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

Suppl.
1.

OA 2057/2018 with MA 2264/2018
Cdr SD Singh (Retd) ..... Applicant
VERSUS
Union of India and Ors. ..... Respondents
For Applicant : Mr. Baljeet Singh, proxy for
Mr. OS Punia, Advocate
For Respondents : Mr. Waize Ali Noor, Advocate

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

ORDER
03.01.2024

Vide our detailed order of even date, we have allowed the OA 2057/2018. 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)

POOJA

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

OA No. 2057 of 2018 with MA 2264/2018

Cdr SD Singh(Retd) ... **Applicant**

Versus

Union of India & Ors. ... **Respondents**

For Applicant : Mr. O.S. Punia, Advocate

For Respondents : Mr. Waize Ali Noor, Advocate

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

O R D E R

MA 2264/2018

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 1855 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 2264/2018 is allowed despite opposition on behalf of the respondents and the delay of 1855 days in filing the OA 2057/2018 is thus condoned. The MA is disposed of accordingly.

1. The applicant vide the present O.A 2057/2018 has made the following prayers:-

> ***"(a) Set aside the impugned order letter No. PN/7050/DP/13 dt 25.04.2013 & 24.10.2018 and direct the respondents to consider the disability of the applicant as attributable to and aggravated by service as well as consider the net assessment qualifying for disability pension from Nil for life to 30% for life;***
> ***(b) Direct the respondents to give the benefits of rounding off of disability element from 30% grant Disability element of Pension duly rounded off to 50% to the applicant w.e.f.01.04.2013 @50% for life in the light of law laid down by Hon'ble Supreme Court alongwith interest @12% per annum alongwith all consequential benefits;***
> ***(c) To award any other/further relief which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case alongwith cost of the application in favour of the applicant and against the respondents."***

2. The applicant Cdr SD Singh was commissioned in the Indian Navy on 01.01.1982 and retired from service on 31.03.2013. The applicant was suffering from the disability of Coronary Artery Disease(Ant Wall MI) ICD I-25.9, Z-09.0 since the year 2007, the RMB held on 15.02.2013 had considered the ID as Neither Attributable to Nor Aggravated by Naval Service, though it assessed the percentage of disablement @30% for life with the net assessment qualifying for disability pension has been assessed at Nil for life. The claim for disability pension was rejected by the Naval Hq vide letter dated 25.04.2013 stating that the RMB had assessed his disability as being neither attributable to nor aggravated by military service. The applicant was also advised to file an appeal to the Appellate

Committee on First Appeal(ACFA) within six months from the date of receipt of the letter. The applicant filed the first appeal on 10.08.2018 which was not processed having been filed after a period of 05 years till disposal from the date of rejection of the initial claim as informed to the applicant vide the letter dated 24.10.2018. In the interest of justice, we consider it appropriate to take up the OA for consideration in terms of Section-21(1) of the AFT Act, 2007.

CONTENTIONS OF THE PARTIES

3. The applicant submits that he joined the Indian Navy in a fit medical condition without any note of any disability recorded on the records of the respondents and that during his career of 30 years, he was posted to various places including onboard ships and that during these years he had 16 postings of which 06 postings were in field /onboard ships. The applicant further submits that life at these places was always full of stress and strain and due to day to day performance of duties as well as climatic and environmental conditions which the applicant performed to the utmost satisfaction of the authorities even during the odd weather and hostile environmental conditions. The applicant submits that whilst posted on the strength of INS, Angre Addl on 20.04.2007, he suffered from cardiac problems and was admitted to INHS Asvini, where he was diagnosed with Coronary

Artery Disease(Ant Wall MI) and thereafter was placed in Lower medical category S2A2(P) and remained on medication thereafter but performed his duties and responsibilities which aggravated his ailments due to the stress and strain of service. Inter alia the applicant submits that he was still suffering from the disability and there is no improvement in his condition and that he is on regular medication.

4. Reliance was placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in CA No. 4949/2013 in ***Dharamvir Singh Vs. UOI & Ors.*** to contend to effect that in the absence of any note recorded on the records of the respondents qua any disability that the applicant suffered from and there being nothing to indicate as to why the respondents could not ascertain the existence of any disability before the induction of the applicant into the Indian Navy while conducting physical examination, the disability that had arisen during military service has to be presumed to be attributable to and aggravated by military service.

