

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

B..

OA 763/2019

Col (TS) Bhupendra Singh (Retd.) Applicant
VERSUS Respondents
Union of India and Ors.

For Applicant : Mr. Shakti Chand Jaidwal, Advocate
For Respondents : Mr. Niranjana Das, Advocate

CORAM

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

ORDER
22.12.2023

Vide our detailed order of even date, we have allowed the OA 763/2019. 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. Therefore, prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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

ORDER

The applicant vide the present O.A 763/2019 has made the following prayers:-

- “(a) Set. Aside the impugned order dated 26.10.2018 passed by the respondents rejecting second and final appeal of the applicant for grant of enhanced disability element of pension to him for other two disabilities also;*
- (b) Direct the respondents to treat other two disabilities of the applicant, namely, “CAD-SVD-POST PTCA TO LCX-OM2(held as aggravated by RMB)” and ‘PRIMARY HYPERTENSION’ also as aggravated by military service;*
- (c) Direct the respondents to grant disability element of pension to the applicant @70% for life w.e.f. 01.01.2017, as composite degree of his disablement for all the three disabilities has been assessed @66% for life by the RMB;*
- (d) Direct the respondents to pay disability element of pension to the applicant at an enhanced rate @75% for life w.e.f. 01.01.2017 By rounding off/broadbanding applicant's all disabilities from composite 66.4% to 75% as per Govt Policy dated 31.01.2001;*

(e) Direct the respondents to pay to the applicant an interest @10% per annum on the arrears of enhanced disability pension w.e.f. 01.01.2017 and/or;
(f) Pass such other order(s)/direction(s) as may be deemed appropriate in the facts and circumstance of the case.”

2. The applicant Col. Bhupendra Singh (Retd) was commissioned in the Indian Army on 09.06.1984 and retired from service on 31.12.2016 on reaching the age of superannuation. At the time of retirement, the applicant was brought before the duly constituted Release Medical Board on 07.06.2016 which opined *qua* his disabilities as reflected in Part V thereof to the effect:

PART V
“ OPINION OF THE MEDICAL BOARD

1. Causal relationship of the Disability with service conditions Otherwise.				
Disability	Attributable To Military Service	Aggravated By military service	Not connected with Service (Y/N)	Reason/cause/specific Condition and period In service
CAD/SVD-POST -PTCA TO LCX-OM2	NO	YES	NO	Vide AFMSF-15 dt 04. Jan 2006 and 14 days Charter of duties Para 56 of GMO 2008
SECONDARY OA(RT) KNEE	YES	NO	NO	Secondary to Injury(RT) Knee vide IAFY-2006 dt 09 Jun 2016 and AFMSF-15 dt 03 Aug 2012
PRIMARY HYPERTENSION	NO	NO	YES	Onset in peace vide Para 43 of Chapter VI of GMO-2008

”

The onset of the disabilities reflected in RMB in Part IV Statement of the case is to the effect:

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PART IV
STATEMENT OF CASE

1. Chronological list of the disabilities.

Disabilities	Date of Origin	Rank of Indl	Place where Serving at the Time
CAD/SVD-POST-PTCA TO LCX-OM2	18 Nov.2005	Major	OC IIT, 14 RAPID(S) Dehradun
SECONDARY OA(RT) KNEE	01 Aug 2012	Col.	OC 24 Inf Div FS Sec, Bikaner
PRIMARY HYPERTENSION	23 Jan 2015	Col	OC 22 Inf Div FS Sec. Meerut

The Posting profile of the applicant reflected in Part-I of the RMB in Personal Statement is to the effect:

