

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

B.

OA 790/2018

Col Attar Singh (Retd.)

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Mr. V S Kadian, Advocate
For Respondents : Mr. Arvind Patel, Advocate

CORAM

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

ORDER
30.11.2023

Vide our detailed order of even date, we have allowed the OA 790/2018. 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)

//CHANANA//

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ORDER

The applicant vide para 8 of the present O.A 790/2018 seeks the following prayers:-

“(a) Quash and set aside the Impugned Letter No. 52334.MADRAS/IC-41293L/MP-(D)/614/2015/AG/PS-4(IMP-I) dated 03.05.2016. And/or

(b) Direct the respondents to grant disability element of pension to the applicant for ID(ii) i.e. Primary Hypertension also by granting benefits of composite assessment as per RMB @60% with benefits of broadbanding/rounding off to 75% and /or

(c) Direct respondents to pay the due arrears of disability element of Pension with interest @12% p.a from the date of retirement with all the consequential benefits.

(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.”

2. The applicant was commissioned in the Indian Army on 18.06.1983 and retired from service on superannuation w.e.f. 31.12.2015 in Low Medical Category. The Release Medical Board held at the time of retirement found the applicant suffering from the disabilities (i) ANKYLOSING SPONDYLITIS assessed @30% for life and (ii) PRIMARY HYPERTENSION assessed @40% for life and the composite assessment was 60% for life conceding the ID (i) ANKYLOSING SPONDYLITIS as aggravated due to physical stress and strain of military service vide Para 51 Chapter VI GMO 2008 amended and the ID (ii) PRIMARY HYPERTENSION, the onset of which was while serving in HAA/Fd Area and this ID was also conceded as being aggravated due to physical stress and strain of military service vide Para 43 Chapter VI GMO 2008. The respondents however vide the impugned letter No.52334/MADARAS/IC-41293L/MP-6(D)/614/2015/AG/PS-4(Imp-I) dated 03.05.2016 intimated to the applicant that ID (i) is held as aggravated by military service with disablement @30% for life and accorded approval for the grant of the disability element of pension @30% for life w.e.f. date of retirement but that the ID (ii) assessed @40% did not fulfil the eligibility criteria for the grant of the disability element of pension though the Release Medical Board dated 04.09.2015 had opined that the onset of ID (ii) occurred whilst serving in high altitude areas/field areas and the said ID was



conceded aggravated due to physical stress and strain of military service in terms of Para 43 Chapter VI of GMO(MP) 2008. Thus, being aggrieved the applicant served a legal notice-cum-representation dated 22.09.2017 for the grant of the disability element of pension in relation to ID(ii) Primary Hypertension. The respondents after expiry of 05 months vide letter No.B/40471/IC-41293/2018/AG/PS-4(Imp-II) dated 31.01.2018 intimated the applicant that his first appeal is under process which as per the counter affidavit of the respondents was reviewed on 13.02.2018 calling upon the applicant to file the First Appeal. The instant OA was filed on 17.04.2018 and has been pending since then, and thus in the interest of justice in terms of the Section 21(b) of the Armed Forces Tribunal Act, 2007, we take up the matter for consideration.

3. The opinion of the Release Medical Board dated 04.09.2015 in Part V is as under:

“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
(i) ANKYLOSING SOPONDYLITIS	NO	YES	NO	The ID is conceded as aggravated due to physical stress and strain of service Para 51 Chapter VI GMO 2008
(ii) Primary Hypertension	No	Yes	No	Onset of ID was occurred while serving in HAA/CI Ops area and conceded aggravated due to military

				service vide Para 43 GMO 2008
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The posting profile of the applicant as indicated in Part-I of his Personal Statement of the RMB proceedings dated 14.09.2005 is as under:-