5. Inter alia, the applicant submits that even after the onset of his ailment in April 2007 he was not excused from any duties and rather his duties being of the Dy Commodore of the yard, involved severe/ exceptional stress and strain as stated in the statement of the Commanding Officer i.e. Commodore of the Yard and this stress and

strain further aggravated his disability. The applicant further submits that there is no family history of the disability which is not hereditary. Inter alia, the applicant submits that the disability which has been assessed @ 30% for life be broadbanded to 50% for life in terms of the verdict of the Hon'ble Supreme Court in ***UOI & Ors. vs Ramavtar*** in Civil Appeal No. 418/2012.

6. On behalf of the respondents, learned counsel for the respondents submits to the effect that there is no infirmity whatsoever in the opinion of the RMB dated 15.02.2013 which had opined the disability to be neither attributable to nor aggravated by military service in as much as the disability had its onset on 20.04.2007 whilst the applicant was posted at Mumbai at the peace posting. Furthermore, the respondents further submits to the effect that after the 9th posting of the applicant from May 1993 to June 1995 onboard INS Prachand at Vizag, a field posting, the applicant had always been posted at peace stations and thus there was no stress and strain caused by the Naval service to the applicant. Inter alia, the respondents have placed reliance on the Para-4 of the Part-I in Personal Statement of the applicant as stated in the RMB which reads as under:-

> ***"4. Give details of any incidents during your service, which you think caused or made your disability worse. NO "***

to submit that the contention of the applicant that the disability was pursuant due to military service had not been so stated by the applicant in view of his personal statement. The respondents have further submitted through their Counter Affidavit that the disability like of Coronary Artery Disease grows with age and may not be detected in young age and is a lifestyle disease and not related to service.

ANALYSIS

7. On a consideration of the submissions made on behalf of either side, it is essential to observe that the factum that as laid down by the Hon'ble Supreme Court in ***Dharamvir Singh(Supra)*** ,a personnel of the Armed forces has to be presumed to have been inducted into military service in a fit condition ,if there is no note of record at the time of entrance in relation to any disability in the event of his subsequently being discharged from service on medical grounds the disability has to be presumed to be due to service unless the contrary is established, - is no more ***res integra***.

8. It is essential to observe that the verdict of the Hon'ble Supreme Court in CA No. 4949/2013 in ***Dharamvir Singh Vs. UOI & Ors.***, vide Para-28 lays down the guiding canons 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."

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

10. Vide the verdict of the Hon'ble Supreme Court in ***UOI & Ors. Vs. Manjeet Singh*** dated 12.05.2015, Civil Appeal no. 4357-4358 of 2015, vide Para-22 to 25 it has been laid down to the effect:-

"22.Be that as it may, adverting inter alia to Rule 14(b) of the Rules, we are of the unhesitant opinion that reasons, that the diseases could not be detected on medical examination prior to acceptance in service, ought to have been obligatorily recorded by the Medical Board sans whereof, the respondent would be entitled to the benefit of the statutory inference that the same had been contracted during service or have been aggravated thereby. There is no reason forthcoming in the proceedings of the Medical Board, as to why his disabilities eventually adjudged to be constitutional or genetic in nature had escaped the notice of the authorities concerned at the time of his acceptance for Army service. On a comprehensive consideration of the Regulation, Rules and the General Principles as applicable, the service profile of the respondent and the proceedings of the Medical Board, we are constrained to hold that he had been wrongly denied the benefit of disability pension. His tenure albeit short, during which he had to be frequently hospitalized does not irrefutably rule out the possibility, in absence of any reason recorded by the Medical Board that the disability even assumed to be constitutional or genetic, had not been induced or aggravated by the arduous military conditions. The requirement of recording reasons is not contingent on the duration of the Army service of the member thereof and is instead of peremptory nature, failing which the decision to board

him out would be vitiated by an inexcusable infraction of the relevant statutory provisions. Having regard to the letter and spirit of the Regulation, Rules and the General Principles, the prevailing presumption in favour of a member of the Army service boarded out on account of disability and the onus cast on the authorities to displace the same, we are of the unhesitant opinion that the denial of disability pension to the respondent in the facts and circumstances of the case, have been repugnant to the relevant statutory provisions and thus cannot be sustained in law. The determination made by the High Court of Jammu and Kashmir at Jammu is thus upheld on its own merit.unhesitant opinion that the denial of disability pension to the respondent in the facts and circumstances of the case, have been repugnant to the relevant statutory provisions and thus cannot be sustained in law. The determination made by the High Court of Jammu and Kashmir at Jammu is thus upheld on its own merit.

23. The authorities cited at the Bar though underline the primacy of the opinion of the Medical Board on the issue, however, do not relieve it of its statutory obligation to record reasons as required. Necessarily, the decisions turn on their own facts. With the provisions involved being common in view of the uniformity in the exposition thereof, a dilation of the adjudications is considered inessential.

