

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

**OA No. 338/2020 with MA 2253/2023**

**Ex Sub Clk Ram Darash Yadav** ... Applicant

**Versus**

**Union of India & 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**  
**05.01.2024**

**MA 2253/2023**

This is an application filed on behalf of the respondents for condonation of delay of **02** days in filing the counter affidavit. In view of the reasons explained in MA and in the interest of justice, the MA 2253/2023 is allowed and the delay in filing the counter affidavit is condoned.

1. The applicant vide the present O.A 338/2020 has made the following prayers:-

*“(a) quash and set aside the impugned letter No 1(100)/2010/D(Pen/Appeal) dated 08.09.2010. And/or  
(b) Direct respondents to consider the disability  
PRIMARY HYPERTENSION assessed @30% as  
attributable to/ aggravated by military service and*

*grant disability element of pension from the date of retirement of the applicant along with benefit of broad banding.*

*(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 JC-623217N Ex Sub Clk Ram Darsh Yadav was enrolled in the Indian Army on 21.02.1979 and discharged from service wef 31.05.2008 after rendering 29 years, 03 months and 08 days of service under item 1(i)(a) of table annexed to Rule 13(1) of Army Rules 1954 on completion of his term of engagement, as averred vide the Counter Affidavit of the respondents dated 04.05.2023. It is the avowed contention of the applicant that the disability that he suffers from of Primary Hypertension which had its onset in June, 2007 whilst the applicant was posted at Shillong was pursuant to the stress and strain that the applicant suffers from during his rigorous tenure with the Indian Army from 21.02.1979 when he was enrolled and his last posting i.e. his 22<sup>nd</sup> posting in the Indian Army whilst he was posted from 01.08.2005 onwards at Shillong. It has further been submitted that the applicant was inducted in the trade of Infantry GD(Clk). Inter alia it is submitted on behalf of the applicant placing reliance on the verdict of the Hon'ble Supreme

Court in *Dharamvir Singh Vs. Union Of India &Ors* (Civil Appeal No. 4949/2013) to contend to the effect that as per the RMB placed on record itself dated 23.04.2008, it has been categorically stipulated in Para- 2 &3 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”***

to submit to the effect that the same indicates that the applicant suffered from no disability before he entered military service nor was it possible that the said disability could not be detected during the routine medical examination carried out at the time of entry in the Indian Army.

3. It is thus submitted on behalf of the applicant that in terms of the verdict of the Hon'ble Supreme Court in *Dharamvir Singh Vs. Union Of India &Ors* (Civil Appeal No. 4949/2013) with specific reliance on observations in Para-28 thereof 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."*



the matter is no more *res integra* in relation to the aspect of the grant of the disability element of pension wherein the rebuttable presumption that arises in favour of the personnel who joins the military service in a fit medical condition and of the subsequent disability having arisen being as a consequence of the rigours of military service. Reliance is also placed on behalf of the applicant on the Govt. of India, Ministry of Defence vide letter no. 4(17)/2015/D(Pen/Legal) dated 29.06.2017 to submit to similar effect.

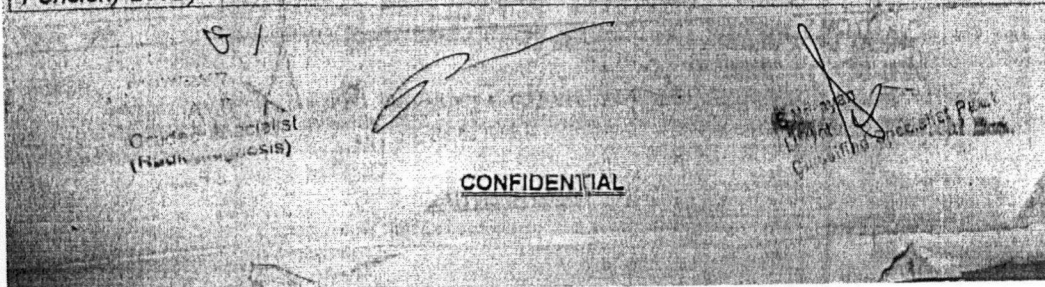
4. It has further been submitted on behalf of the applicant that no reasons have been given by the respondents to decline the grant of the disability element of pension to the applicant as reflected vide the RMB. It is essential to observe that the original RMB produced by the respondents now, dated 23.04.2008 vide the opinion given in Part-V of the medical board is wholly silent in relation to the reasons for opining the disability of the applicant to be neither attributable to nor aggravated by military service. Copy of the said RMB is directed to be placed on record by the respondents with a copy being supplied to the applicant through counsel. The scanned opinion of the medical board in Part-V of RMB is as under:-

**PART V**

**OPINION OF THE MEDICAL BOARD**

1. Casual 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
(a) PRIMARY HYPERTENSION	No	No	Yes	
(b)				
(c)				
(d)				
(e)				

Note : A disability "Not connected with service" would be neither Attributable nor Aggravated by service (This is in accordance with instructions contained in "Guide to Medical Officer (Mil Pension)-2002")



5. Though there is a medical case sheet that is annexed to the original RMB dated 21.04.2008, copy of which is on the record at Page-79 as annexed to the Counter Affidavit, the said opinion also reads to the effect:-



and does not make any mention of any reasons for the onset of the disability.

