

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

D.

OA 593/2021 with MA 2363/2023 & 3039/2023

Col Rajiv Chaudhary (Retd.) ..... Applicant  
VERSUS  
Union of India and Ors. .... Respondents

For Applicant : Mr. Rajiv Manglik, Advocate  
For Respondents : Mr. Neeraj, Sr CGSC

CORAM

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

ORDER  
24.01.2024

Vide our detailed order of even date, we have allowed the OA 593/2021. 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.

(JUSTICE ANU MALHOTRA)  
MEMBER (J)

(LT. GEN. P.M. HARIZ)  
MEMBER (A)

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**ARMED FORCES TRIBUNAL**  
**PRINCIPAL BENCH: NEW DELHI**

**OA 593 / 2021 with MA 3039 / 2023**

**Col Rajiv Chaudhary (Retd.)**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant : Mr. Rajiv Manglik, Advocate**

**For Respondents : Mr. Neeraj, Sr. CGSC**

**CORAM :**

**HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)**

**HON'BLE LT GEN P. M. HARIZ, MEMBER (A)**

**ORDER**

**MA 3039 / 2023**

This is an application filed on behalf of the respondents for condonation of delay of 09 days in filing the counter affidavit. In view of the reasons explained in the MA and in the interest of justice, the MA 3039 / 2023 is allowed and the delay in filing the counter affidavit is condoned.

**OA 593 / 2021**

The applicant "No. V 00395M Col Rajiv Chaudhary (Retd.)" vide the present OA makes the following prayers:-

*(a) To declare the action of the respondents as unjust, arbitrary and illegal; and*

(b) *To quash and set aside order dated 15 Apr 2019 and 30 Oct 2019; and*

(c) *To direct the respondents to grant the disability pension for the disability of 30% as assessed as disablement by the Release medical Board and grant the benefit of rounding of disability of the applicant from 30% to 50% in terms of letter dated 31 Jan 2001; and*

(d) *To grant an interest of 18% on the arrears; and*

(e) *To award exemplary costs upon the Respondents in the facts and circumstances of the record; and*

(f) *To pass such further order or orders, direction / directions as this Hon'ble Tribunal may deem fit and proper in accordance with law."*

2. The applicant who was commissioned in the Army on 26.05.1986 (SSC), was granted permanent commission on 10.04.1990 and retired from service on 31.05.2019 (AN) on attaining the age of superannuation. At the time of retirement, since, the applicant was in low medical category, he was brought before a duly constituted Release Medical Board on 21.01.2019. As per the RMB proceedings AFMSF-16 dated 16.02.2019, the disability of the applicant was assessed as under, as averred in Para 3 of the counter affidavit dated 05.06.2023 of the Respondents.

Ser No	Disability	ATTR/AGGR/NANA	% of disablement	Composite assessment for all disabilities with duration (Max 100%)	Disability qualifying for disability pension with duration	Net assessment qualifying for disability pension (Max 100%) with duration	Reason
(a)	PRIMARY HYPERTENSION	NANA	30% for life	30% for life	Nil for life	Nil for life	As per para 43

							of GMO 2008.
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3. The initial disability claim in respect of the applicant was adjudicated and rejected by the Competent Authority vide AG/PS-4(Imp-I) letter No 13301/V-00395/RVC/MP-6(F)/329/2019/AG/PS-4 (Imp-I) dated 15.04.2019 since the disability was held as neither attributable to nor aggravated by military service.

4. The applicant preferred first Appeal on 09.07.2019 against rejection of disability claim, which was adjudicated and rejected by Appellate Committee on First Appeals (ACFA) vide their letter No 13301/V-00395M/RVC/MP-6(F)/205/2019/1<sup>st</sup> Appeal/AG/PS-4(Imp-II) dated 30.10.2019, stating as under:-

S. No.	Disabilities	Reason (s)
1.	Primary Hypertension	ID is idiopathic disorder with strong genetic correlation and is per say not attributable to military service. In the instant case, onset of the ID was in a peace station. Hence, the ID is conceded as neither attributable to nor aggravated by military service in terms of Para 43, Chap VI, GMO 2002/2008 and ER-2008.

5. The second appeal dated 09.07.2020 against the rejection of the disability claim was not adjudicated by the respondents within a period of six months from the date of the filing of the same and thus the present OA instituted on 12.03.2021 is taken up for consideration in terms of Section 21 (2) (b) of the AFT Act 2007. Significantly, the counter affidavit dated 05.06.2023 filed by the respondents states that the 2nd appeal was still under examination.

