

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

OA 1315/2022

Ex NC(E) T Jatin Suba

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Bharat Singh, Advocate

For Respondents : Mr. Waize Ali Noor, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

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

ORDER

Invoking the jurisdiction of this Tribunal; under Section 14, of the Armed Forces Tribunal Act, 2007 the applicant has filed this application and the reliefs claimed in Para 8 read as under:

- (a) *To direct the respondents to grant the disability element of the applicant @ 50% w.e.f. 01/09/2021.*
- (b) *To direct the respondents to pay arrears w.e.f. from 01/09/2021 along with interest @ 12% per annum till its payment to the applicant.*
- (c) *Pass any other or such further orders as deemed fit to this Hon'ble Tribunal in order to secure the ends of justice in favour of the applicant.*

BRIEF FACTS

2. The applicant was enrolled in Indian Air Force on 29.06.1984 and discharged from service on 31.08.2021 under

the clause "On attaining the age of superannuation" after rendering 37 years 02 months and 02 days of regular service. The applicant was found fit to be released in low medical category A4G4(P), for the disabilities of (i) Primary Hypertension (Old) @ 30% (ii) Impaired Glucose Tolerance (Old) @ 15% and (iii) Nutritional Anemia Diagnosis changed to Hb E Disease @ 20%. The applicant was subjected to a Release Medical Board (RMB) on 29.06.2021 whereby the percentage of composite disabilities was assessed @ 50% for life, however, the net qualifying percentage for the disability pension was nil for life as all the disabilities were adjudged as neither attributable to nor aggravated by military service.

3. On adjudication, the AOC AFRO upheld the recommendations of the RMB and rejected the disability pension claim vide letter no. RO/3305/3/Med dated 22.11.2021. The outcome of the same was communicated to the applicant vide letter no Air HQ /99798 /1/802554 /08 /21 /DAV (DP/RMB) dated 03.12.2021 with an advice that he may prefer an appeal to the Appellate Committee within six

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months from the date of receipt of letter. The applicant made a First Appeal/ Representation dated 08.02.2022. When no reply was received from the respondents, the applicant sent a legal notice dated 14.03.2022 which was replied to vide the letter no. Air HQ /99798 /1/802554 /DAV /DP /CC dated 27.04.2022 stating that the applicant is not entitled to disability element as per rules. Aggrieved by the decision of the respondents, the applicant has filed the instant OA. In the interest of justice, in terms of Section 21 (2) (b) the AFT Act, 2007, we take up the same for consideration.

CONTENTIONS OF THE PARTIES

4. The learned counsel for the applicant submitted that the applicant joined the IAF on 29.06.1984 and was discharged from the service on 31.08.2021 in the rank of NC(E) after rendering 37 years 02 months and 02 days of long service in the Indian Air Force during which he suffered with the above said disabilities.

5. The learned counsel for the applicant submitted that he was subjected to a thorough medical examination conducted

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by the medical board at the time of his entry into service and was found medically fit to join the service in Indian Air Force and was posted to various Air Force units in varied geographical and climatic conditions.

6. The learned counsel for the applicant submitted that in addition to conditions of service frequent changes in weather and social environment at different geographical locations were the main causes of stress and strain on the applicant.

7. The learned counsel for the applicant placed reliance on the verdict of the Hon'ble Supreme Court of India in ***Dharamvir Singh Vs Union of India & Others*** (Civil Appeal No. 4949/2013); (2013) 7 SCC 316. He also placed reliance in the cases of ***UOI & Ors. Vs. Rajbir Singh*** (2015) 12 SCC 264 and ***UOI & Ors Vs. Angad Singh Titaria*** (2015) 12 SCC 257. In ***Dharamvir Singh (supra)***, the Hon'ble Supreme Court held as under :-

"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

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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."

8. Per contra the respondents submit that the applicant had a personal history of being a chronic alcohol consumer and reformed smoker and the disabilities arose due to applicant's smoking habits and consumption of alcohol.

