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

C..

OA 814/2019 with MA 1444/2019

AG PO Jay Shanker Prasad (Retd.) ..... Applicant
VERSUS
Union of India and Ors. ..... Respondents

For Applicant : None
For Respondents : Mr. Arvind Patel, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE LT GEN C. P. MOHANTY, MEMBER (A)

ORDER
08.04.2024

Vide our detailed order of even date we have allowed the OA 814/2019. 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 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)

(LT GEN C. P. MOHANTY)
MEMBER (A)

AP

COURT NO. 2
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PRINCIPAL BENCH, NEW DELHI

OA 814/2019 WITH MA 1444/2019

AG PO Jai Shankar Prasad (Retd) ... Applicant
Versus
Union of India & Ors. ... Respondents

For Applicant : Mr. Manoj Kumar Gupta, Advocate with
Ms. Prachi Chaturvedi, Advocate
For Respondents : Mr. Arvind Patel, Advocate

CORAM :
HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE LT. GEN. C.P. MOHANTY, MEMBER (A)

O R D E R

MA 1444/2019

This is an application filed under Section 22 of The Armed Forces Tribunal Act, 2007 seeking condonation of delay of **1335** days in filing the present OA. in view of the judgments of the Hon'ble Supreme Court in the matter of **UoI & Ors Vs. Tarsem Singh 2009(1) AISLJ 371** and in **Ex Sep Chain Singh Vs. Union of India & Ors (Civil Appeal No. 30073/2017)** and the reasons mentioned, the MA 1444/2019 is allowed despite opposition on behalf of the respondents and the delay of **1335** days in filing the OA 814/2019 is thus condoned. The MA is disposed of accordingly.

OA 814/2019

2. The applicant vide the present O.A. 814/2019 has made the following prayers:-

"(a) To direct the respondents to grant the disability pension@ 20% broadbanded with 10% interest on arrears w.e.f. 01.09.2015.

(b) Set aside the opinion of the RMB and the composite assessment by treating the disease as attributable and aggravated by the Military service.

(c) To pass such further order or orders/Directions as this Hon'ble Tribunal may deem fit and proper in accordance with law."

3. The applicant Ex-AG PO Jai Shankar Prasad had joined the Navy on 02.08.2000 and was discharged from service on 31.08.2015, with 15 years and 01 day of qualifying service. Before his discharge, the applicant was brought before a duly constituted Release Medical Board which assessed the disability "SEIZURE DISORDER ICD No 40.4" as Neither Attributable to Nor Aggravated by Naval service and his disablement was assessed @20 for life.

4. The opinion of the RMB in Part-V of the RMB dated 05.05.2015 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
SEIZURE DISORDER ICD No 40.4	**No**	**No**	**Yes**	Onset of disability 05 Apr while posted ashore. No close time association with stress and strain of field/afloat service, Hence, neither attributable nor aggravated in terms of Para 33, Chapter VI of GMO (MP), 2008
Note. A disability "Not Connected with service" would be neither Attributable nor Aggravated by service.				

Questions no. 3 & 4 and the responses thereto in the RMB in Part-I Personal Statement are to the effect:-

> ***"3. Did you suffer from any disability mentioned in Question 2 or anything like it before joining the Armed Forces? If so, give details and dates. NO***
>
> ***4. Give details of any incidents during your service, which you think caused or made your disability worse. YES, Due to stress and strain of SERVICE"***

5. As per the statement of the Commanding Officer in Part-III of the RMB, the applicant had been placed in low medical category w.e.f 05.04.2012 and as per the last Categorisation Medical Board was placed in low medical category S3A2 (P) Pmt wef 28.06.2013.

6. The applicant was excused prolonged standing duties as per Part III of Para 3 of AFMSF-16 (Ver)-2006. The onset of the disability is reproduced as under:-

PART IV
STATEMENT OF CASE

1. Chronological list of the disabilities
2. Clinical details and Questions no. 2 & 3 and responses thereto as per the Part-V of the RMB are to the effect:-

Disabilities	Date of Origin	Rank of the Indl	Place and unit where serving at the time
Seizure Disorder ICD 40.4	05.04.12	PO SRI	VISAKHAPATNAM, INHS KALYANI

