

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

C.

OA 1126/2020

Ex JWO Dalbir Singh ..... Applicant  
VERSUS  
Union of India and Ors. .... Respondents

For Applicant : Mr. Baljeet Singh &  
Ms. Deepika Sheoran, Advocates  
For Respondents : Ms. Barkha Babbar, Advocate

CORAM

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

ORDER  
03.04.2024

Vide our detailed order of even date we have partially allowed the OA 1126/2020. 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 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, the prayer for grant of leave to appeal stands declined.

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

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

**COURT NO. 2, ARMED FORCES TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**OA No. 1126 of 2020**

**Ex JWO Dalbir Singh**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant : Mr. Baljeet Singh, Advocate**

**For Respondents : Ms. Barkha Babbar, Advocate**

**CORAM :**

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

**HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)**

**ORDER**

The applicant vide the present O.A 1126/2020 has made the following prayers:-

*“(a) To set aside the impugned order letter No.Air HQ/99798/1/690073/DAV/DP/CC dated 19.02.2020 passed by the respondents.*

*(b) To direct the respondents to grant disability element of pension for the disability ID(i) Primary Hypertension assessed @30% and ID(ii) Carcinoma Oropharynx(L) BOT assessed @60% with effect from the date of invalidment for life by treating both the disabilities of the applicant as attributable to or aggravated by the Air Force service.*

*(c) To direct the respondents to grant the benefit of rounding off of disability element of pension of the applicant @100%(80% to be rounded off to 100%) with effect from the date of invalidment with all consequential benefits.*

*(d) To direct the respondents to pay the due arrears of disability pension with interest @12% p.a. with effect from the date of retirement till actual payment.*

*(e) 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 was enrolled in the Indian Air Force on 14.09.1983 and discharged from service w.e.f. 25.06.2018 under the clause "on having been found medically unfit for further service in the IAF after rendering a total of 34 years and 280 days of regular service. The applicant was found to have ID-Carcinoma Oropharynx BOT cT4aN2cM0(ST IV A) and ID-Osteo Arthritis Knees. The applicant was placed in Low Medical Category Composite A4G4(T-24) vide AFMSF-15 dated 22 January, 2016 while being posted at MCC Air Force, Basant Nagar and during the subsequent review, the applicant was placed in LMC A4G4(P) Composite vide AFMSF-15 dated 07.02.2017 for the ID-Primary Hypertension, ID-Carcinoma Oropharynx BOT cT4aN2cM0(ST IV A) and ID-Osteo Arthritis Knees. The Invaliding Medical Board solely on medical grounds was held at Base Hospital, Delhi Cantt vide AFMSF-16 dated 27.11.2017 and the same found the applicant fit to be invalided out from service in Low Medical Category A4G4 composite. The Invaliding Medical Board assessed the disability of the applicant i.e. ID-(i) Primary Hypertension @30%, ID(ii) Carcinoma Oropharynx(L) BOT

cT4aN2cM0(ST IV A) POST NACT F/BY DEFCCRT with Residual Disease @60% and ID(iii) Osteoarthritis Bilateral Knees @20% all compositely assessed @80% for life and recommended ID (i) and ID (ii) as neither attributable to nor aggravated by Air Force Service. However, the ID (iii) had been considered as aggravated by Air Force Services. The disability qualifying element for disability pension was held to be 20%. The proceedings of the Invaliding Medical Board were approved by JDMS(MB) AIR HQ(RKP) dated 05.06.2018 and thus the PPO was issued granting the disability element of pension in relation to ID(iii) Osteoarthritis Bilateral Knees assessed @20%. The Legal Notice dated 27.01.2020 of the applicant to the respondents for the grant of the disability element of pension in relation to the ID (i) and ID (ii) was responded to by the respondents vide a letter dated 19.02.2020 apprising the applicant that the said disabilities were neither attributable to nor aggravated by military service and thus stating that the applicant is not entitled to the grant of the disability element of pension in relation to the said disabilities of Primary Hypertension assessed @30% for life and ID(ii) Carcinoma Oropharynx BOT cT4aN2cM0(ST IV A) assessed @60% for life.