24. Though noticeably, the decision rendered in LPA(SW) 212/2006; Union of India and Others vs. Ravinder Kumar, as referred to in the impugned judgment, was reversed by this Court in Civil Appeal No.1837/2009, we are of the respectful view that the same cannot be construed to be a ruling relating to the essentiality of recording of reasons by the Medical Board as mandated by the Regulations, Rules and the Guiding Principles. This decision thus is of no determinative relevance vis-a-vis the issues involved in the present appeal.

25. The last in the line of the rulings qua the dissensus has been pronounced in a batch of Civil Appeals led by Civil Appeal No. 2904 of 2011; Union of India & Others vs. Rajbir Singh in which this Court on an exhaustive and insightful exposition of the

aforementioned statutory provisions had observed with reference as well to the enunciations in Dharamvir Singh vs. Union of India 2013(7) SCC 316, that the provision for payment of disability pension is a beneficial one and ought to be interpreted liberally so as to benefit those who have been boarded out from service, even if they have not completed their tenure. It was observed that there may indeed be cases where the disease is wholly unrelated to Army service but to deny disability pension, it must affirmatively be proved that the same had nothing to do with such service. It was underlined that the burden to establish disability 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 was on account of Army service or had been aggravated by it. True to the import of the provisions, it was held that a soldier cannot be asked to prove that the disease was contracted by him on account of Army service or had been aggravated by the same and the presumption continues in his favour till it is proved by the employer that the disease is neither attributable to nor aggravated by Army service. That to discharge this burden, a statement of reasons supporting the view of the employer is the essence of the rules which would continue to be the guiding canon in dealing with cases of disability pension was emphatically stated. As we respectfully, subscribe to the views proclaimed on the issues involved in Dharamvir Singh (supra) and Rajbir Singh(supra) as alluded hereinabove, for the sake of brevity, we refrain from referring to the details. Suffice it to state that these decisions do authoritatively address the issues seeking adjudication in the present appeals and endorse the view taken by us."

11. 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),

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.

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

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

has not been obliterated.

13. The verdict of the Hon'ble Supreme Court in ***Dharamvir Singh Vs. UOI & Ors***. vide Para-33 thereof, also stipulates to the effect:-

> ***"33. As per Rule 423(a) of General Rules for the purpose of determining a question whether the cause of a disability or death resulting from disease is or is not attributable to service, it is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a field service/active service area or under normal peace conditions.*** *"Classification of diseases" have been prescribed at Chapter IV of Annexure I; under paragraph 4 post traumatic epilepsy and other mental changes resulting from head injuries have been shown as one of the diseases affected by training, marching, prolonged standing etc. Therefore, the presumption would be that the disability of the appellant bore a casual connection with the service conditions.",-* *(emphasis supplied)*

14. It is essential to advert to the posting profile of the applicant which is depicted in the RMB dated 15.02.2015, as under:-

"

PART I PERSONAL STATEMENT									
1. Give details of the service (P=Pease OR F= Field/Operational/Sea Service)									
SL. NO	FROM	TO	PLACE/SHIP	P/F (HAA/Ops/Sea service /others)	SL. NO	FROM	TO	PLACE/SHIP	P/F (HAA/ Ops/Sea service / others)
(i)	Jan 82	Dec 82	Kochi/Vendruthy	P	**(ii)**	**Dec 82**	**May 84**	**Vizag/Amini**	**F**
(iii)	**May 84**	**May 86**	**Vizag/Portblair/ LCU 34**	**F**	**(iv)**	**May 86**	**May 84**	**Portblair/ INSDBT-53**	**F**
(v)	May 87	May 88	Kochi/Vendruthy	P	**(vi)**	**Jul 88**	**May 89**	**Vizag/Andaman**	**F**
(vii)	May 89	May 91	Vizag/WATT(V)	P	**(viii)**	**May 91**	**May 93**	**Mumbai/ Ajay**	**F**
(ix)	**May 93**	**Jun 95**	**Vizag/Prachand**	**F**	(x)	May 95	Aug 97	Vizag/WATT(V)	P

(xi)	Aug 97	Nov 99	Portblair/Kamorta/Jaraua/Kardip	P	(xii)	Nov 99	Jan 02	Karanja/ Mumbai COMCEN	P
(xiii)	Jan 02	Mar 06	Mumbai/ND(MB)	P	(xiv)	Mar 06	Apr 09	Mumbai/MMB/ Angre Addl	P
(xv)	Apr 09	Sep 11	Portblair/408 MCDET	P	(xvi)	Sep 11	Feb 12	Mumbai/ HQWNC	P
(xvii)	Feb 12	To date	Mumbai/ND(MB)						

