

**PRINCIPAL BENCH, NEW DELHI****O.A. No. 2238 of 2019****with****M.A. No. 3133 of 2019****and****M.A. No. 410 of 2020** /x**In the matter of :****Ex Sub Akuthota Reddeppa****... Applicant****Versus****Union of India & Ors.****... Respondents****For Applicant : Shri I.S. Yadav, Advocate****For Respondents : Shri Prabodh Kumar, Advocate****CORAM :****HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON  
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)****ORDER****M.A. No. 410 of 2020 :** x

Vide this application, the respondents seek condonation of 34 days' delay in filing the counter affidavit. In view of the averments made in the application, the delay is condoned and the counter affidavit is taken on record.

MA stands disposed of accordingly.

**M.A. No. 3133 of 2019 :**

Vide this application, the applicant seeks condonation of 5600 days' delay in filing the OA. In view of the law laid down by the Hon'ble Supreme Court in the case of **Deokinandan Prasad Vs. State of Bihar [AIR 1971 SC 1409]** and in **Union of India & Ors. Vs. Tarsem Singh [2009 (1) AISLJ 371]**, delay in filing the OA is condoned.

MA stands disposed of.

**O.A. No. 2238 of 2019 :**

Invoking the jurisdiction of the Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 read as under :

- (a) ***To declare the action of the respondents as unjust, arbitrary and illegal; and***
- (b) ***To quash the respondents letter No. P/JC-367305/DP-2/NER dated 16 Aug 2004 and dated 29 Apr 2019; and***
- (c) ***To direct the respondents to grant the disability pension from 11-14% to 30% and further rounding off the disability pension***

**50% in terms of letter dated 31 Jan 2001;**

**and**

- (d) To grant an interest of 18% on the delayed payment of the disability pension; and**
- (e) To award exemplary costs upon the Respondents in the facts and circumstances of the record; and**
- (f) Such further order or orders, direction/directions be passed so as to this Tribunal may deem fit and proper in accordance with law.**

#### **BRIEF FACTS**

2. The applicant, having been found medically and physically fit, was enrolled in the Indian Army on 11.08.1973. The applicant retired from service w.e.f. 31.03.2003 after rendering 29 years and 233 days of service being in permanent low medical category S1H1A1P2E1. The Release Medical Board (RMB) held on 19.12.2002 assessed the applicant's disability 'CAD-NQ INFERIOR WALL MI (SVD-LAD STENT) @ 11-14% for life. However, the disability was held as 'neither attributable to nor aggravated by military

service' (NANA), based on which, the disability pension was denied to the applicant.

3. The initial claim of the applicant for the grant of disability pension was forwarded to the PCDA (P) Allahabad for adjudication and the PCDA (P) Allahabad rejected the claim on the ground that the disability was neither attributable to nor aggravated by military service and being constitutional in nature vide letter dated 21.06.2004. The decision was intimated to the applicant vide letter dated 16.08.2004 with an advice to prefer an appeal, if dissatisfied within six months from that date. Accordingly, the applicant filed a personal application dated 30.01.2019 which was replied to by the competent authority vide letter dated 13.02.2019. A petition dated 18.03.2019 filed by the applicant was also rejected by the respondents vide letter dated 29.04.2019. The applicant served Legal notice dated 23.08.2019 which was suitably replied to vide letter dated 28.09.2019. Aggrieved by the same, the applicant has filed the instant OA.

4. The learned counsel for the applicant submitted that the applicant, at the time of joining the service, was declared

fully fit medically and physically and no note was made in his medical record to the effect that the applicant was suffering from any disease at that time and any medical disability contracted by him during the course of his service should be treated as attributable to and aggravated by the stresses and strains of his service. The learned counsel submitted that the respondents committed grave error in denying the disability pension and the RMB had wrongly assessed the disability as NANA being constitutional in nature and not related to service, when the applicant's first and second Re-categorisation Boards held on 18.04.2001 and 05.04.2002 held the disability as aggravated due to stress and strain of military service and assessing the same at 30% and no reason for reducing the percentage of disablement was given by the RMB or respondents. The learned counsel further submitted that in view of Para 48(b) Appendix II of the Pension Regulations for the Army, 1961 read with Para 7.2 of the Policy letter dated 31.01.2001, the applicant was entitled to disability pension by rounding off the percentage already assessed i.e. 11-14% to 50%. The learned counsel contended that the respondents failed to

consider the fact that as per Annexure III to Appendix II to the Entitlement Rules to Casualty Pensionary Awards to the Armed Forces Personnel, 1982, Myocardial Infarction and other forms of IHD are listed in the diseases affected by stress and strain of service.

