

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

OA No. 1002 of 2019 with MA 1669/2019

EX WO Jayparkash Saxena ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Mr. Parveen Kumar, Advocate

For Respondents : Mr.V Pattbhiram, Advocate

CORAM :

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

ORDER

16.01.2024

Vide our detailed order of even date, we have allowed the OA 1002/2019. 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)

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ORDER

MA 1669/2019

This is an application filed under section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 173 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 1669/2019 is allowed and the delay of 173 days in filing the OA 1002/2019 is thus condoned. The MA is disposed of accordingly.

OA 1002/2019

The applicant vide the present O.A 1002/2019 has made the following prayers:-

“(a) Quash and set aside the impugned letters dated 31 Jan 2019 and 10 May 2019

(b) Direct respondents to grant disability element of pension@40% and rounded off the same to 50% for life to the applicant with effect from the date of discharge from service with interest @12% p.a. till final payment is made.

(c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.”

2. The applicant was enrolled in the Indian Air Force on 28.11.1986 and was discharged from service on 30.11.2018 under the clause “On attaining the conditions of his enrolment” after rendering total of 32 years and 03 days of regular service. The Release Medical Board assessed the disability of the applicant in relation to ID(ii) DM Type-II @20% and ID(ii) Primary Hypertension @30%, compositely 40% for life however, recommended the same as neither attributable to nor aggravated by Air Force Service. The AOC, AFRO on adjudication upheld the recommendations of the Release Medical Board and rejected the disability pension claim of the applicant vide

letter No.RO/3305/3/Med dated 21.12.2018 and the outcome to this effect was communicated to the applicant vide letter No.Air HQ/99798/1/707072/11/18/DAV/DP/RMB dated 31.01.2019 with an advise to the applicant that he may prefer an appeal to the Appellate Committee within six months from the date of receipt of this letter. In response to this communication of the respondents, the applicant had sent a legal notice dated 12.04.2019 which was replied to by the respondents vide letter No.AIR HQ/99798/1/707072/DAV/DP/CC dated 10.05.2019 to the effect that as per Rule 153 of Pension Regulations for IAF, 1961(Pt-I), the primary conditions for the grant of disability pension are as follows:-

- (a) Disability must be either attributable to or aggravated by service.
- (b) Degree of disablement should be assessed @20% or more

and that since the disability was not attributable to AF Services, it caused non-fulfilment of the criteria and the applicant thus was not entitled to grant of disability element as per the said rules.

In the interest of justice, we consider it appropriate to take up the present OA for consideration in terms of Section 21(1) of the Armed Forces Tribunal Act, 2007.

CONTENTIONS OF THE PARTIES

3. The applicant submits that he was enrolled in the Indian Air Force on 28.11.1986 in a fit medical category "AYE" and underwent hard and tough military training at the training centre and during his entire service of around 32 years, he was exposed to various climatic conditions in extreme hot/cold areas and his performance was always excellent during his service career. The applicant submits that there was no note of any disability recorded at the time of induction in the Indian Air Force nor was any records as to why the disabilities could not be detected at the time of enrolment. The applicant further submits to the effect that the disability of Diabetes Mellitus Type-II had its onset in February 2008 i.e. after a period of 22 years of service in the Indian Air Force in his trade duties of Missile Fitter Electronics (MF(L)) and that the disability of Primary Hypertension had its onset on 27.05.2014 after 28 years of Air Force service and thus the said disabilities have to be held to be attributable to and aggravated by military service.

4. Inter alia, the applicant places reliance on his posting profile as reflected in Part-I of the Personal Statement in the RMB dated 22.03.2018 which reads to the effect:

"1. Give details of the service (P=Peace OR F= Field/Operational/Sea Service)

SL. NO	FROM	TO	PLACE/SHIP	P/F	SL. NO	FROM	TO	PLACE/SHIP	P/F
1.	28.11.86	24.04.88	Bengaluru/ETE, AF	P	2	25.4.88	3.11.88	Baroda/1GW T(U)	P
3.	4.11.88	18.5.89	Rajokari/2GWT I,AF	P	4	19.5.89	28.3.96	Narela/2228 SQN	P
5	29.3.96	16.5.99	Uttarlai/2217 Sqn AF	P	6	17.5.99	24.11.02	Jamnagar/22 22 2 SQN AF	P
7	25.11.02	31.7.04	Bengaluru/ETE, AF	P	8	1.8.04	19.11.06	Bengaluru/ET I,AF	P
9..	20.11.06	30.6.10	Rajokari/2206 SQN AF	P	10	1.7.10	2.10.11	Rajokari/220 6 SQNAF	P
11.	3.10.11	27.9.15	Gandhinagar/H Q SWAC	P	12	28.9.15	Till date	7 BRD,AF	P

and on the onset of the disabilities as reflected in the same statement of the RMB as under:

“

2. Give particulars of any disease, wounds or injuries from which you are suffering					
Illness, wound, injury	First Started		Rank	Where treated	Approx dates & periods treated
	Date	Place			
1. DIABETES MELLITUS TYPE II(Old)ICD E11.0, Z09.0	Febh.08	Rajokari	JWO	BHDC, Delhi	On OPD basis
2. PRIMARY HYPERTENSION(OLD) ICD No. I10.0 Z09.0	27 May 14	Gandhinagar	WO	MH, Ahmedabad	OPD Basis

”

and submits that his postings have been stressful as the trade duties of MF(L) required extra physical mental stress and required him to stay

away from his family. Inter alia, the applicant submits he was also directly connected with operational duties which have been strenuous. Reliance was placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in ***Dharamvir Singh Vs Union of India & Ors***(Civil Appeal No.4949 of 2013) 2013 AIR SCW 4236 and on the verdict of the Hon'ble Supreme Court in ***Union of India & Ors Vs Rajbir Singh***(Civil Appeal No.2904/2011) decided on 13.02.2015 to contend to similar effect. Further, the applicant submits that the disabilities which have been assessed by the Release Medical Board @40% for life as per the percentage of disablement as reflected in the RMB to the effect:

“

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): 105%, 6-10%, 11-14%, 15-19% and thereafter in multiples of ten from 20% to 100%				
Disability	Percentage of disablement	Composite Assessment for disabilities with duration(Max 100%)	Disability Qualifying for Disability pension With duration	Net assessment qualifying for Disability pension (Max 100%) with duration
Diabetes Mellitus Type-II(Old) ICD No.E11.0, Z09.0	20%(Twenty Percent)	40%(Forty Percent) Life long	NIL life long	NIL life long
Primary Hypertension(OLD) ICD No.110./0, Z09.	30% (Thirty percent)			

”

be broadbanded for life in terms of the verdict of the Hon'ble Supreme Court in ***Union of India & Ors Vs Ram Avtar***(Civil Appeal No.418 of 2012) dated 10.12.2014.

5. On behalf of the respondents, it was submitted to the effect that the disabilities that the applicant suffered from have been opined by the Release Medical Board as being neither attributable to nor aggravated by military service and placed reliance on the opinion of the Release Medical Board in Part V thereto which is to the effect:

“
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	Not Connected with Service (Y/N)	Reason/cause/ Specific condition And period in Service
DIABETES MELLITUS TYPE-II(OLD) ICD No. E11.0, Z09.0	N	N	Y	Disability is not due to Infection, not serviced in Hard area. No delay in Treatment and diagnosis, Not associated with stress And strain of service as per Para 26 Chapter VI of GMO (Mil Pen) 2008
PRIMARY HYPERTENSION (OLD) ICD No.110.0.Z09.0	N	N	Y	Disability is not due to Infection, Not served in hard Area, no delay in treatment And diagnosis, Not associated With stress and strain of Service as per Para 43 Chap VI of GMO(Mil-Pen)

6. Inter alia, on behalf of the respondents, it was submitted to the effect that both the disabilities that the applicant suffered from had their onset in peace areas and that further more throughout his entire service in the Indian Air Force, the applicant had only been posted in peace areas and thus in terms of Para 26 and Para 43 of Chapter VI of GMO(MP) 2008, the

disabilities from which the applicant suffered from i.e. Diabetes Mellitus Type-II and Primary Hypertension are neither attributable to nor aggravated by military 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 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*.

Para 43 of the GMO(Military Pension) 2008 is to the effect:

"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."

8. In view of the verdict of the Hon'ble Supreme Court in *Dharamvir Singh Vs. Union of India & Ors.*(Supra) and the verdict of the Principal Bench of the AFT in OA 1825/2018- **Col R.R. Panigarhi Vs Union of India & Ors.** , and the factum that the non-existence of the ID of Hypertension at the time when the applicant joined military service is not refuted by the respondents, the contention of the respondents that the disability of hypertension assessed by the Release Medical board to be 30% but being neither aggravated nor attributable to military service,- cannot be accepted.

9. As per the amendment to Chapter VI of 'Guide to Medical Officers(Military Pensions), 2008, Para 26 thereof Type 2 Diabetes Mellitus is to be conceded as aggravated if the onset occurs while serving in Field/ CIOPS/HAA/prolonged afloat service and having been diagnosed as 'Type II Diabetes Mellitus' who are required to serve in these areas. Furthermore, inter alia stress and strain because of service reasons are stated therein to be known factors which can precipitate diabetes or cause uncontrolled diabetic state.