3. The First Appeal dated 18.05.2019 of the applicant seeking the disability element of pension in relation to ID(i) Primary



Hypertension and ID(ii) Carcinoma Oropharynx (L) BOT was rejected by the respondents vide letter dated 25.09.2020 i.e. after the institution of the present OA 13.08.2020 by the applicant after the first appeal of the applicant had not been disposed of within the stipulated period of six months from the date of filing of the present OA. The legal notice sent by the applicant was replied to by the respondents vide letter dated 19.02.2020 whilst stating to the effect that in terms of Rule 153 of Pension Regulations for IAF, 1961, Part-I, the primary conditions for the grant of disability pension are as follows:-

“Unless otherwise specifically provided, a disability pension may be granted to an individual who is invalidated/discharged from service on account of a disability which is attributable to or aggravated by AF Service and is assessed at 20% or over”

4. Taking into account the factum that the first appeal of the applicant was not disposed of by the respondents within the stipulated period of six months from the date of filing of the same, the present OA is taken up for consideration in terms of Section 21(2)(b) of the Armed Forces Tribunal Act, 2007.

### **CONTENTIONS OF THE PARTIES**

5. The applicant submits that he was enrolled in the Indian Air Force in a fit medical condition and he was subjected to a thorough

medical examination by the Medical Board and found him fit to join the Indian Air Force, and that there was no note or record on the records of the respondents that the applicant was suffering from any kind of disease or disability at the time of induction. The applicant submits that though he was found to be suffering from the disability of ID(i) Primary Hypertension on 23.11.2004, while being posted to 40 Wg AF, Gwalior a peace station, nevertheless, the factum of stress and strain of military service contributed to the aggravation of the disease. The applicant submits that whilst posted at 62 SU, Air Force, Salua from 26.12.2011 to 29.10.2015, the disability of Carcinoma Oropharynx was detected in July, 2015. The applicant submits that his duties include transmission of huge amount of signals through wireless telegraphy, receiving incoming signals and decoding the same by hand and he was exposed to very high frequency of radio waves throughout his entire career which he submits is the probable cause of Carcinoma Oropharynx. The applicant submits that the RMB had erroneously associated his disability of Carcinoma Oropharynx(L) BOT and related the same to history of smoking and had not taken into account his trade as RDO Tech and that he was exposed to very high frequency of radio waves throughout his career.

6. On behalf of the applicant, reliance is placed on the verdict of the Hon'ble Supreme Court in *Dharamvir Singh Vs Union of India & Ors* (Civil Appeal No.4949 of 2013)(2013) 7 SCC 316 with specific observations on Para-28 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."*

to submit that he is entitled to the grant of the disability element of pension *qua* the said two disabilities i.e. Primary Hypertension and Carcinoma Oropharynx and the applicant thus seeks that the said two disabilities be broadbanded and he thus be granted the disability element of pension from 80% to 100% for life in terms of the verdict of the Hon'ble Supreme in case of Union of India & Ors Vs **Ram Avtar** ( Civil Appeal No.418/2012) decided on 10.12.2014 and in terms of the Govt of India letter No.1(2)/97/D(Pen-C) dated 31.01.2001 and GoI, MoD letter No.17(02)/2016(Pen/Pol) dated 04.09.2017.

