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

OA 1092/2019 with MA 1770/2019

JWO G Sasmal (Retd.) ... **Applicant**

Versus

Union of India &Ors. ... **Respondents**

For Applicant : Mr. Manoj Kumar Gupta, Advocate
For Respondents : Mr. Vijendra Singh Mahndiyan, Advocate

CORAM :

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

O R D E R

MA 1770/2019

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay 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 in the application, the MA 1770/2019 is allowed and the delay in filing the OA 1092/2019 is thus condoned. The MA is disposed of accordingly.

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 disability pension @20% to the applicant by treating the disability as attributable and aggravated by the Military service.***
(b)	***To direct the respondents to grant the benefit of rounding of disability of the applicant to @50% for life in terms of law settled by Hon'ble Supreme Court in UoI & Ors. VS. Ram Avtar dated 10.12.2014.***
(c)	***To direct the respondents to pay the due arrears of disability pension with interest @ 100% p.a. wef date of retirement with all the consequential benefits.***
(d)	***Set aside the impugned order dated 18 Dec 2018 passed by the respondents no.3***
(e)	***Call the RMB proceedings and peruse and quash the provision whereby the adjudication authority considered the disease as NANA and affirm the decision of RMB.***

3. The applicant was enrolled in the Indian Air Force on 28.11.1973 and was discharged from the service on 30.11.1999 under the clause "On fulfilling the condition of enrolment" after rendering 26 years 03 days of regular service.

The applicant is found to be suffering from "Primary Hypertension" and the composite disability for the ailment has been assessed at 15-19% for five years.

4. In so far as, the disability of 'Primary Hypertension' is concerned, the RMB has assessed the disability @ 15-19% for five years whereas the 'Guide to Medical Officers (Military Pension), 1980, the minimum assessment of the disability of Essential Hypertension cannot be less than 30% in terms of para 34 of Chapter VII which relates to Assessment of the 'Guide to Medical Officers (Military Pension), 1980, which reads as under:-

"DISEASES OF CIRCULATORY SYSTEM

Essential hypertension:
According to the size of the heart, response of BP to exercise, ECG changes and complications 30-100%

5. The consistent view taken by this Tribunal for the disability of hypertension is based on the law laid down 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."

6. 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.

7. The 'Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 1982', (as applicable in the instant case, in view of discharge of the applicant from service on 30.11.1999), provide vide Paras 8, 9, 13, 14 and 19 thereof as under:

"8. Attributability/aggravation shall be conceded if causal 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 of any reasonable doubt. This benefit will be given more liberally to the claimants in field/afloat service cases.

Injuries:

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

(a) Injuries sustained when the men is 'on duty', as defined, shall be deemed to have resulted from military service, but in cases of injuries due to serious negligence/misconduct the question of reducing the disability pension will be considered.

(b) In cases of self-inflicted injuries white on duty, attributability shall not be conceded unless it is established that service factors were responsible for such action; in cases where attributability is conceded, the question of grant of disability pension at full or at reduced rate will be considered.

Disease:

14. In respect of diseases, the following rule will be reserved :-

(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 acceptance on the basis 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 individual's acceptance for military service. 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.

(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 disease and that the conditions were due to the circumstances of duty in military service.

19. <u>Aggravation</u>: 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."

Furthermore, Regulation 423 of the Regulations for the Medical Services of the Armed Forces 1983 which relates to 'Attributability to Service' provides as under:-

"423 . Attributability to service- (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 ceruse 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. lt is, however, essential to establish whether the disability or death bore a casual connection with the service conditions. Ail 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 carry the high degree of probability. In

this connection, it 5will be remembered that proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. lf 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. lf 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 doubt could be given more liberally to the individual, in cases occurring in field service/active service areas.

(b) The cause of a disability or death resulting from wound or injury, will be regarded as attributable to service if the wound/injury was sustained during the actual performance of 'duty' in armed forces. 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 disability resulted from self-infliction, negligence or misconduct.

(c) The cause of a disability or death result 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 is attributable to or aggravated by service or not will be decided as regards it:; 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 cause 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 attributed to service will, however, be decided by the pension sanctioning authority."

(emphasis supplied),___

as applicable at the relevant time has not been obliterated, and is rather succeeded by Regulation 423 of the Regulations for the Medical Services of the Armed Forces 2010.

8. It is essential to observe that the Hon'ble Supreme Court in Civil Appeal No. 5970/2019 titled as ***Commander Rakesh Pande Vs. Union of India, dated*** on 28.11.2019, observed as under :-

"Para 7 of the letter dated 07.02.2001 provides that no periodical reviews by the Resurvey Medical Boards shall be held for reassessment of disabilities. In case of disabilities adjudicated as being of permanent nature, the decision once

arrived at, will be for life unless the individual himself requests for a review. The appellant is afflicted with diseases which are of permanent nature and he is entitled to disability pension for his life which cannot be restricted for a period of 5 years. The judgment cited by Ms. Praveen Gautam, learned counsel is not relevant and not applicable to the facts of this case. Therefore, the appeal is allowed and the appellant shall be entitled for disability pension @ 50% for life."

9. In the instant case the applicant was discharged on 30.11.1999, i.e prior to issue of policy letter dated 07.02.2001 which has been taken into consideration by the Hon'ble Supreme Court in the case of ***Cdr Rakesh Pande*** and thus, it is brought forth through the ratio of the verdict in ***Cdr. Rakesh Pande (supra)*** that a person afflicted with diseases which are permanent in nature is entitled to disability pension for life which cannot be restricted for a period of time and the assessment/ percentage of disability as made by the Medical Board has to be treated for life, for the nature of a disability being permanent or temporary cannot be determined from a date of a regulation and only be ascertained medically.

10. The applicant served in the Indian Air Force for 26 years. The onset of the disability occurred in June 1998, after 24 years of long service, whilst he was posted in Jaisalmer, Rajasthan. Prior to the onset of the disability, the applicant was posted to different Air Force stations and his duties in the various squadrons of the Air Force involved considerable amount of stress and strain and the accumulated stress and strain of such a long service on the applicant cannot be overlooked.

11. 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 'Primary Hypertension {Essential Hypertension as per 'Guide to Medical Officers (Military Pension), 1980}'. 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.

12. The arrears are however directed to commence to run from a period of three years prior to the institution of the present OA, in terms of the verdict of the Hon'ble Supreme Court in ***Union of India & Ors Vs Tarsem Singh*** reported in 2008 8 SCC 648 which shall be paid by the respondents, 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 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.

13. Pronounced in the open Court on this day of 16 May, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

Pooja