S. No.	From	To	Unit/ Ship	Place	P/F (HAA. Ops/ Sea Service/ other	S. No.	From	To	Unit/ Ship	Place	F
i	1.6.84	31.10.84	9 MECH	Sangrur	F	Ix	24..5.00	7.6.02	Jaisalmer	1/879 Int & FS U	
ii	1.11.84	31.10.88	(MECH	Ratnuchak	F	X	8.6.02	6.6.04	Bareilly	No.2 Det CCLU	P
iii	1.11.86	30.6.90	9 MECH	Hissar	F	Xi	7.6.04	13.8.06	Dehradun	HQ 14 RAPID(S)	P
iv	1.7.90	30.11.90	2/7Det SCLU	Pune	P	Xii	14.8.06	10.8.08	LUCKNOW	HQ CC	P
v	1.12.90	30.9.92	2/7 \ Det SCLU	Jaipur	P	xiii	11.8.08	28.7.10	Lucknow	HQ CC	P
vi	1.10.92	21.12.94	57 Mtn Div FS Coy	Leimahong	F	Xiv	31.7.10	4.1.14	Bikaner	24 Inf Div FS Sec	P
vii	1.1.95	25.12.97	Army HQ LU	Delhi Cantt	P	Xv	5.1.14	Till date	Meerut	22 Inf Div FS Sec	P
viii	26.12.97	23.5.00	NO.6 DET MCLU (121 BT)	Kupwara/ Kargil	F						

The RMB proceedings in Para 2,3,4, 5(a) & 5(b) reflect to the effect:

2.	Did the disability exist before entering service(Y/N/could be	NO
3.	In case the disability existed at the time of entry, is it possible that it could not be detected during the routine medical examination carried out at the time of the entry	NA
4.	In case the disability awarded aggravation, whether the effects of such aggravation Still persist? If yes, whether the effect of aggravation will persist for a material period/ Yes for dis No.(1) as long as in Mil service and No for Dis No.(2) and (3)	
5.	(a) Was the disability attributable to the individual's own negligence or misconduct	NO

3. The Release Medical Board assessed the disability of Secondary OA(RT) Knee @20% for life and opined the same to be attributable to military service which has been broadbanded to 50% for life w.e.f. 01.08.2012 vide PPO No.131201700541 issued by the PCDA(A), the applicant prays that the other two disabilities i.e.CAD-SVD-POST PTCA TO LCX-OM2 which had its onset on 18.11.2005 assessed @40% for life and the Primary Hypertension which had its onset on 23.01.2015 assessed @30% for life be held to be attributable to and/or aggravated by military service as he suffered from no disablement at the time of induction into the military service and that there is no reason put forth by the RMB to indicate as to why the said disabilities were not detected before the commission of the applicant in the Indian Army on 09.06.1984.

4 The applicant's first appeal dated 05.05.2017 against partial rejection of his disability claim was rejected with the reasons to the effect:

“

Sr. No.	Disability	Reasons(s)
(a)	CAD/SVD-POST PTCA TO LCX-OM2	As per 14 days charter of duties, the officer has been performing normal course of duties without any stress and strain. Hence condition laid down vide Para-47, Chapter VI, GMO 2002/2008 for conceding attributability/ aggravation.
(b)	PRIMARY HYPERTENSION	ID is an idiopathic disorder with familial clustering and is per se not attributable to service. In the instance case the onset of ID

		was in peace station. Hence, the ID is conceded as neither attributable to nor aggravated by mil service in terms of Para 43 Chapter VI GMO 2002/2008 and ER-2008
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The applicant's second appeal dated 05.02.2018 was rejected on the grounds as under:

“Onset of ID(i) was in Nov.2005 when the officer was serving in Dehradun(Peace). The officer presented with retrosternal discomfort with vomiting and diaphoresis on 17 Nov 2005. CAG showed mid segment plaques in LAD. He was initially managed medically and thereafter managed with PCI stenting. Onset of ID(iii) was in Jan 2015 when the officer was serving in Meerut(Peace). He was put on antihypertensive following which the BP was brought under control. At the time of RMB, he was asymptomatic with ejection fraction of 60% on 2D ECHO and normotensive on medication. ID(i) ‘Ischemic heart disease’ is conceded as attributable to military service if the onset of ID occurs in Fd/HAA/CO Ops or if there is evidence of exceptional service related stress immediately prior to onset of symptoms of ID. ID is conceded as aggravated by military service if the individual serves in Fd/CI Ops/HAA after onset of ID. In the instant case, onset of ID(i) was in peace station(Dehradun) and the veteran officer continued to serve in the peace station till his retirement from service. As per the 14 days charter of duties, the veteran officer was performing his normal duties. Hence, the ID(i) is conceded as neither attributable to nor aggravated by military service(Para 47, Chapt VI, GMO 2002, amendment 2008). ID(iii) ‘Primary Hypertension’ is an idiopathic disorder with familial clustering hence is not attributable to military service.