## ***CONTENTIONS OF THE PARTIES***

6. The applicant submits that he joined the Indian Army on 26.05.1986 in a fit medical category without any disability of any kind and whilst posted at HQ 33 Corps in 2013 he suffered a Transient Ischemic attack and was admitted to the Hospital in May 2013 when it was observed that he was suffering from an abnormally high blood pressure. *Inter alia* the applicant submits that he was however not medically downgraded for the same at that time and was managed for High BP conservatively. *Inter alia* the applicant submits that he was further evacuated to the Command Hospital, Kolkata in June 2013 where he was diagnosed as a case of Lower Motor Neuron Palsy, a disease which he submits is also linked to Hypertension.

7. The applicant submits further that he was also suffering from viral fever and was diagnosed to be having high blood pressure whilst posted at HQ Southern Command and was also medically downgraded for primary hypertension in August 2018 and placed in a low medical category and continued with LMC thereafter. The applicant thus submits that the rejection of his disability pension claim by the respondents vide the RMB dated 21.01.2019 by merely stating that the onset of the disability was in peace area with no evidence of stress and strain due to military service in reference to Para 43 of the GMO (Military Pensions) 2008 is wholly arbitrary.

8. The applicant further submits that in terms of the verdict of the Hon'ble Supreme Court in *Dharamvir Singh vs UOI & Ors* (Civil Appeal No. 4949/2013) 2013 AIR SCW 4236 decided on 02.07.2013 with specific reliance on observations in Para 28 thereof which read 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."***

he having joined the Indian Army in a fit medical condition with the onset of the disability after 22 years of service, the disability has to be presumed to have arisen due to the stress and strain of military service.

9. The applicant has also sought the rounding off from the disability element of pension from 30% to 50% for life in terms of the verdict of the Hon'ble Supreme Court in ***Union of India vs Ram Avtar*** decided on 10.12.2014 in Civil Appeal no. 418 of 2012.

10. On behalf of the respondents it was submitted to the effect that the onset of the disability of the applicant as stated in Part IV of the statement of the case to the effect:-

<i>S.no.</i>	<i>Disabilities</i>	<i>Date of origin</i>	<i>Rank of the Indl</i>	<i>Place and unit where serving at time</i>
<i>(a)</i>	<i>PRIMARY HYPERTENSION P2 (P)</i>	<i>14 Aug 2018</i>	<i>Col</i>	<i>HQ Southern Command (RV)</i>

indicates as per the posting profile of the applicant the onset thereof was in 14.08.2018 at HQ Southern Command when the applicant was posted at a peace station. The respondents thus submit that there is no causal connection between



the onset of the disability of the applicant with any stress or strain caused by military service.

11. *Inter alia* on behalf of the respondents it was submitted to the effect that in the personal statement of the applicant at Para 5 thereof it was stated to the effect:-

*"5. In case of wound or injury, state how they happened and whether or not (a) Medical Board or Court of Inquiry was held (b) Injury Report was submitted : Triggered because of LMN Fascial Palsy attack in 33 Corps (Sukna) in May 2013 due to high humidity & incongenial weather."*

and thus it was submitted that the contention of the applicant that the disability was caused by any stress or strain in military service cannot be accepted.

12. The respondents have further submitted to the effect that the medical opinion that has been placed on record as well as the rejection of the first appeal of the applicant have to be given due weight and credence and cannot be overlooked.

### **ANALYSIS**

13. 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 or 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*.

14. The 'Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel 2008, which take effect from 01.01.2008 vide Paras 6, 7, 10, 11 thereof provide as under:-

**"6. Causal connection:**

*For award of disability pension/special family pension, a causal connection between disability or death and military service has to be established by appropriate authorities.*

**7. Onus of proof.**

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

**10. Attributability:**

**(a) Injuries:**

*In respect of accidents or injuries, the following rules shall be observed:*

*(i) Injuries sustained when the individual is 'on duty', as defined, shall be treated as attributable to military service, (provided a nexus between injury and military service is established).*

*(ii) In cases of self-inflicted injuries while 'on duty', attributability shall not be conceded unless it is established that service factors were responsible for such action.*

**(b) Disease:**

***(i) For acceptance of a disease as attributable to military service, the following two conditions must be satisfied simultaneously:-***

- (a) that the disease has arisen during the period of military service, and***
- (b) that the disease has been caused by the conditions of employment in military service.***