9. The learned counsel for the respondents submitted that the disability "Primary Hypertension" also has no close time association of stress and strain since at the time when the applicant suffered from the said disability he was posted in peace area. The learned counsel further submitted that in so far as the disability of Impaired Glucose Tolerance (Old) is concerned there was no close time relationship to service due to infection, trauma and post surgery or post drug therapy and is also assessed at less than 20%, therefore

does not qualify for grant of disability pension as per Rule 153 of Pension Regulations for IAF, 1961 (Part-1).

10. The learned counsel for the respondents submitted that in so far as the disability Hb E disease is concerned, the said disease is congenital in nature and is therefore neither attributable to nor aggravated by military service.

ANALYSIS

11. We have heard the learned counsel for the parties and have gone through the records produced before us.

12. In the instant case, the onset of the disabilities *qua* the applicant was after 33 years of his engagement in the Indian Air Force and the applicant suffered with the disabilities i.e. (i) Primary Hypertension (Old) (ii) Impaired Glucose Tolerance (Old) and (iii) Nutritional Anemia Diagnosis changed to Hb E Disease at Salua in peace area from 02.11.2017 to 30.11.2017.

13. It is essential to advert to Para 43 of Chapter VI of the Guide to Medical Officers (Military Pensions) 2002, amendment 2008 (GMO (MP) 2008), which reads to the effect:-

"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."

14. It is essential to advert to scientific literature available in public domain such as <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8619602/> published by National Library of Medicine on 10.11.2021 accessed on 17.01.2024 which read as under:-

"In this way, the onset of hypertension is affected by not just one factor but multiple factors, including both alcohol intake and smoking.

Many past studies identified alcohol as one factor that worsens hypertension. In these studies, a dose-response relationship between

alcohol consumption and hypertension was specifically noted. On the other hand, the relationship between smoking and hypertension was not found to be significant. However, a transient increase in blood pressure while smoking cigarettes, as well as findings supportive of a causal association of smoking burden with a higher resting heart rate, were noted, despite how no direct relationship between smoking and hypertension has been documented. Furthermore, numerous studies on the risks of cardiovascular disease (stroke and heart disease) have found that alcohol and smoking raise by several fold the risk of cardiovascular diseases. In these studies, alcohol, smoking, and hypertension are all factors similarly affecting the outcome of cardiovascular diseases. Some previous studies have investigated the relationship between hypertension and both alcohol and smoking, but none, to our knowledge, have focused on the synergistic health effects of the two together on hypertension."

15. In addition to the fact that the applicant was a chronic alcohol consumer, it is pertinent to mention that the applicant was a smoker for a considerable period whilst in service and contracted with the said disabilities in 2017, though the applicant became a reformed smoker afterwards. Therefore, it is safe to say that smoking could be one of the reasons for occurrence of the said disabilities which cannot be overlooked. In the instant case, along with the RMB proceedings the

respondents have placed on record the Summary of the Case which reflects the personal history of the applicant to the effect that the applicant has been chronic alcohol consumer and has a history of smoking vide summary of opinion dated 27.06.2018 and 08.04.2021.

16. It is pertinent to mention that in the instant case, although the applicant is a reformed smoker, but he is declared as a chronic alcohol consumer and the onset of the disability in the instant case cannot be held to be attributable to or aggravated by military service in view of the personal history apparently given by the respondents that he is a chronic alcohol consumer and has a history of being a reformed smoker and even prior to the induction of the applicant in the Indian Air Force, he was a smoker and a social drinker, where he worked for 37 years.

17. Thus, in view of the circumstances of the instant matter, we do not find any infirmity in the opinion of the Release Medical Board denying the disability element of pension to the applicant *qua* the disability of Primary Hypertension for it

being neither attributable to nor aggravated by military service and the applicant thus is not entitled to the grant of the disability element of pension for which the applicant is himself responsible being a chronic alcohol consumer and a reformed smoker.