Aggravation is conceded when onset occurs while serving Fd/CI Ops/HAA instant. In the case, onset of ID was in a peace

station hence the ID conceded as neither attributable to nor aggravated by military service in terms of Para 43, Chap VI, GMO 2002, amendment 2008."

CONTENTIONS OF THE PARTIES

4. The applicant submits that he was commissioned in the Indian Army on 09.06.1984 after being thoroughly examined by various medical experts which found him absolutely fit in all respects and free from any disease or disability and no note of any disease or disability was recorded in his medical records at the time of his acceptance for service in the Indian Army. The applicant submits that he served the Army during his tenure at different places including difficult terrains and high altitude areas. The applicant submits that being an Intelligence Officer, he had to undergone tremendous stress and strain in performance of his military duties during his deployment at the High altitude area in Kargil during Ops Vijay and thereafter at Jaisalmer for trans-border operations which were undertaken for intelligence gathering and after having completed the two successful tenures, he was posted at Bareilly where he busted an ISI Module for which he was awarded a Commendation Card.

5. The applicant places reliance on the verdict dated 13.7.2013 of the Hon'ble Supreme Court in Dharamvir Singh Vs Union of India & Ors in CA 4949/2013 with specific observations therein in para 28 thereof which lays down the guiding cannons 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."

6. Reliance was also placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in *Union of India & Ors Vs Rajbir Singh* (CA No.2904 of 2011) with observations in para 15 to the effect:

"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)

7. The applicant further submitted to the effect that the Hon'ble Supreme Court in CA No.3409/2011, CA No.5840/2011 and CA No.5819/2012 in the case of *Union of India & Ors Vs Rajbir Singh*, has granted the benefits of disability element of pension in relation to the diseases of Primary Hypertension and IHD held to be attributable to/aggravated by military service. On behalf of the applicant reliance was also placed on Para 43 and 47 of Chapter VI of the Guide to Medical Officers(Military Pensions) 2002 amended 2008 to submit to the effect

that in terms thereof, it is specifically provided that stress and strain of military service are the conditions which aggravated both the disabilities. A further submission is made on behalf of the applicant that in terms of Para 423 of Chapter VIII of the Regulations for Medical Services for Armed Forces Personnel -2010 wherein it has been specifically stipulated to the effect that to determine whether the cause of a disability or death resulting from disease is or is 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 service/active service area or under normal peace conditions and it is essential to establish whether the disability or death bore a causal connection with the service conditions.

8. The applicant further submits that in as much as he was commissioned in the Intelligence Corps of the Indian Army, the stress and strain in which the applicant had to work at high altitude area in Kargil during Ops Vijay and in his further posting at Jaisalmer for trans-border operations for gathering intelligence have to be considered to have aggravated his two disabilities due to military service in terms of Para 43 and 47 of the GMO(MP) 2008 and Regulation 423 of Regulations for Medical Services of the Armed Forces-2010. The applicant further places reliance on the order of the Armed Forces Tribunal(PB) in OA 675/2015 in case of *Gp Capt S Mehdi(Retd) Vs Union of India & Ors.* and in the case of *Surge CMDE S.K. Satsangi(Retd) Vs Union of India & Ors* in OA 1509/2017 in which in relation to the said two disabilities mentioned therein i.e. of Primary Hypertension and

Coronary Heart Disease, the disability element of pension was granted by the Armed Forces Tribunal(PB), New Delhi.