> ***"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. NO "***

7. Questions no. 5(a),(b),(c) and the responses thereto were to the effect:-

> ***" 5. (a) Was the disability attributable to the individual's own negligence or misconduct? If yes, in what way? NO.***
>
> ***(b) If not attributable, was it aggravated by negligence or misconduct? If so, in what way and to what percentage of the total disablement? NO***
>
> ***(c) Has the individual refused to undergo operation/treatment? If so, individual's reasons will be recorded? NA***
>
> ***Note: In case of refusal of operation treatment a certificate from the individual will be affected. "***

8. The percentage of disablement of the disability is reflected as under:-

6. What is present degree of disablement as compared with a healthy person of the same age and sex?(Percentage will be expressed as Nil or as follows) 1.5%, 6-10%,11-14%,15-19% and thereafter in multiples of ten from 20% to 100%.				
Disabilities(as numbered in Para 1 Part IV)	Percentage of disablement	Composite assessment for all disabilities with duration(Max 100)%	Disability qualifying for disability pension with duration	Net assessment qualifying for disability pension(Max 100%) with duration
(a) Seizure Disorder ICD 40.4	20%	20%	Life Long for Seizure Disorder	Nil for life long

9. On behalf of the applicant, it was submitted that he was enrolled in the Indian Navy in a fit medical category both physically and mentally and that there was no adverse medical opinion recorded at the time of induction into service. The applicant further submits that he also underwent training before being deputed on his duties which also required a thorough medical checkup. The applicant submits that

during his tenure in the Indian Navy apart from his trade duties, he also carried out other duties assigned to him which required prolonged standing, and involved severe stress and strain as has been specified vide Para 4 of the Part III of the Release Medical Board titled, "Statement of Commanding Officer", reproduced as under:

> ***"5. Did the duties involve severe/exceptional stress and strain ? (Give details) (a) Since when (b) On special day/occassions. - YES, on Special day/occasions"***

10. The first appeal of the applicant dated 24.10.2018 was not disposed off within a period of six months of the filing of the same, the instant IA instituted on 02.05.2019 is taken up for consideration of under section 21(2) (b) of the AFT Act 2007 as the matter was admitted for hearing vide order dated 09.01.2020. The applicant submits that in terms of the verdict of the Hon'ble Supreme Court in ***Dharamvir Singh Vs Union of India & Ors.*** in CA No. 4949/2013, he is entitled to the benefit of grant of disability element of pension and in terms of ***UOI & Ors. Vs Ram Avtar*** in Civil Appeal no. 418/2012, he is entitled to the benefit of rounding off his disability element of pension from 20% to 50%.

11. The applicant submits that the onset of the disability was on 05.04.2012 at Ranchi i.e. after a period of 12 years into naval service

and 4 afloat postings covering a cumulative period of approximately 9 years out of his total service of 15 years and 01 day.

12. The applicant submits that there is nothing on the record to show that he was suffering from the disease at a time of entry into service and that it has to be presumed that he was in sound and mental condition at the time of entry into service and deterioration in his health has to be held to be attributable to stress and strain of naval service.

13. The respondents through their Counter Affidavit dated 04.03.2020 submitted on their behalf have reiterated the reasons that have been detailed in rejection of the first appeal and submit that in the instant case, there is no documented evidence of fever, infection, trauma or any other service related stressors, leading to the onset of the disability and that the onset of the ID was in a peace station. The respondents further submit that there are no aggravating or attributable factors brought forth in the instant case, which fulfill the criteria in terms of Para 33,Chap VI of the GMO 2002, amended 2008 and the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008.

14. The respondents further submit that as per the existing policy, personnel enrolled in the Indian Navy have to undergo a primary medical examination at the time of enrolment which is carried

out by the Recruiting Medical Officer and respective Recruiting Centres and that internal disorders cannot be detected by the medical officer conducting recruiting medical examination at the time of enrollment in the absence of history or overt manifestation of symptoms. The respondents have thus prayed that the OA be dismissed.

15. Inter alia, on behalf of the applicant reliance was also placed on the factum that the appellant **Dharamvir Singh** in Civil Appeal 4949/2013 suffered from Generalised Seizures(Epilepsy), that the respondent Rajbir Singh in ***UOI & Ors.Vs. Rajbir Singh*** in Civil Appeal No. 2904/2011, suffered from Generalised Seizures, and

- that in CA 5163/2011 in ***Ex Recruit Amit Kumar*** suffered from Manic Episode;
- that in CA 5260/2012 in ***Ex Sep Tarlochan Singh*** suffered from Epilepsy;
- in CA 10105/2011 the respondent ***Harbans Singh*** suffered from Epilepsy;
- in CA 1498/2011 in ***Ex Sgt Suresh Kumar Sharma*** suffered from Generalised Seizures;
- in CA 14478/2011 in **Ajit Singh** suffered from Idiopathic Epilepsy;

- in CA 5414/2011 in ***Rakesh Kumar Singla*** suffered from Bipolar Mood disorder, that all of these cases were also taken up in Civil Appeal in 2904/2011 in ***Rajbir Singh(Supra)***, and it has been submitted on behalf of the applicant that in each of the said cases, the disability element of pension was granted to the Armed Forces Personnel.

