

COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

144.

OA 916/2024 WITH MA 1138/2024 AND MA 4441/2024

HFO Sukhdeo Singh Kanaujia Wpn/Fit (Retd) Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Rakesh Kumar Yadav, Advocate
For Respondents : Mr. Rajeev Kumar, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
29.11.2024

MA 4441/2024

Counter affidavit has been filed. There being some delay in filing the counter affidavit, this application has been filed seeking condonation of delay. Delay condoned. Counter affidavit is taken on record.

2. MA stands disposed of.

MA 1138/2024

3. Keeping in view the averments made in the application and in the light of the decision in Union of India and others Vs. Tarsem Singh [(2008) 8 SCC 648], the delay in filing the OA is condoned.

4. MA stands disposed of.

5. Invoking the jurisdiction of this Tribunal; under Section 14 of The Armed Forces Tribunal Act, 2007, the applicant has filed this application and the reliefs claimed in Para 8 read as under:

- (a) *To set aside rejection letter of the Respondents Air Headquarter letter No. Air HQ (DAV) letter No. AirHQ/99798/5/1st Appl/278630/DP/DAV dated 10 Nov 2023 under which the disability pension which was not considered stating that disability of the applicant is neither attributable to nor aggravated by military service. (NANA).*
- (b) *To issue necessary orders to the respondents to consider the disability pension to the applicant herein as per GMO the primary hypertension ICD No. 10.0 with composite assessment 30% disability, as per laid down guidelines and catena of the judgements. Further Broad Banding from 30% to 50% for life which happened him during and while performing service exigencies and working conditions which have casual connections to the military service and wholly attributed to service, in terms of regulation for the IAF 1961.*
- (c) *To consider the facts and circumstances of the case in the light of above discussed Rules and Regulations as well as settled principles of law enshrined by the Hon'ble Supreme Court in Dharamvir Singh Vs. Union of India & Ors. (supra) and reiterated in Union of India & Anr Vs. Rajbir Singh (Supra) and Union of India Vs Angad Singh Titaria and award disability pension to the applicant of 50% for life, after broad banding from 30% to 50% disability from the date of his discharge i.e. 31 July, 2004, along with 10% p.a. interest on the arrears.*

6. The applicant was enrolled in the Indian Air Force on 04.09.1965 and discharged on 31.07.2004 in low medical

category, i.e. BEE(P) after rendering 38 years and 332 days of regular service. The applicant submits that for the purpose of Essential Hypertension, the disability has been assessed @ 30% as is evident from the medical records.

7. The consistent view taken by this Tribunal qua the disability of primary hypertension is based on the law laid down by the Hon'ble Supreme Court in the case of Dharamvir Singh Vs Union of India & Others (Civil Appeal No. 4949/2013); (2013) 7 SCC 316, the Entitlement Rules for Casualty Pensionary Awards, 1982, and observations in Para 28 of the said verdict 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."

8. Further as per amendment to Chapter VI of the 'Guide to Medical Officers (Military Pensions) 2002, at Para 43, it is provided as under:-

43. Hypertension-

The first consideration should be to determine whether the hypertension is primary (essential) 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. It is better to clearly indicate whether it is a case of essential hypertension, giving the evidence in support.

As in the case of arteriosclerosis, entitlement of attributability is never appropriate, but where disablement for 104 essential hypertension appears to have arisen or become worse in service, the question whether service compulsions have caused aggravation must be considered. Each case should be judged on its merits taking into account particularly the physical condition on entry into service, the age, the amount and duration of any stress and whether any other service compulsion has operated.

Hypertension generally arising in close time relationship to service in field area, active operational area, war like situation both in peace and field area, counter-insurgency areas and high altitude areas are acceptable as aggravated when exceptional stress and strain of service is in evidence. 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. Aggravation can be considered taking into account the duration of service in active operational areas and sector profile.

9. It has already been observed by this Tribunal in a catena of cases that peace stations have their own pressure of rigorous military training and associated stress and strain of the service. It may also be taken into consideration that most of the personnel of the armed forces have to work in the stressful and hostile environment, difficult weather conditions and under strict disciplinary norms.