9. The applicant has thus prayed for the broadbanding of the said two disabilities of the applicant compositely assessed @66.4.% for life to be broad banded to 75% for life in terms of the verdict of the Hon'ble Supreme in *Union of India & Ors Ram Avtar*(Civil Appeal No.418/2012 dated 10.12.2014 and as per Para 7.2 of the Govt of India, MoD notification bearing No.1(2)/97/D(Pen-C) dated 31.01.2001.

10. The respondents on the other hand submit to the effect that both the disabilities of Coronary Artery Disease(CAD) and the Primary Hypertension had their onset when the applicant was posted in peace areas i.e. HQ 14 RAPID(S) at Dehradun on 18.11.2005 when the disability of CAD had occurred and the onset of the Primary Hypertension had its onset on 23.01.2015 at Meerut in 22 Inf Div FS Sec. Inter alia, the respondents submit that as per the AFMS-15 dated 14.01.2000, the 14 days Charter of Duties and in terms of Para 56 of the GMO 2008, the percentage of disablement in relation to CAD is neither aggravated by nor attributable to military service. Inter alia, the respondents submit that in terms of Para 43, Chapter VI, GMO 2002/2008, the disability of Primary Hypertension is also neither attributable to nor aggravated by military service.

11. The respondents further submit to the effect that the opinion of the Release Medical Board requires to be given due weight and credence and that the applicant's First Appeal dated 05.05.2017 and second appeal

dated 05.02.2018 against the part rejection of his disabilities claim were rejected by the Competent Authority as has been detailed in para 9 hereinabove.

12. The respondents thus submit that there is no infirmity in the findings of the RMB and the opinion of the Release Medical Board and that the disabilities *qua* the applicant in relation to CAD and Primary Hypertension are neither attributable to nor aggravated by military service and that likewise there is no infirmity in the rejection of the first appeal vide letter dated 15.01.2018 and in relation to second appeal vide letter dated 26.10.2018.

ANALYSIS

13. The original RMB proceedings produced by the respondents indicate that there are no contributory factors from the side of the applicant for the onset of the disabilities in as much as he was not overweight nor is there any family history of the said disabilities nor is it indicated that the applicant was a smoker in any manner to detract from the grant of the disability element of pension in relation to the disabilities of CAD and the Primary Hypertension.

14. Para 43 of Chapter VI, GMO(MP) 2008 reads to the effect:

"43. Hypertension- The first consideration should be to determine whether the hypertension is primary or secondary. If secondary, entitlement considerations should be directed to the underlying disease process (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."

(emphasis supplied).

The same is itself an indicator that stress and strain of military service is a cause of aggravation of disability of Primary Hypertension. That the disability of Primary Hypertension in the instant case had its onset on 23.01.2015 after the commissioning of the applicant in the Indian Army on 09.06.1984, after 31 years of military service in the Intelligence Corps cannot be overlooked. It is also essential to observe that during the tenure of 32 years of military service, the applicant was posted at field stations from 01.06.1984 to 31.10.1984 at 9 MECH, Sangrur, 01.11.1984 to 31.10.1988 at 9 MECH Ratnuchak, from 01.11.1986 to 30.06.90 at Hissar, 01.10.1992 to 21.12.1994 at 57 Mtn Div FS Coy Leimakhong/Ukhrul, from 26.12.1997 to 23.05.2000 at No.6 DET MCLU(121 BTT), Kupwara/Kargil, from 24.05.2000 to 7.6.2002 at 1/879 Int & FS Unit, Jaisalmer i.e. more than 17 years in field areas and as stipulated in Para 43 of Chapter VI of GMO(MP) 2008, as already adverted hereinabove, in certain cases, the said disease is reported to have occurred after long spells of military service in field/CI Ops/HAA areas and that there can be thus variable responses in relation to stress and strain in relation to the disability of Primary Hypertension. That the

applicant was deputed for more than 06 times in a field area during his entire 15 postings and thus in the instant case, the applicant has had frequent spells of service in field areas, the probability of the disability of Primary Hypertension having had its onset due to stress and strain of military service, cannot be overlooked. In the circumstances of the instant case, though the disability of the applicant had its onset in a peace area, the same has to be held to be attributable to military service. In terms of Regulation 423 of the Regulations for the Medical Services of the Armed Forces 2010 itself it is stipulated categorically to the effect that the arising of the onset of disabilities in the peace area/CIOPS Area/HAA or field area *per se* is immaterial to the ascertain the aspect of attributability of a disability to military service and what is required to be established whether there exists a causal connection between the arising of the disabilities with military service or not. In these circumstances, it is thus held that the disability of the Primary Hypertension in the instant case has to be held to be attributable to and aggravated by military service. Thus, the disability of Primary Hypertension that the applicant suffered from in that instant case has to be held to be attributable to and aggravated by military service.