7. The respondents on the other hand contended to the effect that there is no infirmity in the Release Medical Board proceedings dated 27.11.2017 as the disabilities of the applicant were neither attributable to nor aggravated by military service. Inter alia, the respondents submit that the first appeal of the applicant has been rejected vide letter dated 25.09.2020 for the reasons detailed therein to the effect:

*"Disability(i) Primary Hypertension is a multifactorial disorder with a genetic preponderance. Entitlement of attributability is never appropriate for primary hypertension, but where disablement due to hypertension appears to have arisen or become worse in service, the question whether service compulsions have caused aggravation must be considered. Primary Hypertension may therefore be held aggravated if its onset is in field/HAA/CI Ops. In the ibid case the onset was while serving in peace. Accordingly, the disability is conceded as neither attributable to nor aggravated by service, in terms of Para 43, Chapter VI, GMO 2002/2008. As per AFMSF-7, attached with review/recat Med Bd dated 22. Jan 2016, the veteran has been a bidi smoker. In terms of Para 12, Chapter VI, GMO 2002/2008 the disability (ii) is conceded as neither attributable to nor aggravated by service."*

and thus seek that the present OA be dismissed.

### **ANALYSIS**

8. 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 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.

9. 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.*

*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, *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.

10. 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.

11. On a consideration of the submissions made on behalf of either side, it is essential to observe that the factum that as laid down in 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), 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*.

The Opinion of the Medical Board in Para VI is reflected to the effect:

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

“The Medical Board having examined the individual and after perusing all available documents is of the consensus opinion as under:

1. Causal Relationship of the disability with service conditions or Otherwise.				
Disability	Attributable to service (Y/N)	Aggravated by Service(Y/N)	Not connected with Service(Y/N)	Reasons/specific
PRIMARY HYPERTENSION	NO	NO	Yes	Onset of ID was in Nov.2004 while Serving at Gwalior(Peace Stn)There is No close time relationship of the onset or course of disease with service in Fd/ HAA/CI Ops tenure. Hence ID considered As neither attributable nor aggravated by Moil service as per Para 43, Chapter VI GMO(Mil Pension), 2008 amendment
(b)CARDINOMA OROPHARANX (L)BOT cT4aN2M0 POST NACT F/BY DEF CCRT WITH RESIDUAL DISEASE	NO	NO	YES	ID conceded as neither attributable nor Aggravated since it is related to history Of smoking and no causative factors like Radiation, chemicals and viral infection. Ref Para 8 & 12 of Chapter VI of GMOs Mil Pension 2008 amended.
(c) OSTEOARTHRITIS BILATERAL KNEES	NO	YES	NO	ID conceded as aggravated due to rigours Of training and stress of duties, Operational activities and uncongenial Climatic conditions are causative factors Adversely affected the course of illness. Hence, ID conceded as aggravated as Per Para 56, Chap VI of GNOs Mil Pension, 2008 amended.

The onset of the disabilities as reflected in Part IV Statement of the case are to the effect:

“

**PART IV  
STATEMENT OF CASE**

Disabilities	Date of origin	Rank of Indl	Place and unit where serving at the time
(a) PRIMARY HYPERTENSION	23 Nov.2004	JWO	40 Wing AF
(b) CARCINOMA OROPHARYNX(L) BOT cT4aN2M0 POST NACT F/BY DEF CCRT WITH RESIDUAL DISEASE	Jul 2015 at Hissar	JWO	MCC AF Basant Nagar
(c) OSTEOARTHRITIS BILATERAL KNEES	Oct 2015	JWO	MCC AF Basant Nagar

”

12. It is essential to advert to the posting profile of the applicant which is as under:

“

**PERSONAL STATEMENT**

1. Give details of service (P-Peace, or F-Field/Operational/Sea Service):

S. No.	From	To	Unit/place	P / F	S.No	From	To	Unit/-place	P/ F
01	14.9.83	20.4.84	Sambrae/ATI	P	(ii)	21.4.83	18.7.85	Bangalore/CTI	P
03	19.7.85	16.8.87	Kumbhigram/22W	P	(iv)	17.8.87	25.9.88	Kumbhigram	F
05	26.9.88	31.1.94	Ambala/7Wg	P	06	1.2.94	9.7.96	Bangalore/58	P
07	10.7.96	13.5.01	Nagpur/MC(U)	P	08	14.5.01	13.7.03	Bhuj/27 Wg AF Stn	F
09	14.7.03	21.12.08	Gwalior/40W	P	10	22.12.08	25.12.11	ChennAFS Tambram	P
11	26.12.11	29.10.15	Salua/62 SU	P	12	30.10.15	Till date	Delhi/MCC AF Basant Nagar	P