5. The learned counsel for the applicant placed reliance on various judgments of the Hon'ble Supreme Court including **Dharamvir Singh Vs. Union of India & Ors. [2013 AIR SCW 4236]**, **Union of India & Anr. Vs. Rajbir Singh [2015 (2) SCALE 371]** to submit that as no note of any disability or disease was made at the time of acceptance of military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service. The learned counsel further relied upon the judgment of Hon'ble Apex Court in **Sukhvinder Singh Vs. Union of India and Ors. [2014 STPL (WEB) 468 SC]** and **Union of India & Ors. Vs Naik Vijay Kumar [Laws SC 2015 868]** wherein the petitioners were granted the benefit of disability pension despite their disability assessed at less than 20%. The learned counsel submitted that the respondents' action in denying the disability pension is unjustified and unlawful,

when the disability recorded by the RMB occurred during the active service and were caused due to stress and strain of service. The learned counsel, therefore, prayed that the disability in question may be held as attributable to and aggravated by military service and that the disability pension may be granted to the applicant.

6. *Per contra*, the learned counsel for the respondents contended that the applicant is not entitled to the relief claimed since the RMB, being an Expert Body, found the disability as "Neither Attributable to Nor Aggravated by Military Service" on the ground that the disease is constitutional in nature and not related to service. The learned counsel referred to Para 179 of the Pension Regulations for the Army, 1961 (Part-I), which stipulates the primary conditions for grant of disability pension to the effect that "unless otherwise specifically provided, disability pension may be granted to an individual who is invalided from service on account of disability which is attributable to or aggravated by military service and is assessed as 20% or over" and submitted that as the applicant's disability was assessed at less than 20% (11-14%), the applicant is not

entitled to get disability element of pension. Hence, learned counsel prayed that the OA be dismissed.

7. We have heard the learned counsel for the parties and have gone through the records.

8. It is an undisputed fact that at the time of joining the Indian Army on 11.08.1973, the applicant was found medically and physically fully fit in all respect. The present disability has admittedly been diagnosed on 03.01.2001 and at the time of retirement, the applicant was placed in low medical category S1H1A1P2E1.

9. The law on the issue of attributability of a disability is already settled by the Hon'ble Supreme Court in the case of **Dharamvir Singh Vs. Union of India [(2013) 7 SCC 316]**, which has been followed in subsequent decisions of the Hon'ble Supreme Court and in a catena of orders of this Tribunal, wherein the Apex Court had considered the question with regard to grant of disability pension and after taking note of the provisions of the Pension Regulations, Entitlement Rules for Casualty Pensionary Awards, 1982 and the General Rules of Guide to Medical Officers (Military

Pensions), 2002 and Para 423 of the Regulations for the Medical Services of the Armed Forces, it was held by the Hon'ble Supreme Court that an Army personnel shall be presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance and in the event of his being discharged from service on medical grounds, any deterioration in his health, which may have taken place, shall be presumed due to service conditions. The Apex Court further held that the onus of proof shall be on the respondents to prove that the disease from which the incumbent is suffering is neither attributable to nor aggravated by military service. The guidelines laid down vide the verdict in *Dharamavir Singh (supra)* are as under:-

**"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."

10. The Hon'ble Supreme Court in the case of Union of India & Ors. Vs. Rajbir Singh [2015 (2) SCALE 371] decided on 13.02.2015, after taking note of its judgement in

the case of *Dharamvir Singh (supra)* upheld the decision of this Tribunal granting disability pension and observed as under :

**“15. .... 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 ever 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.... ..”**

11. Further, in Para 47 of Chapter VI of the Guide to Medical Officers (Military Pensions) 2002, amended 2008 (hereinafter referred to as ‘GMO (MP) 2008’, various factors including prolonged stress and strain and physical hardship caused by serving in field and high altitude areas have been provided which cause the heart diseases to the army personnel. It would be relevant to reproduce Para 47 of the GMO (MP) 2008, which is as under:-

**“47. Ischaemic Heart Disease (IHD). IHD is a spectrum of clinical disorders which includes asymptomatic IHD, chronic stable angina, unstable angina, acute myocardial infarction and sudden cardiac death (SCD) occurring as a result of the process of atherosclerosis. Plaque fissuring and rupture is followed by deposition of thrombus on the atheromatous plaque and a variable degree of occlusion of the coronary artery. A total occlusion results in myocardial infarction in the territory of the artery occluded. Prolonged stress and strain hastens atherosclerosis by triggering of**

**neurohormonal mechanism and autonomic strcms. 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, heart rate and produce ECG abnormality and arrhythmias. 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. IHD arising in while serving in Field area/HAA/CI Ops area or during OPS in an indl who was previously in SHAPE-I will be considered as attributable to mil service....."**

**[Emphasis supplied]**

12. In the present case, the applicant having joined the service on 11.08.1973 contracted the disability in question i.e. CAD on 08.01.2001 i.e. after more than 26 years of service. During this long spell of service, from the record, it is clear that the applicant was posted in field area from 07.09.1979 to 17.03.1981, 08.03.1981 to 20.11.1984, 09.11.1984 to 23.01.1988 and 03.11.1992 to 02.02.1997 along with several peace area postings in different climatic and environmental conditions and difficult terrain. The cumulative stress and strain of such a long spell of service including the services rendered in the field areas cannot be

overlooked while considering the attributability of the disability in question and, therefore, we hold the disability of the applicant CAD as attributable to service conditions. Moreover, it has already been observed by the Tribunal in large number of cases that the armed force services in peace area have their own pressure of rigorous military training and associated stress and strain of the service. It may also be taken into consideration that the most of the personnel of the armed forces live without their family, work in the stressful and hostile environment, difficult weather conditions and under strict disciplinary norms.