16. The Respondents on the other hand, placed reliance on the verdict of the Hon'ble Supreme Court in ***Ex Cfn Narsingh Yadav Vs. UOI & Ors.*** in Civil Appeal No. 7672/2019, to contend to the effect that the diseases which are undetectable by carrying out physical examination on enrolment unless adequate history is given at the time of enrolment by the member cannot be held to be attributable to the naval service. Specific reliance was placed on behalf of the respondents on the observations of the Hon'ble Supreme Court in Paras- 20 and 21 thereof which read to the effect:-

> ***"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 but the Courts are not possessed of expertise to dispute such 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."

ANALYSIS

17. On a consideration of the submissions made on behalf of either side, it has to be observed that as laid down by the Hon'ble Supreme Court in ***Ex Cfn Narsingh Yadav (supra)*** vide observations in Para 18 thereof, each case has to be examined whether the duties assigned to the individual may have led to stress and strain leading to the disability. The applicant in the case of ***Ex Cfn Narsingh Yadav (supra)*** was enrolled in the Indian Army on **02.12.2003** and was discharged from service on **08.05.2007**, when the invaliding board had found him armyto be suffering from Schizophrenia which disability had been assessed to be @20% for a period of 5 years and it had been observed vide Para-19 of the Hon'ble Supreme Court to the effect:

> ***"The appellant was a young boy of 18 years at the time of enrolment and had been boarded within 3½ years of his service. Even if he was suffering from any mental disorder prior to enrolment, the same could not be detected as there were intervals of normality. The appellant was posted in peace station as a Vehicle Mechanic. Neither the nature of job nor the place of posting was such which could have caused stress and strain leading to disability as attributed to or aggravated by military service."***

18. The facts of the instant case however are not in *pari materia* with the facts of the case of ***Ex Cfn Narsingh Yadav (Supra)***. This is

so in as much as the applicant herewith had been enrolled in the Indian Navy on **02.08.2000** and was discharged from service in low medical Category on **31.08.2015** after **15 years and 1 day of service**.

19. 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 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***.

20. It is essential to observe that the verdict of the Hon'ble Supreme Court in ***Rajbir Singh*** (supra) vide Paras 12 to 15 is to the effect:-

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

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

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

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

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

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

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

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

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

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

In addition to any documentary evidence relative to the member's condition to entering the service and during service, the member must be carefully and closely questioned on the circumstances which led to the advent of his disease, the duration, the family history, his pre-service history, etc. so that all evidence in support or against the claim is elucidated. Presidents of Medical Boards should make this their personal responsibility and ensure that opinions on attributability, aggravation or otherwise are supported by cogent

reasons; the approving authority should also be satisfied that this question has been dealt with in such a way as to leave no reasonable doubt.

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

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

"29.1. Disability pension to be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).

29.2. A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service [Rule 5 read with Rule 14(b)].

29.3. The onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).

29.4. If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service

determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service [Rule 14(c)]. [pic] 29.5. If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service [Rule 14(b)].

29.6. If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons [Rule 14(b)]; and 29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 - "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."

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

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

15. The legal position as stated in Dharamvir Singh's case (supra) is, in our opinion, in tune with the Pension Regulations, the Entitlement Rules and the Guidelines issued to the Medical Officers. The essence of the rules, as seen earlier, is that a member of the armed forces is presumed to be in sound physical and mental condition at the time of his entry into service if there is no note or record to the contrary made at the time of such entry. More importantly, in the event of his subsequent discharge from service on medical ground, any

