board. The Invaliding Medical Board has categorically held that the appellant is not fit for further service and there is no material on record to doubt the correctness of the Report of the Invaliding Medical Board.

22. Thus, we do not find any merit in the present appeal accordingly, the same is dismissed".

11. Moreover, the Supreme Court Judgement in *Cfn Narsingh Yadav (supra)* amplifies that mental disorders which cannot be medically detected during the enrolment process cannot be claimed to be attributable to rigours of service at a later stage, and observed as under:

"Relapsing forms of mental disorders which have intervals of normality and Epilepsy are undetectable diseases while carrying out physical examination on enrolment, unless adequate history is given at the time by the member".

In the facts and circumstances of the instant case, reliance that has been placed on behalf of the respondents on observations in *Sub Anil Kishor(Retd)* in OA 2058/2021 is wholly misplaced, as the facts thereof are not in *pari materia* with the facts of the instant case, *where*

the applicant herein suffered from the onset of the disability of Generalised Anxiety Disorder after only 8½ months of his field posting at J&K from the period 02.01.2013 to 01.01.2015.

CONCLUSION

12. The OA 650/2021 is allowed. The applicant is thus entitled to the grant of disability element of pension @40% for life for the disability of Generalised Anxiety Disorder, which in terms of the verdict of the Hon'ble Supreme Court in *UOI & Ors. vs Ramavtar* in Civil Appeal No. 418/2012 is directed to be broadbanded to 50% for life, from the date of discharge i.e. 31.10.2020.

13. The respondents are directed to calculate, sanction and issue the necessary Corrigendum PPO to the applicant 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 13 day of December, 2023.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER(J)

/TS/