"

which indicates that the applicant was commissioned in the Indian Navy on 01.01.1982 and was posted onboard Ships for the period from December 1982 to May 1984 onboard INS Amini; May 1984 to May 1986 on LCU 34; from May 1986 to May 1987 on INSDBT-53; July 1988 to May 1989 onboard INS Andaman; May 1991 to May 1993 onboard INS Ajay; May 1993 to June 1995 onboard INS Prachand, and thus was posted for a period of more than 10 years onboard ships prior to the onset of his disabilities on 20.04.2007 at Mumbai. The opinion of the medical Board in Part-V of the RMB states 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 & period in Service
Coronary Artery Disease(Ant Wall MI) ICD I-25.9, Z-09.0	**No**	**No**	**Yes**	**There is no close time relationship to a service compulsion involving severe trauma or exceptional mental, emotional or physical strain. Hence disability is considered NANA vide Para-47 of**

				Chapter-VI of GMO, 2008.
Note: A Disability "Not Connected with Service" would be neither Attributable nor aggravated by Service.				

"

15. Para-47 of the Chapter-VI of the GMO(MP), 2008 on which the respondents relied in view of the RMB having based its opinion in relation thereto provides as under:-

> *"47. Ischaemic Heart Disease (IHD)- IHD is a constitutional disease. It is almost always due to occlusive thrombus at the site of rupture of an atheromatous plaque in the coronary artery. Prolonged stress and strain hastens atherosclerosis by triggering of neurohormonal mechanism and autonomic storms. It is now well established that autonomic nervous system disturbances precipitated by emotions, stress and strain, through the agency of catecholamines affect the lipid response, blood pressure, increased platelet aggregation, heartrate and produce ECG abnormality and arrhythmias.* ***Therefore where exceptional and prolonged stress and strain of service can reasonably be established, aggravation can be conceded. On the other hand acute and severe mental and physical stress of very short duration may precipitate acute cardiovascular catastrophe by suddenly creating marked reduction of blood supply relative to its demand and favours coronary spasm, resulting in ischaemia. Therefore intimate causal relationship must be accepted and attributability can be conceded.***
>
> *The service in field and high altitude areas apart from physical hardship imposes considerable mental stress of solitude and separation from family leaving the individual tense and anxious as quite often separation entails running of separate establishment, financial crisis, disturbance of child education and lack of security for family. Apart from this, compulsory group living restricts his freedom of activity. These factors jointly and severally can become a chronic source of mental stress and strain precipitating an attack of IHD.*
>
> *Severe regimentation in the day to day service life, working to deadlines, prolonged hours of uncongenial*

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

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

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

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

b) Aggravation will be conceded in cases in which there is evidence of:-
(i) Severe mental and/or emotional stress due to participation in operation or high pressure planning for operation or other similar activities involving equivalent stress and strain.
[ii] Severe physical stress in the field or other similar activities involving stress in peace or training during the preceding two weeks.
(iii) Atheroma manifesting itself clinically as angina. syocardial infarction, sudden death and abnormalities of the electrocardiogram.

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

There would be cases where neither immediate nor prolonged exceptional stress and strain of service is evident. In such cases the disease may be assumed to be the result of constitutional factors, heredity and way of life such as indulging in risk factors e.g. smoking. Neither attributabililty nor aggravation can be conceded in such cases." *(emphasis supplied)*

16. Vide order dated 13.09.2023, the respondents were directed to produce the original RMB proceedings along with the Clinical assessment of the specialist opinion which were produced on 17.11.2023 with a copy thereof having been submitted on the record by the respondents. The opinion of ADV(MED) Cardiology dated February 2013 does not bring forth any contributory factors against

the applicant and does not indicate that the applicant suffers from any family history of Coronary Artery Disease nor any history specify that the applicant was a smoker or an alcoholic. The RMB rather states categorically in responses to query to Para-2,3,5(a) in Part-V of the RMB 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***
> ***5.(a) Was the disability attributable to the individual's own negligence or misconduct? If Yes, in what way? NA"***

17. Reliance was sought to be placed on behalf of the respondents on the certificate of assessment of longevity attached to the RMB as per which the applicant was released from service in Medical Category S2A2(P) PMT and it was stated that he was already held to have the prospects of average duration of life and was recommended for extended insurance cover by the Naval group pension with already been also found fit for suitable employment in civil area. The respondents thus urged that the OA be dismissed.