18. In so far as the second disability of "Impaired Glucose Tolerance (Old)" is concerned, it has been assessed at 15% and considered it as neither attributable to nor aggravated by military service as per the RMB records. However, since the disability has been adjudged as 15% which is below 20%, the bare minimum required for grant of disability pension as per Rule 153 of Pension Regulations for IAF, 1961 (Part-1), the same is not admissible.

19. In so far as the third disability of "Hb E Disease" is concerned, it is pertinent to mention part-III, para-2 of the RMB dated 29.06.2021 wherein the disability Nutritional Anemia was changed to Hb E Disease on 29.06.2018. The RMB assessed the disability @ 20% for life and considered it

as neither attributable to nor aggravated by military service.

The onset of the said disability was in peace area at Salua.

20. It is important to refer to the scientific literature in relation to the said disability available in the public domain of

University of Rochester medical centre i.e.

"[https://www.urmc.rochester.edu/encyclopedia/content.aspx?](https://www.urmc.rochester.edu/encyclopedia/content.aspx?ContentTypeID=160&ContentID=12)

ContentTypeID=160&ContentID=12" Section : *Health*

Encyclopedia accessed on 17.01.2024 wherein it is provided

that Hb E Disease occurs due to gene defect which is passed

down from patients and is inheritable. The aforesaid scientific

literature reads to the effect:-

"Hemoglobin E Trait

What is hemoglobin E Trait?

Hemoglobin E trait is an inherited blood disorder. That means it's passed down through your parent's genes. It leads to an abnormal form of hemoglobin that may cause mild anemia. It occurs most often in people of Southeast Asian descent.

What causes hemoglobin E trait?

Hemoglobin E trait is caused by a gene defect. This gene defect is passed down from one of your parents. It's not a disease. It doesn't usually cause any health problems. It can cause smaller-than-normal red blood cells. When inherited from both parents, or

with other abnormal hemoglobin genes, it can cause anemia and other problems.

If you inherited the defect from both parents or from one parent and a different abnormal hemoglobin from the other parent, it can cause problems, such as:

- **Hemoglobin E disease.** This means you have one hemoglobin gene from each parent. This causes a slight defect in the hemoglobin beta, or HBB, gene. It results in small and irregularly-shaped red blood cells.
- **Hemoglobin E/thalassemia.** This means you have one hemoglobin gene from one parent, and a beta-thalassemia gene from the other parent. In this disease, the hemoglobin E causes anemia symptoms.
- **Hemoglobin sickle E disease.** This means you have one hemoglobin gene from one parent and a sickle cell hemoglobin gene from the other parent. This is a milder form of sickle cell anemia.

Who is at risk for hemoglobin E trait?

Hemoglobin E trait is rare. It only occurs if you inherit the hemoglobin E defect from one of your parents. Hemoglobin E trait may occur in any part of the world. But it's most often found in people of Southeast Asian descent such as those from Thailand, Cambodia, Vietnam, or Laos.

What are the symptoms of hemoglobin E trait?

Most people have no symptoms.

Those with hemoglobin E trait plus a second abnormal hemoglobin gene (as described above), may have thalassemia, or anemia-like symptoms. Symptoms are rare but may include:

- Severe tiredness (fatigue)
- Growth failure
- Shortness of breath
- Jaundice, or a yellowing of the skin"

Therefore, it is safe to say that the said disease has no causal connection with the military service as it is congenital. Hence, we find no error in the opinion of the Release Medical Board denying the disability element of pension to the applicant *qua* the disability of Hb E Disease.

CONCLUSION

21. In view of the aforesaid analysis and the parameters referred to above, there being no infirmity in the opinion of the RMB, we hold that the applicant is not entitled to any relief and thus the OA 1315/2022 stands dismissed.

22. There is no order as to costs.

Pronounced in the open Court on this 8th day of February, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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