10. Since the applicant was discharged from service on 31.07.2004, the 'Entitlement Rules for Casualty Pensionary Awards, to the Armed Forces Personnel 1982 are applicable. The relevant Paras of Entitlement Rules 1982 read as under:-

"5. The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions:-

Prior to and during service

- (a) *A member is 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.*
- (b) *In the event of his subsequently being discharged from service on medical grounds any deterioration in his health which has taken place is due to service.*
6. *Disablement or death shall be accepted as due to military service provided it is certified by appropriate medical authority that:-*
- (a) *The disablement is due to a wound, injury or disease which-*
- (i) *is attributable to military service, or*
- (ii) *existed before or arose during military service and has been and remains*

aggravated thereby. This will also include the precipitating /hastening of the onset of a disability.

(b) The death was due to or hastened by-

(i) a wound, injury or disease which was attributable to military service; or

(ii) The aggravation by military service of a wound, injury or disease which existed before or arose during military service.

7. Where there is not note in contemporary official records of a material fact on which the claim is based, other reliable corroborative evidence of that fact may be accepted.

8. *Attributability/aggravation shall be conceded if casual connection between death/disablement and military service is certified by appropriate medical authority.*

Onus of proof

9. *The claimant shall not be called upon to prove the conditions of entitlement/ He/She will receive the benefit or any reasonable doubt. This benefit will be given more liberally to the claimants in field/afloat service cases.*

Post Discharge Claims

10. *Cases in which a disease did not actually lead to the member's discharge from service but arose within 10 years thereafter, may be recognized as attributable to service if it can be established medically that the disability is a delayed manifestation of a pathological process set in motion by service conditions obtaining prior to discharge and that if the disability had been manifest at the time of discharge the individual would have been invalidated out of service on this account.*

Diseases

14. *In respect of disease, the following rule will be observed:-*

(a) *Cases in which it is established that conditions of military service did not determine or contribute to the onset of the disease but influenced the subsequent courses*

of the disease will fall for the acceptance on the best of aggravation.

(b) A disease, which has led to an individual's discharge or death, will ordinarily be deemed to have arisen in service, if no note of it was made at the time of individual's acceptance for military service. However, if medical opinion holds, for reasons to be stated, that the diseased could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.

(c) If a disease is accepted as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the diseased and that the conditions were due to the circumstances of duty in military service.

15. The onset and progress of some diseases are affected by environmental factors related to service conditions, dietic compulsions, exposure to noise, physical and mental stress and strain. Disease due to infection arising in service, will merit on entitlement of attributability. Nevertheless, attention must be given to the possibility of pre-service history of such conditions which, if approved, could rule out entitlement of attributability, but would require consideration regarding aggravation. For clinical description of common disease reference shall be made to the Guide to Medical Officers (Military Pensions) 1980, as amended from time to time. The classification of diseases affected by environmental factors in services is given in Annexure-III to these rules.

19. Aggravation: if it is established that the disability was not caused by service, attributability shall not be conceded. However, aggravation by service is to be accepted unless any worsening in his condition was not due to his service or worsening did not persist on the date of discharge/claim.

11. 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. Furthermore, The Regulation 423(a) & (c) of Chapter VIII of the Regulations for Medical Services 1983 reads thus :

"423 (a) For the purpose of determining whether the cause of a disability or death 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. It is, however, essential to establish whether the disability or death bore a casual connection with the service conditions. All evidence 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 favour, 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 cases occurring in Field Service/Active Service areas.

(c) The cause of a disability or death resulting from a disease will be regarded as attributable to Service when it is established that the disease arose during Service and the conditions and circumstances of duty in the Armed Forces determined and contributed to the onset of the disease. Cases, in which it is established that Service conditions did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, will be regarded as aggravated by the Service. A disease which has led to an individual's

discharge or death will ordinarily be deemed to have arisen in Service if no note of it was made at the time of the individual's acceptance for Service in the Armed Forces. However, if medical opinion holds, for reasons to be stated that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service".

(underline supplied)

13. The applicant served in the Indian Air Force for 38 years and 332 days and the onset of the disability 'Essential Hypertension', is stated to have occurred on 1st January, 1993 as per medical documents available on record after 27 years of long military service both at peace and field areas. The accumulated stress and strain of such a long service on the applicant cannot be overlooked.

14. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is entitled for disability element of pension in respect of disability Essential Hypertension. Accordingly, we allow this application holding that the applicant is entitled to disability element of pension @ 30% rounded off to 50% for life with effect from the date of his discharge 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, the arrears will be restricted to three years from the date of filing of this OA, i.e., **05.03.2024** in keeping with the

law laid down in the case of Union of India and others Vs. Tarsem Singh [2008 (8)SCC 649].

15. 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% per annum till the date of payment.

16. No order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN WIG]
MEMBER (A)

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