15. As regards the disability in relation to CAD though a reference is made to Para 56 of Chapter VI the GMO(MP) 2008 in the RMB dated 14.06.2016, CAD falls within the ambit of Para 47 of Chapter VI of the GMO(MP)-2008 which relates to Ischaemic heart disease (IHD) which stipulates to the effect:-

"47. Ischaemic Heart Disease (IHD)- IHD is a constitutional disease. It is almost always due to occlusive thrombus at the site of rupture of an atheromatous plaque in the coronary artery. Prolonged stress and strain hastens atherosclerosis by triggering of neurohormonal mechanism and autonomic storms. It is now well established that autonomic nervous system disturbances precipitated by emotions, stress and strain, through the agency of catecholamines affect the lipid response, blood pressure, increased platelet aggregation, heartrate and produce ECG abnormality and arrhythmias. Therefore where exceptional and prolonged stress and strain of service can reasonably be established, aggravation can be conceded. On the other hand acute and severe mental and physical stress of very short duration may precipitate acute cardiovascular catastrophe by suddenly creating marked reduction of blood supply relative to its demand and favours coronary spasm, resulting in ischaemia. Therefore intimate causal relationship must be accepted and attributability can be conceded.

The service in field and high altitude areas apart from physical hardship imposes considerable mental stress of solitude and separation from family leaving the individual tense and anxious as quite often separation entails running of separate establishment, financial crisis, disturbance of child education and lack of security for family. Apart from this, compulsory group living restricts his freedom of activity. These factors jointly and severally can become a chronic source of mental stress and strain precipitating an attack of IHD.

Severe regimentation in the day to day service life, working to deadlines, prolonged hours of uncongenial duties as inherent in the working of services. In addition, severe mental trauma associated with operations of high pressure planning and similar other duties in three services, severe physical stress and strain of field service and active operational areas, stresses of multitude of duties and responsibility must be given consideration while establishing causal relation between acute cardiovascular catastrophe and service.

The magnitude of physical activity and emotional stress is no less in peace area. Tough work schedules and mounting pressure of work during peace time compounded by pressure of duties, maintenance of law and order, fighting counter insurgency and low intensity war in deceptively peaceful areas and aid to civilians in the event of natural calamities have increased the stress and strain of service manifold. Hence no clear cut distinction can be drawn between service in peace areas and field areas taking into account quantum of work,

mental stress and responsibility involved. In such cases, aggravation due to service should be examined in favour of the individual.

It is concluded that a myocardial infarction may be attributable to or aggravated by service or unrelated to service factors as follows:-

(a) Attributability will be conceded where: A myocardial infarction arises during service in close time relationship to a service compulsion involving severe trauma GE exceptional mental, emotional or physical strain, provided that the interval between the incident and the development of symptoms is approximately 24 to 48 hours. Attributability will be conceded in cases related to activities like high pressure planning for/in operation or extreme physical strain, but not in cases of stress and strain in office or extra/work duties which are matters of normal official life. Attributability can also be conceded when the underlying disease is either embolus or thrombus arising out of trauma in case of boxers and surgery, infectious diseases. e.g. SBE, vaccinia, exposure to HAA, extreme heat. However, occurring in a setting of hypertension, diabetes vasculitis, entitlement can be judged on its own merits.

b) Aggravation will be conceded in cases in which there is evidence of:-

(i) Severe mental and/or emotional stress due to participation in operation or high pressure planning for operation or other similar activities involving equivalent stress and strain.

