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

C..
OA 1146/2019 with MA 1862/2019

Ex JWO Om Prakash Dubey ..... Applicant
VERSUS
Union of India and Ors. ..... Respondents

For Applicant : Mr. Omprakash Kr Srivastava & Vinay Makhija, Advocate
For Respondents : Mr. Satya Ranjan Swain, Advocate

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

ORDER
10.01.2024

Vide our detailed order of even date, we have allowed the OA 1146/2019. 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)

Pooja

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

OA No. 1146 of 2019 with MA 1862/2019

Ex JWO Om Prakash Dubey ...Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Mr Prem Prakash, proxy for Mr.Om Prakash KSrivastava, Advocate

For Respondents : Mr. Satya Ranjan Swain, Advocate

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

O R D E R

MA 1862/2019

This is an application filed under section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 2901 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 1862/2019 is allowed and the delay of 2901 days in filing the

OA 1146/2019 is thus condoned. The MA is disposed of accordingly.

OA 1146/2019

The applicant vide para 8 of the present O.A 1146/2019 has made the following prayers:-

> *(a) To direct the respondents to issue the disability pension PPO to the applicant from the date of discharge i.e. 01.08.2016.*
>
> *(b) To direct the respondents to round-off the disability percentage from 30% to 50% and issue the disability pension PPO of the applicant from the date of discharge i.e. 01.08.2016.*
>
> *(c) To direct the respondents to pay arrears from the date of discharge i.e. 01.08.2016 alongwith interest @12% p.a. till the realization of the payment to the applicant.*
> *(d) 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."*

2. The applicant who was enrolled in the Indian Air Force on 15.07.1996 was discharged from service on 31.07.2016 under the clause on "On fulfilling the conditions of enrolment" after rendering a total of 20 years and 17 days of regular service. The applicant was detected to have raised blood pressure during routine medical examination and was evaluated at 10 AFH and was diagnosed with' ID Primary Hypertension'. The applicant was managed by the medical specialist and was opined to be placed in Low Medical Category LMC A4G3(T-24). The initial medical board *qua* the

applicant was held at AP Station, Hasimara vide AFMSF-15 dated 12.07.2013 which too recommended the LMC A4G4(T-24) and during the subsequent reviews the applicant was placed in LMC A4G2(P) vide AFMSFM5 dated 09.05.2014. The Release Medical Board not solely on medical ground was held at INHS Dhanvantari vide AFMSF-16 dated 11.09.2015 which found the applicant fit to be released from service in Low Medical Category A4G2(P) for the ID Primary Hypertension but considered the disability of the applicant as neither attributable to nor aggravated by service. The onset of the disability was detected whilst the applicant was serving in a peace area and the percentage of disablement was assessed @30% for life. The disability qualifying element for disability pension was assessed as NIL. Subsequently, the RMB was approved by the SSO (Health), HQ A&N Command dated 26.09.2015. On adjudication, the AOC, AFRO also upheld the recommendations of the RMB and rejected the disability pension claim of the applicant vide letter No. HQ/99798/1/741945/07/16/DAV(DP)/RMB) dated 14.01.2016 with an advice to the applicant that if so desired, he may prefer an appeal to the Appellate Committee within six months from the date of receipt of the letter. The First Appeal dated 22.02.2019 preferred by the applicant was rejected by the Appellate Committee on First Appeal vide letter No. Air

HQ/.99798/5/321/2019/741945/DP/AV-III (Appeals (dated 26.02.2020.

3. In the interest of justice, it is considered essential to take up the OA for consideration in terms of Section 21(1) of the Armed Forces Tribunal Act, 2007.

CONTENTIONS OF THE PARTIES

4. The applicant submits that he was enrolled in the Indian Air Force in the trade of RAD/Fit on 15.07.1996 in a fit medical conditions and that there was no note of any disability recorded on the records of the respondents and submits that the disability of Primary Hypertension from which he suffers had its onset whilst posted to 155 Sqn, AF, Hashimara in the month of April, 2013, almost after 17 years of military service. The applicant submits that the said disability has to be held to be attributable to and aggravated by military service. The applicant submits that he was brought before the Release Medical Board at INHS Dhanvantari on 11.09.2015 which assessed the percentage of disablement @30% for life, however recommended the disability as neither attributable to nor aggravated by military service. The applicant submits that as per the Summary of the Case given by the Surgeon Cdr CL SPL(Medicine) INHS DHANVANTARI, it was stated that he was a non-drinker and a non-smoker and there was no known family history of DM, HTN, IHD and that there are no contributory factors

from the side of the applicant and in terms of the verdict of the Hon'ble Supreme Court in the case of ***Dharmavir Singh*** Vs ***Union of India & Ors*** in Civil Appeal No. 4949 of 2013 AIR SCW 4236, the disability of the applicant in the instant case has to be held to be attributable to and aggravated by military service.