6. On behalf of the respondents it is strenuously urged that the disability had its onset in a peace area and thus the second appeal of the applicant has been rightly rejected vide the impugned communication no. 1(100)/2010/D(Pen/Appeal) dated 08.09.2010 observing to the effect that the onset of the disability was in June 2007 whilst the applicant was posted in a peace station and that the applicant served in a peace station from 27.04.2004 till discharge. Inter alia, reliance was also placed by the respondents on the reasons of the rejection of the said appeal which reads to the effect:-

***"Subject:- Second Appeal against rejection of disability pension in respect of Ex. Sub./Clk. Ram Darash Yadav (JC-623217N).***

***Sir,***

***I am directed to say that your 2<sup>nd</sup> appeal dated 25.02.2010 against rejection of your 1st appeal by Appellate Committee on First Appeal vide Service Hqrs. letter No. B/40502/324/09/AG/PS/-4(Imp-II) dated 14.01.2010 has been considered by Defence Minister's Appellate Committee on Pension. The Committee has observed that the onset of ID "Primary Hypertension" was in June 2007 while posted in a peace station. As per posting profile you served in peace from 27 April 2004 till discharge ID is a life style related disease due to hardening of blood vessels which may be due to familial predisposition. It is not attributable to service It will be considered aggravated by service if it occurs while serving in field CIOPS/HAA. No such close time association with service in these areas is there in this case. Further you were asymptomatic at release with no target organ damage.***



*Hence ID is neither attributable to nor aggravated by military service The Committee has accordingly, not accepted your request for grant of disability Pension."*

to submit to the effect that the said disability is a life style disease due to hardening of blood vessels which may be due to a familial predisposition and is not attributable to service and will be considered aggravated by service if it occurs while serving in field CI Ops/HAA and that no such close time association with service in these areas is there in this case.

7. Submissions have been made on behalf of the either side it is essential to advert to Regulation 423 of the Regulations for the Medical Services of the Armed Forces Personnel, 2010 which reads 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.

8. The observations of the Hon'ble Supreme Court in *Dharamvir Singh Vs. UOI & Ors.* vide Para-33 thereof which reads 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).

which thus thereby indicate that mere posting of the armed forces personnel in a peace area simplicitor is insufficient to indicate the



grant of the disability element of pension in relation to the aspect of attributability of the said disability if the circumstances of the case otherwise indicate a causal connection of the said disabilities with military service.

9. 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:-*

*(aa) that the disease has arisen during the period of military service, and*

*(ab) 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.

10. It is also essential to advert to Para-43 of the Chapter-VI of GMO(MP), 2008 (as applicable in the instant case in view of the discharge of the applicant from military service on 31.05.2008), which 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)."*

It is essential to observe that thereby itself, it has been stipulated to the effect:-

*“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.”*

11. In the instant case as reflected through the posting profile placed by the respondents as annexed at Page-76 on the record to the Counter Affidavit filed by the respondents themselves, the applicant after his induction into the Indian Army has held 13 field postings out of his 22 postings which are as under:-

“

Ser No	Date		Location	Peace/Field
	From	To		
01.	21 Feb 1979	04 Jun 1980	Shillong	Peace
02.	05 Jun 1980	13 Jun 1980	OP SAVAGE(WB)	Field
03.	14 Jun 1980	27 Jul 1980	HAUCL(Bhutan)	Field
04.	28 Jul 1980	26 Jul 1981	OP SAVAGE(Sikkim)	Field
05.	27 Jul 1981	26 Oct 1981	HAUCL(Bhutan)	Field
06.	27 Oct 1981	26 Jan 1982	OP SAVAGE(WB)	Field
07.	27 Jan 1982	19 Mar 1982	OP BATTLE EXE (Mizoram)	Field
08.	20 Mar 1982	24 Aug 1982	OP SAVAGE(WB)	Field
09.	25 Aug 1982	16 Aug 1985	Jammu	Peace
10.	17 Aug 1985	12 Mar 1986	OP RAKSHAK (J&K)	Field