”

It is also essential to advert to Paras 2,3,4,5(a) to 5(c) of Part V of the RMB which read to the effect:

“

2. Did the disability exist before entering service (Y/N)	No for all disabilities
3. In case the disability existed at the time of entry, is it possible that it Could not be detected during the routine medical examination carried out at the time of the entry?	NA for all disabilities
4. In case of disability awarded aggravation, whether the effects such Aggravation still persist If yes, whether the effects of aggravation will persist for a material period	NA for Dis(a)(b) Yes for Life for Dis No(c)
5.(a) Was the disability attributed to the individuals own negligence or Misconduct If yes, in what way?	NA for all disabilities
(b) If not attributable, was it aggravated by negligence or misconduct? If so In what way and to what percentage to the total disablement	NA for dis(a)&(b) NO for Dis No(c)
(c) Has the individual refused to undergone operation/treatment? (d) If so, individual's reasons will be recorded	NO/NA for all disabilities

”

The percentage of the disabilities recorded by the Release Medical Board are to the effect:

“

Disabilities(as Numbered in Para 1 Part IV	Percentage of Disabilities with duration	Composite Assessment for All disabilities With duration (Max 100% With duration	Disability Qualifying for Disability Pension with duration	Net assessment qualifying for Disability pension(Max 100%) With duration
PRIMARY HYPERTENSION	30% for life	80% for life	NIL for life	20% for life
(b) CARCINOMA OROPHARANX(L) BOT cT4aN2MO POST NACT F/BY DEF CCRT WITH RESIDUAL DISEASE	60% for life		NIL for life	
(c) OSTEOARTHRITIS BILATERAL KNEEWS	20% for life		20% for life	



13. As regards the disability of Primary Hypertension which had its onset in November, 2004 at Air Force Station 40 Wing, Gwalior, a peace station, it cannot be overlooked that the said disability was detected after 21 years of military service after the applicant had been posted from 17.8.87 to 25.09.88 at Kumbhigram ALS/22 W and 14.5.2001 to 13.07.2003 at Bhuj/27 Wg, both field stations. As has already been observed hereinabove, in terms of Regulation 423 of the Regulations for the Medical Services of the Armed Forces, 2010, and the observation of the Hon'ble Supreme Court in Para 33 in case of *Dharamvir Singh Vs Union of India & Ors*(supra), wherein it is expressly observed to the effect:

*"33. In spite of the aforesaid provisions, the Pension Sanctioning Authority failed to notice that the Medical Board had not given any reason in support of its opinion, particularly when there is no note of such disease or disability available in the service record of the appellant at the time of acceptance for military service. Without going through the aforesaid facts the Pension Sanctioning Authority mechanically passed the impugned order of rejection based on the report of the Medical Board. As per Rules 5 and 9 of the Entitlement Rules for Casualty Pensionary Awards, 1982, the appellant is entitled for presumption and benefit of presumption in his favour. In the absence of any evidence on record to show that the appellant was suffering from "generalised seizure (epilepsy)" at the time of acceptance of his service, it will be presumed that the appellant was in sound physical and mental condition at the time of entering the service and deterioration in his health has taken place due to service."*





and thus it is expressly laid down thereby to the effect that whether the disease had its onset in peace area or field area is immaterial and what is essentially to be ascertained is the aspect of its attributability or aggravation to military service and what is required to be explained is the causal connection with military service. In the circumstances of the instant case where there is no note recorded on the records of the respondents *qua* any disabilities that the applicant suffered from at the time of induction into the Indian Air Force and there is nothing on the record to indicate as to why the said disability of Primary Hypertension could not have been detected at the time of induction of the applicant in the Indian Air Force in terms of settled law as laid down by the verdict of the Hon'ble Supreme Court in *Union of India & Ors vs Rajveer Singh* and as also observed by this Tribunal in catena of orders, in the circumstances of the instant case, the stress and strain of service in 21 years of military service of the applicant has to be held to be the causative factor in relation to the disability Hypertension and the said disability has to be held to be aggravated by military service.