13. In so far as the issue with regard to aggravation of the disability in question is concerned, we have perused the first and second Re-categorisation Medical Board dated 18.04.2001 and 05.04.2002 which have been annexed to the OA as Annexures A-2 and A-3 respectively by the applicant. In the first Re-cat Medical Board dated 18.04.2001, while the disability of the applicant was not held as attributable to service, but aggravation of the same due to stress and strain of service has been recorded in clause 5 of the Part-2 Opinion of the Board. Further, in the second Re-cat Medical Board

dated 05.04.2002, the assessment of the percentage of the disability of the applicant was made as 30%, however, on the point of attributability or aggravation, it was indicated as 'NA'. In the present case, the RMB was held on 19.12.2002 i.e. about eight months after the second Re-cat Medical Board was held in April, 2002 and the RMB held the disability of the applicant as neither attributable to nor aggravated by military service being constitutional in nature. There was no reason assigned for considering the disability as NANA and assessing the same as less than 20% in the RMB proceedings, when as per the earlier Re-cat Medical Boards, the disability was held aggravated and was assessed at 30% as indicated hereinabove. In view of the above consideration, the disability of the applicant is held as attributable to and aggravated by military service.

14. In this case, the RMB had assessed the disability of the applicant i.e. IHD, at less than 20% (11-14%). As discussed above, we hold that the disability of the applicant i.e. CAD is attributable to and aggravated by military service, as was held by the Re-cat Medical Board held on 18.04.2001. With regard to the percentage of assessment of

the disability in question, we may refer to relevant sub-clause (b) of Clause (e) of Para 21 of the GMO (MP) 2008, which reads as under :

**"DISEASES OF CIRCULATORY SYSTEM**

**21. Assessment of the degree of disablement in cardiovascular diseases should be broad based and should take into account the functional status, left ventricular function, the cardiac rhythm, objective assessment of ischaemia (morphological characteristics as assessed by echocardiographic/angiographic evaluation and treatment modality offered.**

(a) to (d)                    xxx                    xxx

(e) Assessment for IHD.

(a)                    xxx                    xxx

(b) Disablement for IHD.

(i) No Symptoms and or symptoms brought on only by strenuous activity and or No or mild ischaemia and or normal LV function                    30%

(ii) Symptoms brought on by ordinary activity and or moderate ischaemia and or normal LV function and or mild LV dysfunction                    40 - 50 %

(iii) Symptoms brought on by ordinary activity and or moderate ischaemia, and or moderate LV dysfunction                    50 - 60%

(iv) Symptoms brought on by less than ordinary activity and or moderate to severe ischaemia, and or moderate LV dysfunction, untreated severe triple vessel or left main disease                    60 - 80%

(v) Symptoms at rest and or unstable angina, moderate to severe ischaemia, and or severe LV dysfunction with or without congestive cardiac failure                    80-100%

(vi) Presence of atrial fibrillation or complex ventricular arrhythmias                    Add 20-30%"

which brings forth that the assessment of the percentage of disablement for IHD cannot be assessed less than 30%.

15. In light of the afore-referred judicial pronouncements and essential parameters given above, we hold that the applicant's disability is attributable to and aggravated by the military service and the assessment of the same is to be considered @ 30% for life and, therefore, the applicant is held entitled to the grant of disability pension with broad-banding benefits.

### **CONCLUSION**

16. Therefore, the OA 2238 of 2019 is allowed. The respondents are directed to grant the disability element of pension to the applicant for the disability of CAD @ 30% for life which is directed to be rounded off to 50% for life from the date of retirement in terms of the judicial pronouncement of the Hon'ble Supreme Court in the case of **Union of India Vs. Ram Avtar (Civil Appeal No. 418/2012)** decided on 10.12.2014. However, as the applicant has approached the Tribunal after a considerable delay, in view of the law laid down in *Tarsem Singh's case (supra)*, arrears will be restricted to three years prior to the date of filing of this OA i.e. 07.11.2019.

17. Accordingly, the respondents are directed to calculate, sanction and issue necessary PPO to the applicant within a period of three months from the date of receipt of a copy of this order, *failing which*, the applicant shall be entitled to interest @ 6% per annum till the date of payment.

18. There is no order as to costs.

Pronounced in open Court on this 5<sup>H</sup> day of August, 2024.

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[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

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[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)

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