6. On behalf of the respondents, it was submitted that the during the entire tenure of service i.e. from the date of induction into the Indian Air Force on 15 07.1996 till discharge on 31.07.2016, the applicant was posted in peace stations and thus the disability from which the applicant suffered from is not connected with military service hence the applicant is not entitled for the grant of the disability pension.

7. Inter alia, the respondents submit to the effect that the findings of the Medical Board, which is an expert body in the field of its expertise, deserve due weight, value and credence. The respondents also submit that in terms of Rule 153 of Pension Regulations for the Indian Air Force, 1961(Part-I), the primary conditions for the grant of disability pension are "unless otherwise specifically provided, disability pension may be granted to an individual who is invalided out from service on account of a disability and is assessed @20% or more. In other words, disability

pension is granted to those who fulfil the following two criteria simultaneously:

> *"(i) Disability must be either attributable to or aggravated by service.*
> *(ii) Degree of disablement should be assessed @20% or more."*

in as much as the requirements of the disability from which the applicant suffers from is not attributable to nor aggravated by military service has not been satisfied and thus the applicant is not entitled to the grant of the disability element of pension.

ANALYSIS

8. The consistent view of this Tribunal 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 and the relevant Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel as applicable. Vide observations in para-28 of the verdict in Dharamvir Singh(supra), the Hon'ble Supreme Court has laid down 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 no 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."

9. 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 of 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.***

10. 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.

11. The 'Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel 2008, which take effect from 01.01.2008 as applicable in the instant case 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 white '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 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.

12. 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.

13. Furthermore, Para 43 of the Guide to Medical Officer (Military Pension), 2008 provides as under:-

> "43. *Hypertension – The first consideration should be to determine whether the hypertension is primary or secondary. If (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."*

Before proceeding further, it is essential to advert to the posting profile of the applicant which is as under as per the RMB:

"

PART I

PERSONAL STATEMENT

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

S No	From	To	Place/ Ship	P/F(HAA/Ops/Sea service)others	S No.	From	To	Place/ Ship	P/F(HAA/ Ops/ Sea service) others
1	15.6.96	18.7.98	ETI,AF	P	2	19.7.98	24.12.98	MIG 27 T/S	P
3	25.12.98	22.12.03	MIG 27 C/o Wing AF	P	4	23.12.03	21.3.04	5 Wing AF	P
5	22.3.04	25.12.06	10 Sqn AF	P	6	26.12.06	23.3.08	MIG 27 TF C/o 32 Wing	P
7	24.3.08	21.3.10	23 MMPU	P	8	22.3.10	30.3.11	222 Sqn AF	P
9	31.3.11	20.4.14	155 Sqn AF	P	10	21.4.14	Till date	153 Sqn AF	P

2. Give particulars of any disease, wounds, injuries from which you are suffering:

Illness Wound, Injury	First Stated Date Place	Rank of Ind	Where treated	Approximate dates and periods treated
PRIMARY HYPERTENSION ICD No.110.0	Apr13 Hashimara	Sgt	10 AFH	Treated as Out Patient

3. Did you suffer from any disability before joining the Armed Forces, If so give details and dates: NO

4. Give details of any incidents during your service, which you think caused or made your disability worse: NO

5. In case of wound or injury, state how they happened and whether or not(a) Medical Board or Court of Inquiry was held,(b) Injury Report was submitted: NA

"

The onset of the disability of Primary Hypertension as reported in the RMB dated 31.7.2016 is thus in April, 2013.

The opinion of the Release Medical Board in Part V is as under:

"

PART V

OPINION OF THE MEDICAL BOARD

1.Causal Relationship of the Disability with Service conditions or otherwise				
PRIMARY HYPERTENSION ICD No.110.0	N	N	Y	As onset of Disability is While serving in Peace station Hence not Connected service

"

14. The applicant during his tenure of about 20 years and 17 days of service in the Indian Air Force had 10 postings. The onset of the disability of Primary Hypertension was after 16 years of military service. Para 43 of Chapter VI of the GMO(MP) 2008 on which the respondents rely upon through the RMB proceedings itself stipulates stress and strain to be a cumulative factor for the said disability. 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 stress and strain of military service 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.

CONCLUSION

15. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is entitled for the grant of the disability element of pension in respect of disability 'Primary Hypertension' assessed @ 30% for life which is rounded off to 50% for life with effect from the date of his discharge in terms of the verdict 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.

16. 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.

17. The OA stands disposed of in above terms.

Pronounced in the open Court on this 10th day of January 2024.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/chanana/