14. The applicant during his tenure of 37 years and 102 days of service in the Indian Air Force was posted in the field area from 17.08.1987 to 25.09.1988 and 14.05.2001 to 13.07.2003. The onset of the disability of Primary Hypertension was after 21 years of military service. Para 43 of the GMO(MP) 2008, which the respondents rely upon through the RMB proceedings itself stipulates that in certain cases

the disease of hypertension has been reported after long and frequent spells of service in field/HAA active operational areas, and that such cases can be explained by variable responses exhibited by different individuals to stress and strain. Apparently, in the facts and circumstances of the instant case, the probability of the onset of the disability of Primary Hypertension in the instant case being due to the tough terrains that the applicant worked at cannot be overlooked. It is thus, held that the disability of Primary Hypertension that the applicant suffers from has to be held both attributable to and aggravated by military service.

15. As regards the disability of (ii) CARCINOMA OROPHARANX(L)BOT cT4aN2MO POST NACT F/BY DEF CCRT WITH RESIDUAL DISEASE which had its onset in July, 2015 at Hissar, the applicant has submitted that he was working in the Trade of Radio Technician and was subjected to high frequency of radio waves throughout his career of RDO Tech and he was exposed to very high frequency radio waves and thus the RMB had erroneously associated the disability with history of smoking. It is essential to advert to observe Paragraphs 9 and Para 12 of Chapter VI of GMO(MP) 2008 which are to the effect:

*"9. Cancer. Precise cause of cancer is unknown. There is adequate material both of scientific and statistical nature which brings into light the causative factors like radiation, chemicals, and viral*

*infections. The recognized causative agents for carcinogenesis are:- (a) Viral infection (b) Radiation from nuclear sources (c) Ultra violet rays (d) Chemicals (e) Acquired chromosomal abnormalities (f) Trauma (chronic irritation leading to dermatological cancers eg: kangri cancer) The service related conditions in relation to carcinogenesis are as under:- (a) Occupational Hazards: All ranks working in nuclear powered submarines, doctors and paramedics working with electro-magnetic equipment, personnel working with radars, communication equipment, microwave and also those handling mineral oils such as petrol and diesel are exposed despite stringent safety measures. (b) Infection: As a cause of cancer has been documented in certain malignancies. Though identification of an organism may not be possible due to lack of facility but there is gross evidence clinically to suspect infection. (c) The question of relationship between a malignant condition and an accepted injury is difficult to establish. The vast majority of traumatic lesions however severe, show no tendency to be followed by cancer either immediately or remotely. However chronic irritation leading to dermatological cancers have been documented (eg: Kangri Cancer),attributability will be conceded depending on the merit of the case.”*

*“12. Malignancies Not Attributable and Not Aggravated Tobacco related cancers in smokers and tobacco users e.g. carcinoma lung, carcinoma oral cavity, carcinoma bladder. Cancers due to congenital chromosomal abnormalities e.g. CML where Ph chromosome identified.”*

qua which the RMB opined that the ID was conceded as neither attributable nor aggravated since, it is related to history of smoking and no causative factors like radiation, chemicals and viral infections. Ref. Para 9 & 12 of Chapter VI of GMO(MP) 2008 amended.

