

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

**OA No. 100 of 2019 WITH MA 1110/2019**

**In the matter of :**

**Ex HFL Dineshwar Prasad Sinha**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant** : Mr. B.P. Vaishnav, Advocate

**For Respondents** : Mr. Rajiv Kumar, Advocate

**CORAM:**

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

**ORDER**

**MA 1110/2019**

Keeping in view the averments made in the miscellaneous application and finding the same to be bona fide, in the light of the decision in Union of India and Others vs. Tarsem Singh [(2008) 8 SCC 648]. The MA 1110/2019 is allowed condoning the delay in filing the OA. The MA stands disposed of.

**OA 100/2019**

2. Invoking the jurisdiction of this Tribunal under Section 14, the applicant has filed this application and the reliefs claimed in Para 8 read as under:-

***“(a) To direct the respondents to grant the applicant with the 50% disability from the date of discharge i.e. 01.11.2009***

***(b) To direct the respondents to pay arrears from the date of discharge i.e. 01.11.2019 along with interest @12% per annum till its payment to the applicant.***

***(c) Pass any other or such further order or orders as deemed fit to this Hon’ble Tribunal in order to secure the ends of justice in favour of the applicant.”***

### **BRIEF FACTS**

3. The applicant was enrolled in the Indian Air Force on 23.09.1972 and discharged from the service on 31.10.2009 under the clause “on attaining the age of superannuation” after rendering 37 years and 39 days of regular service”. The Release Medical Board dated 22.12.2008 held that the applicant is fit to be discharged from service in low medical category A<sub>4</sub>G<sub>2</sub> (P) for the disabilities “(i) Ischemic Heart Disease (‘IHD’ hereinafter) @15-19% and (ii) Primary Hypertension” @30% with composite assessment of the disabilities @ 30% for life while the net qualifying element for disability pension was recorded as Nil for life on account of both the disabilities having been assessed as neither attributable to nor aggravated by military service.

4. On adjudication, the competent authority upheld the recommendations of RMB and rejected the disability

pension claim of the applicant vide letter No. N. RO/3305/3A/Med (Cat-D) dated 16.09.2009 and the same was communicated to the applicant vide letter No. RO/2703/242796/10/09/P&W (DP/RMB) dated 22.09.2009 with an option that he may prefer an appeal to the Appellate Committee within six months from the date of receipt of letter.

5. The applicant submitted the First Appeal dated 20.12.2009, when no response was received from the respondents, the applicant submitted Second Appeal/representation on 12.10.2018 to the respondents and the reply of the same was awaited too till the time of filing this OA on 10.01.2019. Aggrieved by this, the applicant has filed the instant OA. In the interest of justice, in terms of Section 21(1) of the AFT Act, 2007, we take up the same for consideration.

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

6. Placing reliance on the judgment of the Hon'ble Supreme Court in ***Dharamvir Singh Vs. UOI & Ors*** [2013 (7) SCC 36], the learned counsel for the applicant submitted that no note of any disability was recorded in the service documents of the applicant at the time of his

entry into the service, and that the applicant served in the Air Force at various places in different and difficult environmental and service conditions in his prolonged service and thus thereby, any disability that arose during his service has to be deemed to be attributable to or aggravated by military service.

7. The learned counsel for the applicant further submitted that the applicant is entitled to the disability element of pension undoubtedly as the percentage of the composite disablement of the applicant is wrongly calculated and has been mentioned erroneously as 30% and despite the disability of the applicant "IHD (old) @15-19%" has been opined "Aggravated" due to stress and strain of the military service, the applicant was not given disability element of pension.

8. The learned counsel for the applicant also placed reliance on the judgment 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 and in Civil Appeal No. 2904/2011 titled as **UoI & Ors. Vs. Rajbir & Ors.**, dated 13.02.2015. Reliance was also placed on the order of the AFT (PB), New Delhi in OA 627/2016 in the case of **Ex-**

**HFO Arjun vs. Union of India**, wherein similarly situated personnel was given relief.

9. *Per contra*, the learned counsel for the respondents submitted that the sanction of disability pension at the time of discharge from service is based on fulfillment of essential conditions as laid down under the provisions of Rule 153 of the Pension Regulations for the Air Force, 1961 (Part -I), wherein the disability should be either attributable to or aggravated by the Air Force service and the minimum assessment for disabilities mandatorily is required to be 20% or more. The learned counsel for the respondents further submits that since the applicant's disabilities were NANA as declared by the RMB, his claim for the grant of the disability was rejected by the competent authority. The learned counsel further submitted that the applicant did not prefer any appeal against the rejection of his claim despite he was intimated about the same vide letter dated 22.09.2009, and thus the applicant is not entitled to the grant of the disability pension.