18. On behalf of the applicant, reliance was placed on the order dated 03.03.2022 of the AFT(RB), Chennai in OA 122/2020 in the case of ***Ex Naik Annepu Balakrishna Vs. UOI & Ors***. ,in which case,

the applicant was suffering from Coronary Artery Disease – NSTEMI-SVD (LCX) was granted the benefit of disability element of pension in relation to the said disability.

19. Reliance was also placed on behalf of the applicant on the order dated 24.03.2023 of this Tribunal in OA 2255/2019 in the case of ***Ex Nk (MACP Hav) M Krishna Moorthy Vs. UOI & Ors.***, in which the applicant thereof who suffered from CAD-ASC-STEIWMI+ASMI P/PCI TO PCA was held entitled to the grant of disability element of pension in relation to said disability, in which case that applicant had been enrolled in the Indian Army on 25.09.2000 and was discharged from the service on 30.06.2018 with the disability having started after rendering almost 18 years of service in the Indian Army i.e. on 23.03.2018 and that applicant had served during substantial period of applicant had served in the field area, driving armoured vehicles on difficult terrains.

20. The percentage of disablement put forth by the RMB qua the present applicant is 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%.					
Ser No	Disabilities(as numbered in Para 1 Part IV)	Percentage of disablement with	Composite assessment for all disabilities with	Disability qualifying for disability	Net assessment qualifying for disability

		duration	duration(Max 100)% with duration	pension with duration	pension(Max 100%) with duration
(a)	CORONARY ARTERY DISEASE(Ant Wall MI) ICD I-25.9, Z-09.0	30%	30% (Thirty)	NIL Life Long	NIL Life Long

"

21. In terms of the Para-47 of the GMO(MP), 2008 itself, it is thus brought forth that prolonged stress and strain hastens atherosclerosis by triggering of neurohormonal mechanism and autonomic storms and The service in field and high altitude areas apart from physical hardship imposes considerable mental stress of solitude and separation from family leaving the individual tense and anxious as quite often separation entails running of separate establishment, financial crisis, disturbance of child education and lack of security for family and compulsory group living restricts his freedom of activity and that these factors jointly and severally can become a chronic source of mental stress and strain precipitating an attack of IHD. In the instant case, the onset of the disability of CORONARY ARTERY DISEASE(Ant Wall MI) ICD I-25.9, Z-09.0 was in the year 2007 on 20.04.2007 after induction of the applicant in Indian Navy that is after 25 years in the Indian Navy and it cannot be overlooked that

Statement of Commanding Officer of the applicant dated 18.02.2013 categorically states to the effect:-

> ***"5. Did the duties involve Severe/exceptional stress and strain?(Give details). (a) Since when (b) On special day/occasions***
> ***Yes,. During Exercises/Operations*** "

22. Thus merely because the onset of the disability was in a peace station, the same does not detract from the stress and strain that the applicant has undergone during the postings prior to the onset of the disability of almost 10 years onboard ships which clearly falls within the ambit of attributability of the disability being due to service in the Indian Navy in terms of Para-47 of Chapter-VI of the GMO (M.P.), 2008. That the onset of the disability was not soon after the field postings of the applicant does not detract from the factum of stress and strain that the applicant had undergone during his postings prior to the same. Furthermore, the factum that the Commanding Officer of the applicant has also categorically observed to the effect that the applicant's job profile entailed severe/ exceptional stress and strain during exercise/ competitions, the same cannot be overlooked. Furthermore, merely because the applicant in his personal statement with response to Question no. 4 has not given details of any incidents to which made him think caused and caused his disability worsen does

not detract from the presumption that arises in favour of the applicant of the disability having arisen due to military service in terms of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008 adverted to herein above in Para-11 itself. The applicant in the circumstances of the instant case is thus held entitled to disability element of pension in relation to the disability of CORONARY ARTERY DISEASE(Ant Wall MI) ICD I-25.9, Z-09.0.

CONCLUSION

23. The OA 2057/2018 is allowed. The applicant is held entitled to the grant of disability element of pension in relation to the disability of CORONARY ARTERY DISEASE(Ant Wall MI) ICD I-25.9, Z-09.0 @30% for life, from the date of discharge, 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. However, in terms of verdict of the Hon'ble Supreme Court in **UoI & Ors** Vs **Tarsem Singh 2009(1)AISLJ 371**, the arrears shall be confined to payable to commence from three years prior to the institution of the present OA.

24. 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 5 day of January, 2024.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMRER (J)

/TS/