16. Inadvertently, the RMB vide para 5(a) and 5(b) does not state that the disability was attributable to the applicant's own negligence

and misconduct in any manner. The clinical assessment in Part II of the opinion of Col. S K Singh. SR ADV(ENT) Army Hospital(R&R), Delhi Cantt, dated 03.10.2017 qua the applicant reads to the effect:

PART II  
CLINICAL ASSESSMENT

- "1. History (a) Location of onset : Peace  
(b) Date and time of onset : July 2015  
(c) Relevant History: 51 years old serving JWO, k/c/o, k/c/o, 1. HTN since 2004, 2. Caoropharynx BOT cT4aN2cMO/ 3. Osteoarthritis knees. Pt had initially presented with c/o hoarseness, dysphagia x 02 months. O/E ulceroproliferative growth(L)BOT. Larynx, B/L Valleculae, hypopharynx free. CECT neck(29/06/16): Growth(L) BOT extending to(L) tonsillar fossa and posterior 1/3 of oral tongue and posterolateral oropharyngeal wall. Invading FOM and B/L hyoglossus and genioglossus muscles, inferiorly extending to median GE fold and lingual surface of epiglottis. B/L level II/III nodes seen. Biopsy in civil(3221/15 dated 29/06/15: SCC. He was treated in civil with NACT followed by Def CCRT(till Oct 15). On follow up found to have indurated ulcer in BOT. WBPET CT(18/02/16): soft tissue density(L) BOT and palatoglossal fold(SUV max 5.0) Pt underwent TORs of primary lesion+(L) MND+FALT reconstruction under GA on 21/05/16 at Rajeev Gandhi Cancer Institute. He was placed in LMC P3(P) wef 07 Feb 2017. Now referred for opinion regarding fitness to continue in service vide MCC AF Basant Nagar letter dt 19 Jun 2017. Opinion for the same was issued on 30 Jun 17m requested for fresh present date opinion.  
2. Physical examination findings: oral cavity/oropharynx: ankyloglossia present. Post op status. No lesion seen. No induration in BOT. Neck: No nodes palpable. Well healed surgical scar. Tracheostomy site well healed. Articulation function is affected severely because of the structural defect post surgery.  
3. Investigations: WBPET-CT(13/08/16) post op architectural distortion. Margins of surgical defect show mild FDG avidity(L)>(R); likely inflammatory.  
4. Diagnosis: CARCINOMA OROPHARYNX(L) BOT cT4aN2cMO POST NACT F/BY DEF CCRT WITH RESIDUAL DISEASE(OPTD).

PART III  
TREATMENT UNDERTAKEN/ADVISED

*Patient underwent TORS of primary lesion+(L)MND+FALT reconstruction under GA on 2105/16 at Rajeev Gandhi Cancer Institute. On review loco regionally controlled.*

RECOMMENDATIONS

*His articulation function is affected severely because of the structural defect post surgery. This impedes his verbal communication with resulting in gross restriction of day to day activities related to his duties. Recommended Medical category P5 and equivalent medical category in Air Force. With recommendation for invalidment out of service."*

As per the opinion of the Graded Specialist MH Gwalior dated 16.08.2005 the applicant was a smoker and as per the Medical Case Sheet dated 18.01.2016 he was a **bidi smoker and a social drinker**. The previous history of the applicant undoubtedly does not indicate the existence of the disability of Carcinoma Oropharynx at the time of induction of the applicant in Air Force service. Though, undoubtedly, the applicant was deployed as a Radio Technician and did not have the disability of Carcinoma Oropharynx from 14.09.1983 onwards when he was inducted into the Indian Air Force and the disease had its onset in July, 2015. The applicant undoubtedly was a bidi smoker and social drinker as indicated vide AFMSF-15 dated 29.05.2017 and vide the opinion of the Graded Specialist of Military Hospital, Gwalior dated 16.08.2005 and the personal habits of the applicant recorded in the Medical Case Sheet dated 21.01.2016 indicated him *inter alia* to be a bidi smoker and a social drinker. As per the scientific literature available on the website, smoking tobacco and alcohol consumption have been



widely indentified as the major risk factors for non-HVP-associated oropharyngeal carcinoma. Two types of oropharyngeal cancer can be distinguished: HVP-associated, due to an oral human papillomavirus infection, and non-HVP-associated, mainly due to tobacco smoking and alcohol use. As per the website of the National Cancer Institute, USA, information as accessed on the internet (<https://www.cancer.gov/types/head-andneck/patient/adult/oropharyngeal-treatment-pdq>), it is stated therein to the effect:-