11.	13 Mar 1986	25 May 1989	Shillong	Peace
12.	26 May 1989	20 Sep 1991	Kanpur	Peace
13.	<b>21 Sep 1991</b>	<b>24 Aug 1994</b>	<b>HAUCL(Sikkim)</b>	<b>Field</b>
14.	25 Aug 1994	16 Sep 1996	Shillong	Peace
15.	<b>17 Sep 1996</b>	<b>14 May 1999</b>	<b>OP RAKSHAK (J&amp;K)</b>	<b>Field</b>
16.	15 May 1999	22 Jul 1999	Trivendrum	Peace
17.	<b>23 Jul 1999</b>	<b>02 Sep 1999</b>	<b>OP VIJAY (Falodi)</b>	<b>Field</b>
18.	03 Sep 1999	17 Oct 2002	Binnaguri(WB)	Peace
19.	<b>18 Oct 2002</b>	<b>31 Aug 2003</b>	<b>OP MEGHDOOT (Siachen Glacier)</b>	<b>Field</b>
20.	<b>01 Sep 2003</b>	<b>26 Apr 2004</b>	<b>HAUCL(J&amp;K)</b>	<b>Field</b>
21.	27 Apr 2004	31 Jul 2005	Dehradun	Peace
22.	01 Aug 2005	Till date	Shillong	Peace

12. Thus, the onset of the disability in the instant case in June 2007 is apparently explained in terms of Para-43 of Chapter-VI of the GMO(MP), 2008 itself as stipulated herein above, in view of the frequent spells of service that the applicant has held in field areas. In the circumstances of the instant case, the applicant is held entitled to the grant of the disability element of pension. Though a submission has been sought to be raised on behalf of the respondents through the rejection of the second appeal of the applicant vide the impugned letter dated 08.09.2010 in relation to lifestyle diseases, there is no substantial mention on the records of the RMB in the opinion, which



as observed herein above is **wholly silent** for the negation of the prayer made by the applicant for the grant of disability element of pension and furthermore the counter affidavit filed by the respondents also makes no mention of any lifestyle, contributory factors from the side of the applicant. Furthermore, the applicant is also not indicated to be overweight as per Page-77 in Part-II of the medical examination of the applicant as placed on record by the respondents through their Counter Affidavit. In the circumstances of the instant case, the applicant is held entitled to the grant of disability element of pension in relation to the disability of Primary Hypertension assessed with a percentage of disablement @30% for life by the RMB which in terms of the verdict of the Hon'ble Supreme Court in *UOI & Ors. vs Ramavtar* in Civil Appeal No. 418/2012, is directed to be broadbanded to 50% for life, with effect from the date of discharge.

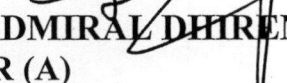
13. However, in as much as the present OA has been instituted by the applicant on the date 06.01.2020 after discharge of the applicant from service on 31.05.2008 in terms of the verdict of the Hon'ble Supreme Court in *UoI & Ors Vs Tarsem Singh 2009(1)AISLJ 371*, the arrears for the disability pension shall be commence to run from the period of three years prior to the institution of the present OA.

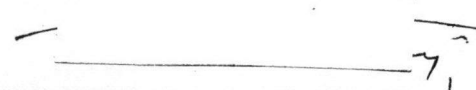


14. The respondents are thus directed to calculate, sanction and issue the necessary PPO to the applicant within a period of three months from the date of receipt of copy of this order and the amount of arrears shall be paid by the respondents, failing which the applicant will be entitled for interest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

15. The prayer made on behalf of the respondents for the Leave to Appeal in the instant case is declined in view of the verdict of the Hon'ble Supreme Court in *Ex. Lac Yogesh Pathania vs. Union of India & Others*, in I.A. No. 1/2016 in Civil Appeal D. No. 14214 of 2016 and in *Union of India & Ors. Vs. Parashottam Dass* in Civil Appeal No. 447/2023 dated 21.03.2023, in as much 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.

Pronounced in the open Court on the 5<sup>th</sup> day of January, 2024.

  
[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)

  
[JUSTICE ANU MALHOTRA]  
MEMBER (J)

/TS/

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IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH  
NEW DELHI

OA NO. **338** /2020

IN THE MATTER OF:-

JC-623217N EX SUB CLK RAM DARASH YADAV

....APPLICANT

VERSUS

UNION OF INDIA & ORS.

.... RESPONDENTS

MEMO OF PARTIES

JC-623217N Ex Sub Clk Ram Darash Yadav  
H No 0281/C, Gyetri Nagar, PO – Kunraghat,  
Distt- Gorakhpur-273011

....APPLICANT

VERSUS

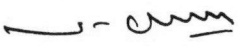
1. Union of India through,  
Secretary, Ministry of Defence  
South Block, New Delhi
2. Chief of Army Staff  
Integrated HQ of MoD (Army)  
South Block, New Delhi-110011
3. Chief Records Officer,  
Records 58 Gorkha Rifles  
PIN-900332, c/o 56 APO
4. Principal Controller of Defence Account ( Pension)  
Draupadi Ghat, Allahabad ( UP )

.....RESPONDENTS

Counsel for the Petitioner

Date 03.01.2020

Place: New Delhi

  
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