deterioration in his health is presumed to be due to military service. This necessarily implies that no sooner a member of the force is discharged on medical ground his entitlement to claim disability pension will arise unless of course the employer is in a position to rebut the presumption that the disability which he suffered was neither attributable to nor aggravated by military service. From Rule 14(b) of the Entitlement Rules it is further clear that if the medical opinion were to hold that the disease suffered by the member of the armed forces could not have been detected prior to acceptance for service, the Medical Board must state the reasons for saying so. Last but not the least is the fact that the provision for payment of disability pension is a beneficial provision which ought to be interpreted liberally so as to benefit those who have been sent home with a disability at times even before they completed their tenure in the armed forces. ***There may indeed be cases, where the disease was wholly unrelated to military service, but, in order that denial of disability pension can be justified on that ground, it must be affirmatively proved that the disease had nothing to do with such service. The burden to establish such a disconnect would lie heavily upon the employer for otherwise the rules raise a presumption that the deterioration in the health of the member of the service is on account of military service or aggravated by it. A soldier cannot be asked to prove that the disease was contracted by him on account of military service or was aggravated by the same. The very fact that he was upon proper physical and other tests found fit to serve in the army should rise as indeed the rules do provide for a presumption that he was disease-free at the time of his entry into service. That presumption continues till it is proved by the employer that the disease was neither attributable to nor aggravated by military service. For the employer to say so, the least that is required is a statement of reasons supporting that view. That we feel is the true essence of the rules which ought to be kept in view all the time while dealing with cases of disability pension."***

(emphasis supplied)

21. 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 faraily pension, a causal connection between disability or death and military service has to be established by appropriate authorities.***

7. *Onus of proof.*
Ordinarily the claimant will not be called upon to prove the condition of entitlement. However, where the claim is preferred after 15 years of discharge/retirement/ invalidment/release by which time the service documents of the claimant are destroyed after the prescribed retention period, the onus to prove the entitlement would lie on the claimant.

10. *Attributability:*

(a) <u>Injuries:</u>
In respect of accidents or injuries, the following rules shall be observed:

(i) Injuries sustained when the individual is 'on duty', as defined, shall be treated as attributable to military service, (provided a nexus between injury and military service is established).
*(ii) In cases of self-inflicted injuries while *on duty', attributability shall not be conceded unless it is established that service factors were responsible for such action.*

(b) <u>Disease:</u>

(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),

has not been obliterated.

22. 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.

23. 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.

(b). Decision regarding attributability of a disability or death resulting from wound or injury will be taken by the authority next to the Commanding officer which in no case shall be lower than a Brigadier/Sub Area Commander or equivalent. In case of injuries which were self-inflicted or due to an individual's own serious negligence or misconduct, the Board will also comment how far the disablement resulted from self-infliction, negligence or misconduct.

(c). The cause of a disability or death resulting from a disease will be regarded as attributable to Service when it is established that the disease arose during Service and the conditions and circumstances of duty in the Armed Forces determined and contributed to the onset of the disease. Cases, in which it is established that Service conditions did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, will be regarded as aggravated by the service. A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in Service if no note of it was made at the time of the individual's acceptance for Service in the Armed Forces. However, if medical opinion holds, for reasons to be stated that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.

(d). The question, whether a disability or death resulting from disease is attributable to or aggravated by service or not, will be decided as regards its medical aspects by a Medical Board or by the medical officer who signs the Death Certificate. The Medical Board/Medical Officer will specify

reasons for their/his opinion. The opinion of the Medical Board/Medical Officer, in so far as it relates to the actual causes of the disability or death and the circumstances in which it originated will be regarded as final. The question whether the cause and the attendant circumstances can be accepted as attributable to/aggravated by service for the purpose of pensionary benefits will, however, be decided by the pension sanctioning authority.

(e). To assist the medical officer who signs the Death certificate or the Medical Board in the case of an invalid, the CO unit will furnish a report on :

(i) AFMSF – 16 (Version – 2002) in all cases
(ii) IAFY – 2006 in all cases of injuries.

(f). In cases where award of disability pension or reassessment of disabilities is concerned, a Medical Board is always necessary and the certificate of a single medical officer will not be accepted except in case of stations where it is not possible or feasible to assemble a regular Medical Board for such purposes. The certificate of a single medical officer in the latter case will be furnished on a Medical Board form and countersigned by the Col (Med) Div/MG (Med) Area/Corps/Comd (Army) and equivalent in Navy and Air Force."

*(emphasis supplied),*___

In the instant case, there is nothing in the Release Medical Board in relation to any history of any kind whatsoever against the applicant which could bring out that the disability that he suffered from of Seizure Disorder was due to any reasons other than Naval service, in as much as, there is nothing whatsoever recorded in the Clinical Assessment to indicate that the applicant suffered from any Seizure Disorders with family history of the same. There is nothing on the record to show that the applicant was addicted to any alcohol or any substance abuse. In these circumstances, in view of the verdicts of the

Hon'ble Supreme Court in ***Dharamvir Singh(supra)***, ***Rajbir(supra)***, ***Sukhvinder Singh (supra)***, ***Manjeet Singh(supra)***, it is essential to observe that the guiding principles as laid down by the Hon'ble Supreme Court in the ***Rajbir Singh*** have to govern whereby it is laid 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."