“

- *Oropharyngeal cancer is a disease in which malignant(cancer) cells form in the tissues of the oropharynx.*
- *Smoking or being infected with human papillomavirus(HVP) can increase the risk of oropharyngeal cancer.*
- *Signs and symptoms of oropharyngeal cancer include a lump in the neck and a sore throat.*
- *Tests that examine the mouth and throat are used to diagnose and stage oropharyngeal cancer.*
- *Certain factors affect prognosis(chance of recovery) and treatment options. ”*

It is also stated in the said article as under:

“

*Smoking or being infected with human papillomavirus(HVP) can increase the risk of oropharyngeal cancer.....*

*The most common factors for oropharyngeal cancer include the following:*

- *A history of smoking cigarettes for more than 10 packs years and other tobacco use.*
- *Heavy alcohol use.*



- *Being infected with human papillomavirus(HVP), especially HVP type 16. The number of cases of oropharyngeal cancers linked to HVP infection is increasing.*
- *Personal history of head and neck cancer.*
- *Chewing betel quid, a stimulant commonly used in parts of Asia.* ”

In terms of Para 9 of Chapter VI of the GMO(MP) 2008, as already adverted to hereinabove, the occupational hazards referred to therein related to working in nuclear power submarines, doctors and paramedics working with electro-magnetic equipment, personnel working with radars, communication equipment, microwave and also those handling mineral oils such as petrol and diesel are exposed despite stringent safety measures and occupational hazards. Carcinoma with malignancies have to be considered in terms of para 10 of the Chapter VI of the GMO (MP) 2008 and those which are considered thereby to be attributable to service, are:-

”

10. *Malignancies Considered Attributable to Service*

(a) *Due to Occupational Hazards*

- (i) *Any cancer in those personnel working or exposed to radiation source in any forms:*
  - (aa) *Acute Leukaemia*
  - (ab) *Chronic lymphatic leukemia*
  - (ac) *Astrocytoma*
  - (ad) *Skin cancers*
- (ii) *Any cancer in those exposed to chemical especially petroleum products or other chemicals:*
  - (aa) *Carcinoma bladder*
  - (ab) *Renal cell carcinoma*
  - (ac) *Carcinoma of Renal Pelvis*
- (iii) *Any cancer in those exposed to coal dust, asbestos, silica & Iron*



- (aa) *Bronchogenic Carcinoma*
- (ab) *Pleural Mesothelioma*
- (b) *Due to Viral Infection:*
  - (i) *Hepato-cellular carcinoma (HV B&C)*
  - (ii) *Ca nasopharynx (EB virus)*
  - (iii) *Hodgkin's disease (EB virus)*
  - (iv) *Non-Hodgkin's Lymphoma (Viruses)*
  - (v) *Acute Leukaemia (HTLV)*
  - (vi) *Ca anal canal (HTLV 1)*
  - (vii) *Any cancer due to HIV infection (contracted out of blood transfusion/needle stick injury in service)*
  - (viii) *Ca Cervix (HPV).*      "

However, vide Para 12 of Chapter VI of the GMO(MP) 2008 - Tobacco related cancer in smokers and tobacco users e.g. carcinoma lung, carcinoma oral cavity, carcinoma bladder fall in the category of malignancies not attributable and not aggravated. Likewise, cancers due to congenital chromosomal abnormalities e.g. CML where Ph chromosome identified do not fall within the ambit of being attributable to or aggravated to military service. Furthermore, the applicant in the instant case being a Radio Technician sitting in a sealed/closed compartment was apparently not exposed to ultra violet rays but rather to radio frequency waves. Para 9 of Chapter VI of GMO(MP) 2008 puts forth recognized causative agents for cancer and reads to the effect:-