#### **ANALYSIS**

10. We have heard the learned counsel for the parties and have gone through the records including the original RMB

proceedings produced before us. We find that, in the instant case the applicant was inducted into the Indian Air force on 23.09.1972 and the applicant was found to be suffering from two disabilities (i) IHD and (ii) Primary Hypertension. The disability (i) Ischemic Heart Disease and (ii) Primary Hypertension (old) *qua* applicant had their onset on 12.12.1989 and 20.10.2000 respectively i.e. after more than 16 years of service in the Air Force.

11. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh v. Union of India and others*** (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."*

12. 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 thereof 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 courses 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 Altitude etc."*

thus, the ratio of the verdicts in **Dharamvir Singh Vs. Union Of India &Ors** (Civil Appeal No. 4949/2013); (2013 7 SCC 316, and **UOI &Ors. Vs. Rajbir Singh** (2015) 12 SCC 264, as laid down by the Hon'ble Supreme Court are the fulcrum of these rules as well.

13. Furthermore, Regulation 423 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.

(b). Decision regarding attributability of a disability or death resulting from wound or injury will be taken by the authority next to the Commanding officer which in no case shall be lower than a Brigadier/Sub Area Commander or equivalent. In case of injuries which were self-inflicted or due to an individual's own serious negligence or misconduct, the Board will also comment how far the disablement resulted from self-infliction, negligence or misconduct.

(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.



**(d). The question, whether a disability or death resulting from disease is attributable to or aggravated by service or not, will be decided as regards its medical aspects by a Medical Board or by the medical officer who signs the Death Certificate. The Medical Board/Medical Officer will specify reasons for their/his opinion. The opinion of the Medical Board/Medical Officer, in so far as it relates to the actual causes of the disability or death and the circumstances in which it originated will be regarded as final. The question whether the cause and the attendant circumstances can be accepted as attributable to/aggravated by service for the purpose of pensionary benefits will, however, be decided by the pension sanctioning authority.**

**(e). To assist the medical officer who signs the Death certificate or the Medical Board in the case of an invalid, the CO unit will furnish a report on :**

**(i) AFMSF - 16 (Version - 2002) in all cases**

**(ii) IAFY - 2006 in all cases of injuries.**

**(f). In cases where award of disability pension or reassessment of disabilities is concerned, a Medical Board is always necessary and the certificate of a single medical officer will not be accepted except in case of stations where it is not possible or feasible to assemble a regular Medical Board for such purposes. The certificate of a single medical officer in the latter case will be furnished on a Medical Board form and countersigned by the Col (Med) Div/MG (Med) Area/Corps/Comd (Army) and equivalent in Navy and Air Force."**

**(emphasis supplied),**

and has not been obliterated.

14. We have carefully examined the RMB proceedings, in original and found that in Part V initially the disability IHD

was held as 'Aggravated' by military service due to stress and strain of service, however, it was then changed to 'Not Aggravated'. For ready reference, Part V of the RMB proceedings is reproduced as under:-

**"PART V  
OPINION OF THE MEDICAL BOARD**

<b>1. casual relationship of the disability with service conditions or otherwise:</b>				
<b>Disability</b>	<b>Attributable to service (Y/N)</b>	<b>Aggravated by service(Y/N)</b>	<b>Not Connected with service (Y/N)</b>	<b>Reason/Cause/Specific Condition and period in service.</b>
<b>(a)IHD(OLD)</b>	No	<input checked="" type="radio"/> Yes <input type="radio"/> No	<input checked="" type="radio"/> No <input type="radio"/> Yes	<i>Due to stress and strain of military duties</i>
<b>(b) Primary Hypertension</b>	No	No	Yes	<i>Dis is constitutional in nature Dis (a) as per charter of duties dated 31.08.2009 Dis (b) as per para 43 of Guide to medical officers (military pension 2002</i>
<b>Note: A disability "Not connected with Service" would be neither Attributable nor Aggravated by Service. (This is in accordance with instructions contained in 'Guide to Medical Officers (Mil Pension) 2002.</b>				

