

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

OA 1331/2022

JWO Nirmal Kanti Biswas (Retd) ... Applicant
Versus ... Respondents
Union of India & Ors. ...

For Applicant : Mr. Bharat Singh, Advocate
For Respondents : Mr. Avdresh Kumar Singh, Advocate

CORAM:

HON'BLE MR JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN. P.M. HARIZ, MEMBER (A)

ORDER

This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant, a retired JWO of the Indian Air Force, who is aggrieved by the rejection of his claim for disability pension by the respondents vide order dated 11.03.2022 and further aggrieved by the reply of the respondents to the legal notice dated 26.05.2022. The applicant has also filed a first appeal dated 10.04.2022, which is yet to be replied by the respondents.

2. The applicant, having been found medically and physically fit, was enrolled in the Indian Air Force on 26.10.1989 and was discharged from service on 31.10.2021 after rendering a total of 32 years and 06 days of service.

The applicant had been found suffering from disability ID (i) "CAD-TVD (Old) PTCA – LAD/LCX/RCA I-20, Z-09.0" and its onset was in August 2011 while the applicant was posted in Bhopal and disability ID (ii) "GOUTY ARTHRITIS (OLD) M-10, Z-09.0" and its onset was in Feb 2001 while the applicant was posted in New Delhi. Furthermore, the applicant had been placed in a low medical category A4G3 (P) since 31.08.2011. At the time of discharge, the RMB held on 10.02.2021 placed the applicant in permanent low medical category, i.e., A4G3 (P) Composite for the disability ID (i) "CAD-TVD (Old) PTCA – LAD/LCX/RCA I-20, Z-09.0" and assessed it @ 30% for life and disability ID (ii) "GOUTY ARTHRITIS (OLD) M-10, Z-09.0" and assessed it @ 20% for life with composite assessment of both the disabilities @ 40% for life but opined the same as being 'neither attributable to nor aggravated by military service' (NANA). The initial claim for disability pension of the applicant was rejected vide letter dated 11.03.2022. It is the applicant's case that the applicant preferred the first appeal on 10.04.2022 which is yet to be replied by the respondents and he then sent a legal notice dated 16.04.2022 which was replied by the respondents vide letter dated 26.05.2022. However, the applicant was informed by the reply dated 11.13.2022 that he was not entitled to

disability pension in terms of Regulation 153 of Pension Regulations for the Indian Air Force 1961, Part-I since the disabilities as recorded in the RMB proceedings were neither attributable to nor aggravated by military service and a similar reply was given to the applicant vide letter dated 26.05.2022 as well.

3. The learned counsel for the applicant submitted that the law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of Dharamvir Singh Vs. Union of India & Others [(2013) 7 SCC 316]. The learned counsel for the applicant has also relied on Union of India & Others Vs. Rajbir Singh [(2015) 12 SCC 264] wherein it was held that -

“15. The legal position as stated in Dharamvir Singh's case (supra) is, in our opinion, in tune with the Pension Regulations, the Entitlement Rules and the Guidelines issued to the Medical Officers. The essence of the rules, as seen earlier, is that a member of the armed forces is presumed to be in sound physical and mental condition at the time of his entry into service if there is no note or record to the contrary made at the time of such entry. More importantly, in the event of his subsequent discharge from service on medical ground, any deterioration in his health is presumed to be due to military service.”

4. Per contra, learned counsel for the respondents took us through the RMB proceedings and submitted that under the provisions of Rule 153 of Pension Regulations for IAF 1961 (Part-1), the primary condition for grant of disability pension

are "Unless otherwise specifically provided, disability pension may be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by Air Force service and is assessed at 20% or over". Since the disability of the applicant was held as NANA by military service, the counsel prayed that the OA be dismissed.

5. Having heard the rival submissions and perused the records, the question which arises for our consideration is - Whether the disability of the applicant vis disability ID (i) "CAD-TVD (Old) PTCA – LAD/LCX/RCA I-20, Z-09.0" and disability ID (ii) "GOUTY ARTHRITIS (OLD) M-10, Z-09.0" is attributable to or aggravated by military service which entitles the applicant for disability pension?

6. In so far as the grant of disability pension is concerned the it is pertinent to refer to Chapter VI of the 'Guide to Medical Officers (Military Pension), 2008 at Para-47, which is provided as under:-

47. Ischaemic Heart Disease (IHD). IHD is a spectrum of clinical disorders which includes asymptomatic IHD, chronic stable angina, unstable angina, acute myocardial infarction and sudden cardiac death (SCD) occurring as a result of the process of atherosclerosis. Plaque fissuring and rupture is followed by deposition of thrombus on the atheromatous plaque and a variable degree of occlusion of the coronary artery. A total occlusion results in myocardial infarction in the territory of the artery occluded. Prolonged stress and strain hastens atherosclerosis by triggering of neurohormonal mechanism and autonomic storms. It is

now well established that autonomic nervous system disturbances precipitated by emotions, stress and strain, through the agency of catecholamines affect the lipid response, blood pressure, increased platelet aggregation, heart rate and produce ECG abnormality and arrhythmias.