"9. *Cancer:* *Precise cause of concern is unknown. There is adequate material both of scientific and statistical nature which brings into light the causative factors like radiation, chemicals, and viral infections:*

*The recognized causative agents for carcinogenesis are:-*

- (a) Viral Infection
- (b) Radiation from nuclear sources
- (c) Ultra violet rays
- (d) Chemicals
- (e) Acquired chromosomal abnormalities
- (f) Trauma(chronic irritation leading to dermatological cancers.  
a. Eg: Kangri cancer. "

As per the Website of the National Cancer Institute, USA, information as accessed on the internet (<https://www.cancer.gov/publications/dictionaries/cancer-terms/def/radiofrequency-radiation>), radio frequency is stated to be:-

"

#### *Radiofrequency radiation*

*A type of low-energy radiation. The most common sources of radiofrequency radiation are wireless and cellular telephones, radios, televisions, radar, satellites, microwave ovens, computers, and wireless networks(Wi-Fi). Although there have been health concerns, most types of radiofrequency radiation have not been found to cause harmful health effects, including cancer. Radiofrequency radiation is a type of non-ionizing electromagnetic radiation. "*

The same indicate that radio frequency radiation is a type of non-ionizing electromagnetic radiation and does not cause harmful health

effects like cancer. It is essential to observe as indicated by the article of the National Cancer Institute (<https://www.cancer.gov/types/head-and-neck/patient/adult/oropharyngeal-treatment-pdq#>) which observes to the effect that a risk factor is anything that increases a person's chance of getting a disease such as cancer. Different cancers have different risk factors. Some risk factors, like smoking, can be changed. Others, like a person's age or family history, cannot be changed. Furthermore, Tobacco and alcohol use are detailed in ~~relation to which it has been due to~~ <sup>as lung</sup> the risk factors: **Tobacco Use** is one of the strongest risk factors for head and neck cancers, including oral cavity and oropharyngeal cancer. The risk for these cancers is much higher in people who smoke than in people who don't. Most people with these cancers have a history of smoking or other tobacco exposure, like chewing tobacco. The more you smoke, the greater your risk. Smoke from cigarettes, pipes, and cigars all increase your risk of getting these cancers. Some studies have also found that long-term exposure to secondhand smoke might increase the risk of these cancers, but more research is needed to confirm this. Pipe smoking is linked to a very high risk for cancer in the part of the lips that touch the pipe stems. Moreover, **Drinking alcohol** increases the risk of developing oral cavity and oropharyngeal cancers. Heavy drinkers have a higher risk than light drinkers. Smoking and drinking alcohol together multiplies the risk of these cancers. The risk of these cancers in people who drink and smoke heavily is about 30 times higher than the risk in people who don't

smoke or drink. Thus, in the instant case, the disabilities of ID Carcinoma suffered by the applicant who was a bidi smoker and a social drinker apparently cannot be held to be attributable or aggravated by service.

### CONCLUSION

18. The OA 1126/2020 is partially allowed. The applicant is thus held entitled to the grant of the disability element of pension compositely assessed @30% for life for the disability of Primary Hypertension with percentage of the disability element of pension in relation to the disability Osteoarthritis Bilateral Knees assessed @20% for life, compositely assessed thus now @44% for life which is directed to be broadbanded to 50% for life from the date of discharge in terms of the verdict of the Hon'ble Supreme Court in **UOI & Ors. vs Ramavtar** in Civil Appeal No. 418/2012. Apparently, the applicant is already in receipt of the disability element of pension qua ID(iii) Osteoarthritis Bilateral Knees @20% for life.

19. The respondents are thus directed to re-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 if any 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.



Pronounced in the open Court on the 3 day of April, 2024.

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

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

/CHANANA/