***(ii) Disease due to infection arising in service other than that transmitted through sexual contact shall merit an entitlement of attributability and where the disease may have been contracted prior to enrolment or during leave, the incubation period of the disease will be taken into consideration on the basis of clinical course as determined by the competent medical authority.***

***(iii) If nothing at all is known about the cause of disease and the presumption of the entitlement in favour of the claimant is not rebutted, attributability 'should be conceded on the basis of the clinical picture and current scientific medical application.***

***(iv) When the diagnosis and/or treatment of a disease was faulty, unsatisfactory or delayed due to exigencies of service, disability caused due to any adverse effects arising as a complication shall be conceded as attributable.***

***II. 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.

15. Furthermore, Para 423 (a) of the Regulations for the Medical Services of the Armed Forces 2010 which relates to 'Attributability to Service' provides as under:-

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

*(emphasis supplied),*\_\_

has not been obliterated.

16. It is essential to observe that para-33 of the verdict of the Hon'ble Supreme Court in *Dharamvir Singh* (supra) is 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)

and it is thus apparent that in terms of the verdict of the Hon’ble Supreme Court in **Dharamvir Singh** (supra) as observed by para 33 therein led with para 423 of the Regulations for Medical Services of the Armed Forces Personnel 2010, it is immaterial whether a disability had its onset in a peace area or a ClOps area or field area or high altitude area and what is required to be established is the causal connection between the onset of the disability and military service.

17. It is essential to advert to para 43 Chapter VI of the GMO (Military Pensions) 2008 which reads as under:-

*“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."

18. In the instant case the posting profile of the applicant as depicted in the RMB is as under:-

S. no.	From	To	Place/Ship	P/F	S. no.	From	To	Place/Ship	P/F
(i)	08 Nov 86	08 Jun 89	HQ 20 Mtn Div	P	(xi)	12 Jul 06	03 Apr 08	HQ 25 Inf Div	F
(ii)	08 Jun 89	02 May 91	890 AT Bn ASC	F	(xii)	04 Apr 08	10 Mar 10	EBS Hisar	P
(iii)	05 May 91	03 Dec 91	311 Coy ASC (Sup)	F	(xiii)	02 Mar 10	13 Apr 13	Dte Gen RVS, IHQ of MoD (Army)	P
(iv)	05 Dec 91	31 Jul 93	2 Adv Fd Vet Hosp	F	(xiv)	14 Apr 13	25 Mar 15	HQ 33 Corps	F
(v)	01 Aug 93	02 Jul 95	EBS Babugarh	P	(xv)	26 Mar 15	06 Jul 17	HQ Soth West Comd	P
(vi)	26 May 96	15 Jun 98	Mil Farm Pimpri	P	(xvi)	07 Jul 17	Till date	HQ South Comd	P
(vii)	01 Jul 98	01 Jul 2000	27 Mob Fd Vet Hosp	F					
(viii)	26 Mar 01	10 Apr 03	MF Allahabad	P					
(ix)	20 Apr 03	08 Apr 05	RVC Centre & College	P					
(x)	09 Apr 05	11 Jul 06	2 Army Dog Unit	P					

the same indicates that the applicant had been posted on 6 field postings out of his 16 postings during his military service. The onset of the disability reflected by the respondents to be on 14.08.2018 at HQ Southern Command is after the induction of the applicant in the Indian Army on 26.05.1986 that is after 22 years, 02 months and 19 days of military service.

19. Significantly, Para 10(b)(iii) of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008, which provides to the effect:-

*“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.”*

### **CONCLUSION**

20. In the circumstances, the **OA 593/2021** is allowed and the applicant is held entitled to the grant of the disability element of pension qua the disability of the applicant i.e. **“PRIMARY HYPERTENSION P2 (P)”** assessed at 30% for life, which is directed to be broad banded to 50% for life in terms of the verdict of the Hon’ble Supreme Court in **Ram Avtar** (supra) with effect from the date of his discharge and the respondents are directed to issue the corrigendum PPO with directions to the respondents to pay the arrears within a period of three months from the date of receipt of a copy of this order, *failing which*, the



respondents would be liable to pay interest @ 6% p.a. on the arrears due from the date of this order.

21. No order as to costs.

Pronounced in the Open Court on the 24 day of January, 2024.

**[LT GEN P. M. HARIZ]**  
**MEMBER (A)**

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

/AP/