The service in field and high altitude areas apart from physical hardship imposes considerable mental stress of solitude and separation from family leaving the individual tense and anxious as quite often separation entails running of separate establishment, financial crisis, disturbance of child education and lack of security for family. Apart from this, compulsory group living restricts his freedom of activity. These factors jointly and severally can become a chronic source of mental stress and strain precipitating an attack of IHD. IHD arising in while serving in Field area/HAA/CI Ops area or during OPS in an indl who was previously in SHAPE-I will be considered as attributable to mil service.

Entitlement in Ischemic heart disease will be decided as follows:-

(a) *Attributability will be conceded where: A myocardial infarction arises during service in close time relationship to a service compulsion involving severe trauma or exceptional mental, emotional or physical strain, provided that the interval between the incident and the development of symptoms is approximately 24 to 48 hours. IHD arising in while serving in Field area/HAA/CI Ops area or during OPS in an indl who was previously in SHAPE-I will be considered as attributable to mil service. Attributability will also be conceded when the underlying disease is either embolus or thrombus arising out of trauma in case of boxers and surgery, infectious diseases. E.g. Infective endocarditis, exposure to HAA, extreme heat.*

(b) *Aggravation will be conceded in cases in which there is evidence of:-*

IHD occurring in a setting of hypertension, diabetes and vasculitis, entitlement can be judged on its own merits and only aggravation will be conceded in these cases. Also aggravation may be conceded in persons having been diagnosed as IHD are required to perform duties in high altitude areas, field areas, counter insurgency areas, ships and submarines due to service compulsions.

There would be cases where neither immediate nor prolonged exceptional stress and strain of service is evident. In such cases the disease may be assumed to be the result of biological factors, heredity and way of life such as indulging in risk factors e.g. smoking. Neither attributability nor aggravation can be conceded in such cases."

7. As per Para 47, Chapter VI of the Guide to Medical Officers (Military Pensions), 2008, it has been provided specifically that the service in field and high-altitude areas apart from physical hardship imposes considerable mental stress of solitude and separation from family leaving the individual tense and anxious as quite often separation entails running of separate establishment, financial crisis, disturbance of child education and lack of security for family. It is also stipulated therein that apart from this, compulsory group living restricts the freedom of activity and that these factors jointly and severally can become a chronic source of mental stress and strain precipitating an attack of IHD and that IHD arising while serving in Field area/HAA/CI Ops area or during OPS in an individual who was previously in SHAPE-I will be considered as attributable to military service.

8. Undoubtedly, the disability of the applicant had its onset on August 2011 in a peace area in relation thereto however it is essential to advert to Para 423 of the Regulations for the Medical Services of the Armed Forces 2010 which has not been obliterated.

9. Para 423(a) 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.

10. Furthermore, the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel 2008, which take effect from 01.01.2008 vide Paras 6, 7, 10, 11 thereof provide 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.

7. Onus of proof.

Ordinarily the claimant will not be called upon to prove the condition of entitlement. However, where the claim is preferred after 15 years of discharge/retirement/ invalidment/release by

which time the service documents of the claimant are destroyed after the prescribed retention period, the onus to prove the entitlement would lie on the claimant.

10. *Attributability:*

(a) *Injuries:*

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

(i) *Injuries sustained when the individual is 'on duty', as defined, shall be treated as attributable to military service, (provided a nexus between injury and military service is established).*

(ii) *In cases of self-inflicted injuries while 'on duty', attributability shall not be conceded unless it is established that service factors were responsible for such action.*

(b) *Disease:*

(i) *For acceptance of a disease as attributable to military service, the following two conditions must be satisfied simultaneously:-*

(a) *that the disease has arisen during the period of military service, and*

(b) *that the disease has been caused by the conditions of employment in military service.*

(ii) *Disease due to infection arising in service other than that transmitted through sexual contact shall merit an entitlement of attributability and where the disease may have been contracted prior to enrolment or during leave, the incubation period of the disease will be taken into consideration on the basis of clinical course as determined by the competent medical authority.*

(iii) *If nothing at all is known about the cause of disease and the presumption of the entitlement in favour of the claimant is not rebutted, attributability should be conceded on the basis of the clinical picture and current scientific medical application.*

(iv) *When the diagnosis and/or treatment of a disease was faulty, unsatisfactory or delayed due to exigencies of service, disability caused due to any adverse effects arising as a complication shall be conceded as attributable.*

11. *Aggravation:*

A disability shall be conceded aggravated by service if its onset is hastened or the subsequent course is worsened by specific conditions of military service, such as posted in places of extreme climatic conditions,

environmental factors related to service conditions e.g. Fields, Operations, High. Altitudes etc.”