10. Para 26, Chapter VI of the Guide to Medical Officers (Military Pensions), 2008, is as under:-

"26. Diabetes Mellitus

This is a metabolic disease characterised by hyperglycemia due to absolute/relative deficiency of insulin and associated with long term complications called microangiopathy (retinopathy, nephropathy and neuropathy) and macroangiopathy.

There are two types of Primary diabetes, Type 1 and Type 2. Type 1 diabetes results from severe and acute destruction of Beta cells of pancreas by autoimmunity brought about by various infections including viruses and other environmental toxins in the background of genetic susceptibility. Type 2 diabetes is not HLA-linked and autoimmune destruction does not play a role.

Secondary diabetes can be due to drugs or due to trauma to pancreas or brain surgery or otherwise. Rarely, it can be due to diseases of pituitary, thyroid and adrenal gland. Diabetes arises in close time relationship to service out of infection, trauma, and post surgery and post drug therapy be considered attributable.

*Type 1 Diabetes results from acute beta cell destruction by immunological injury resulting from the interaction of certain acute viral infections and genetic beta cell susceptibility. If such a relationship from clinical presentation is forthcoming, then Type 1 Diabetes mellitus should be made attributable to service. **Type 2 diabetes is considered a life style disease. Stress and strain, improper diet non-compliance to therapeutic measures because of service reasons, sedentary life style are the known factors which can precipitate diabetes or cause uncontrolled diabetic state.***

Type 2 Diabetes Mellitus will be conceded aggravated if onset occurs while serving in Field, CIOPS, HAA and prolonged afloat service and having been diagnosed as Type 2 diabetes mellitus who are required serve in these areas.

Diabetes secondary to chronic pancreatitis due to alcohol dependence and gestational diabetes should not be considered attributable to service."

(emphasis supplied)

11. It is also essential to observe that the prayer for the grant of the disability element of pension for the disability of 'Diabetes Mellitus' in C.A. 7368/2011 in the case of **Ex. Power Satyaveer Singh** has been upheld by the Hon'ble Supreme Court vide the verdict in **UOI & Anr Vs. Rajbir Singh** (Civil Appeal 2904/2011) dated 13.02.2015.

12. It is essential to observe that vide the verdict of the Hon'ble Supreme Court in Civil Appeal no. 5970/2019 titled as **Commander Rakesh Pande vs UOI & Ors.**, dated on 28.11.2019, wherein the applicant thereof was suffering from **Non-Insulin Dependent Diabetes Mellitus(NIDDM)** and **Hyperlipidaemia** the grant of disability pension for life @ 20% broad banded to 50% for life was upheld by the Hon'ble Supreme Court.

13. It is essential to observe that the verdict of the Hon'ble Supreme Court in **Rajbir Singh** (supra) vide Para 15 lays down is to the effect:-

*"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)

14. 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 farailly 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 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.

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),__

has not been obliterated.

15. It is also essential to advert to para 33 of the verdict of the Hon'ble Supreme Court in *Dharamvir Singh Vs Union of India & Ors(supra)* which 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."

16. Thus in the instant case, though the onset of the disabilities of Diabetes Mellitus Type-II in February 2008 and of Primary Hypertension in May 2014 were whilst the applicant was posted in a peace area, the aspect of the cumulative stress and strain during military service, due to the hostile environment, difficult weather conditions and strict disciplinary norms under which Armed Forces Personnel work has to be taken into account and has been so taken into account in a catena of orders of this Tribunal. The respondents have thus been unable to refute the contention of the applicant that the stress and strain of military service, resulted into the disabilities of Primary Hypertension and Type-II Diabetes Mellitus that he suffers from.

CONCLUSION

17. Thus, the OA 1002/2019 is allowed and applicant is held entitled to the grant of the disability element of pension qua Primary Hypertension @ 30% and Diabetes Mellitus @ 20%, assessed compositely @ 40% for life, which in terms of the verdict of the Hon'ble Supreme Court of India in Civil Appeal 418/2012 dated 10.12.2014 titled as *UOI & Ors. Vs. Ramavtar*, the said disability is rounded off to 50% for life from the date of discharge.

18. The respondents are directed to calculate, sanction and issue the necessary Corrigendum PPO to the applicant within three months from the date of receipt of the copy of this order and in the event of default, the applicant shall be entitled to the interest @6% per annum till the date of payment.

Pronounced in the Open Court on the 16 day of January, 2024.

~~[REAR ADMIRAL DHIREN VIG]~~
MEMBER (A)

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

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