Signed  
S Abhjit  
Sqn ldr  
Medical officer,  
3 Wing, AF

signed  
Mrs J Rao  
Gp Capt  
Medical Officer

hence, the assessment made in the RMB of the applicant is questionable. In any case, we would like to refer to Para 47, Chapter VI of the Guide to Medical Officers (Military

Pensions), 2008 for coming to a conclusion towards attributability or aggravation of the disability IHD, which reads 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 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, 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.***

***Entitlement in Ischemic heart disease will be decided as follows:-***

***(a) Attributability will be conceded where: A myocardial infarction arises during service in close time relationship to a service compulsion involving severe trauma or exceptional mental, emotional or physical strain, provided that the interval between the incident and the development of symptoms is approximately 24 to 48 hours. 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.*

*Attributability will 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. Infective endocarditis, exposure to HAA, extreme heat.*

*(b) Aggravation will be conceded in cases in which there is evidence of:-*

*IHD occurring in a setting of hypertension, diabetes and vasculitis, entitlement can be judged on its own merits and only aggravation will be conceded in these cases. Also aggravation may be conceded in persons having been diagnosed as IHD are required to perform duties in high altitude areas, field areas, counter insurgency areas, ships and submarines due to service compulsions. 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 biological factors, heredity and way of life such as indulging in risk factors e.g. smoking. Neither attributability nor aggravation can be conceded in such cases."*

stress and strain are important factors for attributability and aggravation of the disability of IHD as brought out in Para 14 hereinabove.

15. As regards the assessment of the disability IHD(old) is concerned which is assessed @15-19% by the Medical Board, there is a scheme for assessment of the IHD to the effect that the disability of the applicant 'Ischemic Heart Disease (old)' cannot be assessed at less than 20% which provision reads as under:-

**"(e) Assessment for IHD.**

***(a) Once the clinical diagnosis of IHD is established the individual should be assessed on the following basis:***

***(i) The functional status.***

*(ii) Objective assessment of ischaemia.*

*(iii) Left Ventricular systolic function.*

*(iv) Rhythm abnormalities.*

*(v) Treatment for IHD.*

**(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 %,"*

hence, the said disability of applicant cannot be assessed less than 30% as per the sub clause (e) of clause (b) of Para 21 of Chapter VII of the GMO, MP 2008.

16. In relation to the second disability of the applicant 'Primary Hypertension' it is observed that the said disability too had it's origin in a peace area on 20.10.2000 i.e. almost after 28 years of the applicant's enrolment in the Indian Air Force. It is essential to advert to the Para 43, Chapter VI of the GMO (MP), 2008, reproduced 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."***

17. A perusal of the posting profile of the applicant reveals that throughout his service in Indian Air Force, the applicant was posted to peace stations only. 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 and stress and strain of such a long service of almost 37 years cannot be overlooked and both the disabilities i.e. Ischemic Heart Disease and

Primary Hypertension of the applicant have to be held to be attributable to and aggravated by the military service.

18. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is entitled for the disability element of pension in respect of two disabilities i.e. Ischemic Heart Disease @ 30% and Primary Hypertension @ 30% for life, the composite assessment of which is now being calculated as per MoD letter No.16036/RMB/IMB/DGAFMS/MA (pens) dated 14.12.2009 as under:

Disability- Ischemic Heart Disease = 30%

Disability-Primary Hypertension = 30% =  $70 \times 30 / 100 = 21\%$

Composite Assessment =  $(30+21) \% = 51\%$

### **CONCLUSION**

19. In view of the aforesaid judicial pronouncements and the parameters referred to above, we allow this application holding that the applicant is entitled to disability element of pension for Ischemic Heart Disease @ 30% and Primary Hypertension @ 30%, the composite assessment of which @ 51% is broad banded to @75% 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.

20. 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. However, in as much as the instant OA has been filed with delay, the arrears in view of the verdict of **UOI & Ors Vs Tarsem Singh** (supra) has commence from the period of three years prior to institution of the present OA, instituted on 10.01.2019.

21. No order as to costs.

Pronounced in the open Court on this <sup>14</sup> day of October, 2024.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)

/nmk/