24. As regards, the submissions on behalf of the respondents that the disability had its onset on 05.04.2012 at a peace station, in terms of Regulation 423(a) of the Regulations for the Medical Services of the Armed Forces 2010, it is apparent that whether the onset of the disability takes place in a CIOPS/HAA area or in a peace area, the same does not detract from the onset of the disability having arisen during military service. In the facts and circumstances of the instant case, the disability of the applicant is held to be both attributable and aggravated by Naval service. The prayer made by the applicant seeking discharge from service in the instant case does not absolve the respondents from the onus as laid down on them to explain under what circumstance, the disability of the applicant had its onset. With

nothing thus on the record to indicate that the applicant suffered from any disease prior to enrolment, it has to be held that the disability of the applicant i.e. "SEIZURE DISORDER" in the instant case, was caused due to the stress and strain of Naval service. Furthermore, it is essential to advert to Para 33 of Chapter VI of the GMO MP (2008) which reads as under :

> *"Epilepsy.*
> ***This is a disease which may develop at any age without obvious discoverable cause. The persons who develop epilepsy while serving in forces are commonly adolescents with or without ascertainable family history of disease. The onset of epilepsy does not exclude constitutional idiopathic type of epilepsy but possibility of organic lesion of the brain associated with cerebral trauma, infections (meningitis, cysticercus, encephalitis, TB) cerebral anoxia in relation to service in HAA, cerebral infarction and hemorrhage, and certain metabolic (diabetes) and demyelinating disease should be kept in mind. The factors which may trigger the seizures are sleep deprivation, emotional stress, physical and mental exhaustion, infection and pyrexia and loud noise. Acceptance is on the basis of attributability if the cause is infection, service related trauma. Epilepsy can develop after time lag/latent period of 7 years from the exposure to offending agent (Trauma, Infection, TB). This factor should be borne in mind before rejecting epilepsy cases. Where evidence exists that a person while on active service such as participation in battles, warlike front line operation, bombing, siege, jungle war-fare training or intensive military training with troops, service in HAA, strenuous operational duties in aid of civil power, LRP on mountains, high altitude flying, prolonged afloat service and deep sea diving, service in sub-marine, entitlement of aggravation will be appropriate if the attack takes place while serving in those areas."***

which thus expressly stipulates that epilepsy can develop after time lag/ latent period of 7 years from the exposure to offending agent (Trauma, Infection, TB) and that this factor should be borne in mind before rejecting epilepsy cases. The applicant in the instant case had been posted

afloat four times from 25.01.2001 – 17.03.2001, 19.08.2001-07.-5.2006, 08.05.2006-22.09.2008 and 23.05.2009 – 15.08.2009 and thus the trauma of being afloat for more than 10 years prior to the onset of the disability on 05.04.2012, inclusive of the aspect of the lateracy of the development of the disability during the said period can not be overlooked, as observed by this Tribunal in ***OA 1204/2019 in Ex Hav Satanarain Singh Vs UOI & Ors***. as there appears no reason to place personnel of the Armed Forces who have retired/been 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 07 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.

CONCLUSION

25. The OA 814/2019 is thus allowed. The applicant is thus held entitled to the grant of disability pension for life qua the disability of "SEIZURE DISORDER" @20% for life which in terms of the verdict of the Hon'ble Supreme Court in ***UOI & Ors. vs Ramvtar*** in Civil Appeal No. 418/2012 is rounded off to 50% for life, from the date of discharge. The arrears of the disability pension however, in the circumstances of the instant case, shall be confined to commence to run from a period of three years prior to the institution of the present OA i.e. 02.05.2019, in view of

the verdict of the Hon'ble Supreme Court in the case of ***Tarsem Singh (Supra)***.

26. The respondents are thus directed to calculate, sanction and issue the necessary PPO to the applicant within a period of three months from the date of receipt of copy of this order and the amount of arrears shall be paid by the respondents, failing which the applicant will be entitled for interest @6% p.a. from the date of receipt of copy of the order by the respondents.

Pronounced in the open Court on the 8th day of April, 2024.

[LT. GEN. C.P. MOHANTY]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/ps/