**PART I
PERSONAL STATEMENT**

1. Give details of the service (P=Peace OR F= Field/Operational/Sea Service)

Formation/Unit	Appt	Places	P/F	Period	
				From	To
9 Madras Travancore	IO	Gurudaspur	P	28 Jul 83	30 Aug 85
9 Madras	Adjnt	J&K	F	31 Aug 85	31 May 86
9 Madras	Mor Pl Cdr	J&K	F	01 Jan 86	11 Sep 87
9 Madras		Kapurthala	P	12 Sep 87	11 Aug 88
9 Madras	Rif Coy Cdr		P	12 Aug 88	28 Jun 90
13 AR	Coy Cdr	OP Orchid	F	29 Jun 90	27 Oct 91
MRC	MTO	Wellington	P	28 Oct 91	01 May 94
13 RR	Coy Cdr	Danapur	P	02 May 94	17 Jul 94
13 RR	Coy Cdr	Manasabal(OP Rakshak)	F	18 Jul.94	28 Oct.96
9 Madras Travancore	Coy Cdr	BD Bari Poonch (OP Rakshak)	F	29 Oct. 96	19 Mar 98
9 Madras Travancore	Coy Cdr	Tibri Gurudaspur	P	20 Mar 98	18 May 98
OTA	And Offr	Chennai	P	05 Jun 98	12 Jul 00
9 Madras Travancore	21C	HAA/OP Meghdoot	F	28 Jul00	20 Dec.01
603 ASC Bn(AM) (ATT On Med Grnds)	21C	HAA/OP/ Meghdoot	F	21 Dec 01	10 Jan 02
HQ North Comd	Att Offr	Udhampur	F	11 Jan 02	09 Jul 02
ADE	Sr Security off	Bangalore	P	10 Jul 02	10 Jul 05
2 Bengal Indep NCC Coy	OC	Kolkata	P	11 Jul 05	31 Mar 06
30 Andhra Bn NCC	OC	Kolkata	P	01 Apr 08	04 Jun 10
1 Orissa Bn NCC	CO	Cuttack	P	05 Jun 10	01 Jan 12
HQ PH & HP(1) Sub Area	SSO	Ambala Cantt	P	08 Jan 12	18 Dec.13
Gp HQ NCC		Rohtak	P	19 Dec 13	To date

The onset of the disabilities is indicated in the RMB to the effect:

“

1. Give particulars of any disease, wound injuries from which you are suffering				
Illness, wound injury	First stated		Where treated	Approximate dates and period treated
	Date	Place		
ANKYLOSING SPONDYLITIS	20 Dec.01	C/O 56 APO	CH WC	LMC-S1H1A1P3(T-24)E1

ANKYLOSING SPONDYLITIS	06 Jun 02	C/O 56 APO	CHNC	LMC S1H1A1P2E1
PRIMARY HYPERTENSION	24 Dec 90	C/o 99 APO	6 AF Hospital Jorahat	S1H1A1P3E1
PRIMARY HYPERTENSION	15 Jun 11	C/O 99 APO	Cuttack	LMC-S1H1A1P2E1
3. Did you suffer from any disability before joining the Armed Forces? If so give details and date NO				
4. Give details of any incidents during your service which you think caused or made your disability worse NO				

”

CONTENTIONS OF THE PARTIES

4. The applicant submits that he had served at various places in different environmental and service conditions in his prolonged service and any disability at the time of his service is deemed to be attributable to or aggravated by military service. The applicant placed reliance on para 43 of the “Guide to Medical Officers(Military Pensions) 2008 to contend to similar effect. The applicant further submits that Rule 423 of the Regulations for Medical Services in the Armed Forces (AMSAF) 2010 ordains that service in peace or field has no linkage whatsoever with attributability of disabilities to military service but the respondents still presumed that the disability of Hypertension had arisen in peace area. The percentage of disablement was put forth in the RMB as under:

Disability	% of Disability with duration	Composite Assessment for all disabilities with duration(Max	Disability Qualifying for disability pension with duration	Net Assessment Qualifying for Disability pension (Max 100%) with duration
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		100%) with duration		
1	2	3	4	5
ANKYLOSING SPONDYLITIS	30 for life	60% for life	30% for life	60% for life
Primary Hypertension	40%		40% for life	60% for life

5. Inter alia, the applicant places reliance on the verdict of the Hon'ble Supreme Court in *Dharamvir Singh Vs UOI & Ors* (Civil Appeal No 4949/2013) 2013 AIR SCW 4236, the "Entitlement Rules for Casualty Pensionary Awards 1982" as shown in Appendix-II, and "General Rules of Guide to Medical Officer (Military Pensions) 2008 and also on Regulation 423 of the RMSAF which deals with "Attributability to Service". Specific reliance was placed on behalf of the applicant on the observations in para-28 of the verdict of the Hon'ble Supreme Court in *Dharamvir Singh (Supra)* which are 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. The applicant has also placed reliance on the verdict of the Hon'ble Supreme Court in *UOI & Ors. Vs Rajbir* in Civil Appeal No. 2904/2011, decided on 13.02.2015, to contend to the effect that in as much as in the absence of any reasons recorded by the Medical Board, the disability that had arisen during the course of service of

7 the applicant and with which the applicant did not suffer at the time of enrolment into the Military Service, has to be presumed to have arisen in the course of military service. The applicant also submits that in terms of the verdict dated 10.12.2017 of the Hon'ble Supreme Court in *UOI Vs Ram Avtar* in Civil Appeal No.418/2012, the applicant is entitled to the rounding off of the disability assessed @40% for life to 50% for life in relation to the disability of Primary Hypertension and as the composite assessment put forth in the RMB qua the two disabilities @60% for life to be rounded thereof to 75% for life.