[ii] Severe physical stress in the field or other similar activities involving stress in peace or training during the preceding two weeks.

(iii) Atheroma manifesting itself clinically as angina. myocardial infarction, sudden death and abnormalities of the electrocardiogram.

In such cases aggravation will be conceded if an individual known to be suffering from ischaemic heart disease, or one in whom it can be otherwise established that there has been a failure to make a diagnosis of ischaemic heart disease, as a result of which he was not given suitable duties in a lower medical observation, but allowed to continue to perform duties in a category and kept under higher medical category with its connected stress and strain, resulting in illness of critical or catastrophic proportions leading to death.

There would be cases where neither immediate nor prolonged exceptional stress and strain of service is evident. In such cases the disease may be assumed to be

the result of constitutional factors, heredity and way of life such as indulging in risk factors e.g. smoking. Neither attributability nor aggravation can be conceded in such cases.
“(emphasis supplied)”

The duties performed by the applicant as an Intelligence Officer in the instant case have been acknowledged to be extremely strenuous vide the statement of the Commanding Officer in Part III of the RMB. Thus disability of the applicant of Ischaemic Heart Disease in the form of CAD-SVD-POST PTCA TO LCX OM2 in the instant case has to be held to be aggravated by military service as through the opinion of the Release Medical Board, it is brought forth by the Medical Board that the said disability did not exist before the applicant was inducted in the Indian Army nor was there any reason put forth as to why the disability could not be detected during the routine medical examination conducted at the time of entry into service.

16. 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*.

17 Furthermore, 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 to the effect:-

"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 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.”

(emphasis supplied),—

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.

18. Regulation 423 of the Regulations for the Medical Services of the Armed Forces 2010, provides to the effect:-

“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.

has not been obliterated.

19. The verdict of the Hon'ble Supreme Court in *Dharamvir Singh Vs.*

UOI & Ors. vide Para-33 thereof, also stipulates to the effect:-

"33. As per Rule 423(a) of General Rules for the purpose of determining a question whether the cause of a disability or death resulting from disease is or is 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 service/active service area or under normal peace conditions."Classification of diseases" have been prescribed at Chapter IV of Annexure I; under paragraph 4 post traumatic epilepsy and other mental changes resulting from head injuries have been shown as one of the diseases affected by training, marching, prolonged standing etc. Therefore, the presumption would be that the disability of the appellant bore a casual connection with the service conditions."

(emphasis supplied)

20. The nature of the postings of the applicant as have been put forth through the OA as being the factors for stress and strain of the service *qua* the applicant have not been effectively refuted by the respondents. The onset of the said two disabilities was in the 21st and 31st year of service of the applicant in the Indian Army after the applicant had already held six field postings as already adverted, it cannot also be overlooked that the onset of the disability of CAD-SVD-POST PTCA TO LCX OM2 and Primary Hypertension were in Nov.2005 and Jan 2015 respectively.

21. Thus, in the instant case, as the nature of duties of the applicant involved stress and strain coupled with the factum that the applicant was posted on six field postings in difficult terrains which involved severe/exceptional stress and strain which has to be held to be attributable to and aggravated by military service.

CONCLUSION

22. The OA 763/2019 is allowed. The applicant is thus entitled to the grant of disability element of pension @20% for Secondary OA(RT) Knee (already granted), @40% for CAD-SVD-POST PTCA TO LCX OM2 and @30% for Primary Hypertension works out to @74.4% for life which has to be rounded off to 75% for life from the date of discharge i.e. 31.12.2016 in terms of the verdict of the Hon'ble Supreme Court in *UOI & Ors. vs Ramavtar* in Civil Appeal No. 418/2012.

23. The respondents are directed to issue the corrigendum PPO to the applicant and to pay the arrears within a period of three months from the date of receipt of a copy of this order, *failing which*, the respondents would be liable to pay interest @6% p.a. on the arrears due from the date of this order. The arrears will be paid adjusting the amount already paid @50%.

Pronounced in the open Court on the 22 day of December, 2023.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/chanana/