(emphasis supplied),—

11. 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, *Union of India & Ors*. Vs. *Rajbir Singh* [(2015) 12 SCC 264] and *Union of India & 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. The Hon'ble Supreme Court in *Dharamvir Singh* (supra) vide Para 33 has categorically made reference to Para 423 of the Regulations for the Medical Services of the Armed Forces 2010 to bring forth that the arising of the disability in a peace area or a field area is by itself irrelevant to assess the aspect of attributability of the disability due to military service. The observations of the Hon'ble Supreme Court in *Dharamvir Singh* (supra) are to the effect: -

“33. As per Rule 423(a) of General Rules for the purpose of determining a question whether the cause of a disability or death resulting from disease is or is not attributable to service, it is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a field service/active service area or under normal peace conditions.”Classification of diseases have been prescribed at Chapter IV of Annexure I; under paragraph 4 post-traumatic epilepsy and other

mental changes resulting from head injuries have been shown as one of the diseases affected by training, marching, prolonged standing etc. Therefore, the presumption would be that the disability of the appellant bore a causal connection with the service conditions."

13. Furthermore, in terms of Para 8 (a) of the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008, it is stipulated to the effect:-

"8(a) Cases in which a disease was not present at the time of the member's retirement/discharge from service but arose within 7 years thereafter, may be recognized as attributable to service if it can be established by the competent medical authority that the disability is a delayed manifestation of a pathological process set in motion by service conditions obtaining prior to discharge."

14. Para 10(b)(iii) of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel 2008 which take effect from 01.01.2008 reads to the effect:-

"10. (b)(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."

15. The disability of 'CAD-TVD (Old)' that the applicant suffers from in the instant case has to be held to be attributable to service and aggravated thereby, as the initial presumption of entitlement in favour of the applicant.

16. Before delving into the issue of second disability it is pertinent to refer to Para 39 of Chapter VI of the 'Guide to Medical Officers (Military Pension), 2008, it is provided as under:-

“39. Gout. Gout is generally a genetic disorder but may be secondary to conditions like leukaemia, polycythemia vera and psoriasis. The disease can be aggravated by exercise, alcohol, starvation, diets rich in nucleic acid like animal protein. In the presence of dietic compulsions and these exciting factors common to armed forces, aggravation due to service can be examined.

17. The degree of disablement of the applicant was assessed at 20% for life. As observed, arthritis is one of the diseases affected by climatic conditions as listed in Annexure III of Entitlement Rules for Casualty Pensionary Awards. In accordance with Para 39 of Guide to Medical Officers (Military Pensions) 2002, (amendment 2008), while Gout is generally a genetic disorder, the disease can be aggravated by exercise, alcohol, starvation and diets rich in nucleic acid like animal protein. It further states that in the presence of dietic compulsions and these exciting factors common to armed forces, aggravation due to service can be examined. It is the contention of the respondent placing reliance on the grounds detailed in the impugned letter rejecting the first appeal of the applicant that in the instant case the applicant was serving in a peace station at the time of the onset of the ID and served there till his release from military. Further, the disability of the applicant viz., Gouty Arthritis was neither considered by the Release Medical Board as neither attributable to nor

aggravated by military service and held as a metabolic disorder. Thus, apart from service and that there is a distinct role of hereditary/familial factors in the cause of the ID of GOUTY ARTHRITIS which is a disease of joints and that the ID has no causal connection with military service. Thus, it is apparent there from that the aforesaid disability i.e. ID (ii) "GOUTY ARTHRITIS (OLD)" of the applicant is NANA by military service.

18. In view of the aforesaid parameters, the applicant is entitled for disability element of pension in respect of disability ID (i) "CAD-TVD (Old) PTCA – LAD/LCX/RCA I-20, Z-09.0" assessed @ 30% for life but is not entitled for disability element of pension for disability ID (ii) "GOUTY ARTHRITIS (OLD) M-10, Z-09.0" assessed @ 20% for life.

19. Accordingly, we allow this application holding that the applicant is entitled to a 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.

20. In view of the above, the OA is partially allowed. The disability ID ID (i) "CAD-TVD (Old) PTCA – LAD/LCX/RCA

I-20, Z-09.0” of the applicant is held as attributable by military service. The applicant is entitled to get a disability element of pension @ 30% for life to be rounded off to 50% from 31.10.2021.

21. The respondents are thus directed to calculate, sanction and issue the necessary corrigendum PPO to the applicant within three months from the date of receipt of a certified copy of this order, failing which the respondents shall be liable to pay interest @ 6% per annum till the date of actual payment.

22. No order as to costs.

23. Pending miscellaneous application(s), if any, stands closed.

Pronounced in open Court on this 17 day of September, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN P.M. HARIZ]
MEMBER (A)

Neha