7. The respondents on the other hand submit that the entitlement to disability pension is governed by the eligibility conditions enumerated in Regulations 81 of Pension Regulations for the Army, 2008 Part-I which stipulates that unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an officer who is invalided out of service on account of disability which is either attributable to or aggravated by military service. The respondents submit that the assessment made by the Medical Board is only recommendatory in nature as per Rule 17(b) of the Entitlement Rules to Casualty Pensionary Awards to the Armed Forces Personnel, 1982(ER 82) and is subject to review by the Competent Medical Authorities and that the Competent Authority on examination had found that the disability

assessed @40% in relation to Primary Hypertension does not fulfil the eligibility conditions for the grant of disability pension but that the applicant has already been sanctioned and granted disability element of pension assessed @30% in relation to the ID (i) ANKYLOSING SPONDYLITIS for life from the date of discharge vide AG's Branch Letter No.52334/MADEAS/IC-41293L/MP-6(D)/614/2015/AG/PS-4(IMP-I) dated 03.05.2016.

ANALYSIS

8. 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 on the 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*.

9. In view of the guiding parameters laid down vide the verdict of the Hon'ble Supreme Court in *Dharamvir Singh Vs. Union of India & Ors.*(Supra) 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 40% as being aggravated as being neither attributable to nor aggravated by military service as opined by the Competent Authority - cannot be accepted.

10. It is essential to observe that the verdict of the Hon'ble Supreme Court in *Rajbir Singh* (supra) vide Para 15 lays down 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)

11. Thus the disability of Primary Hypertension with its initial onset on 24.12.1990 after more than seven years of the applicant having been inducted into military service on 18.06.1983 in terms of Para 43 of the GMO(Military Pension) has to be presumed to be attributable to military service. The aspect of cumulative stress and strain during military service, due to the hostile environment, difficult weather conditions and strict disciplinary norms under which Armed Forces Personnel has been taken into account in a catena of orders of this Tribunal. The Respondents have thus been unable to refute the contention of the applicant that the stress and strain of military service, resulted into the disability of Primary Hypertension that he suffers from.

12. Furthermore, the 'Entitlement Rules for Casualty Pensionary Awards, to the Armed Forces Personnel 2008, which take effect from 01.01.2008 vide Paras 6, 7, 10, 11 thereof state 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 contracted 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."

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.

13. Furthermore, Regulation 423 of the Regulations for the Medical Services of the Armed Forces 2010 which relates to 'Attributability to Service' provides as under:-

"423.(a). For the purpose of determining whether the cause of a disability or death resulting from disease is or not attributable to Service. It is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a Field Area/Active Service area or under normal peace conditions. It is however, essential to establish whether the disability or death bore a causal connection with the service conditions. All evidences both direct and circumstantial will be taken into account and benefit of reasonable doubt, if any, will be given to the individual. The evidence to be accepted as reasonable doubt for the purpose of these instructions should be of a degree of cogency, which though not reaching certainty, nevertheless carries a high degree of probability. In this connection, it will be remembered that proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. If the evidence is so strong against an individual as to leave only a remote possibility in his/her favor, which can be dismissed with the sentence "of course it is possible but not in the least probable" the case is proved beyond reasonable doubt. If on the other hand, the evidence be so evenly balanced as to render impracticable a determinate conclusion one way or the other, then the case would be one in which the benefit of the doubt could be given more liberally to the individual, in case occurring in Field Service/Active Service areas.

(emphasis supplied),—

has not been obliterated.

Thus, merely because the disability of Primary Hypertension had its second onset in June 2011 in a peace area is insufficient to dislodge the presumption of both attributability and aggravation of the disability due to military service, in the absence of any cogent reason or medical grounds put forth by the respondents.

Furthermore, the initial onset of the disability of Primary Hypertension was in December, 1990 when the applicant was posted at Op Orchid, a field posting. Furthermore, the Release Medical Board had itself acceded the aggravation of the ID Primary Hypertension being due to the stress and strain of military service with its onset in a HAA area and the contention raised on behalf of the respondents that the applicant's disability does not fulfill the conditions required for the grant of the disability element of pension cannot be accepted.

CONCLUSION

14. Thus, the OA 790/2018 is allowed and the applicant is held entitled to the grant of the disability element of pension *qua* Primary Hypertension assessed @ 40% for life and in view of the disability of Ankylosing Spondylitis assessed @30% for life with the composite assessment of both disabilities @60% for life as per the RMB dated 04.09.2015, which in terms of the verdict of the Hon'ble Supreme Court of India in *UOI & Ors. Vs. Ramavtar* Civil Appeal 418/2012 dated 10.12.2014, is directed to be broad banded to 75% for life from the date of discharge of the applicant.

15. 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 interest @6% per annum till the date of payment.

16. No order as to costs.

Pronounced in the open Court on the 3rd day of November, 2023.

~~[REAR ADMIRAL DHIREN VIG]~~
MEMBER (A)

~~[JUSTICE ANU MALHOTRA]~~
MEMBER (J)

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