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

D..

OA 1513/2020
Maj Divya S Kurup (Retd) ..... Applicant
VERSUS
Union of India and Ors. ..... Respondents

For Applicant : Mr. Anil Kumar Srivastava, 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
23.01.2024

Vide our detailed order of even date we have allowed the OA 1513/2020. Learned counsel for the respondents makes an orai 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 the 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. Thus, the prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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OA 1513 / 2020

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Versus

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

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O R D E R

The applicant 'No. NS-22048-N Maj Divya S Kurup (Retd.)' vide the present OA makes the following prayers:-

> ***"(a) To direct the respondents to grant disability element of pension at the rate of 50% from 20% dully broadbanded in a time bound frame.***
>
> ***(b) To direct the Respondents to pay interest @ 9% on the arrears till the date of payment.***
>
> ***(c) That the Applicant be awarded cost of the litigation @ Rs 50,000/-.***
>
> ***(d)To pass any such other and further order or orders as this Hon'ble Tribunal may deem fit and proper in the interest of justice and in the facts and circumstances of the case."***

2. During course of submissions made on 11.09.2023 it was submitted on behalf of the applicant that the prayer made through the present OA is confined to seeking the grant of the disability element of disability pension alone.

3. The applicant was enrolled in Military Nursing Service on 14.09.2009 and released from service on 14.09.2019 after completion of contractual period. At the time of release from service, the Applicant was placed in Low Medical Category S1H1A1P2(E1) as per AFMSF-16 dated 05.09.2019 for the disabilities given as under:-

"

Ser No	*Disability*	*Attributable to service*	*Aggravated by service*	*Disability element (%)*	*Composite assessment of disability*	*Net assessment for disability pension*
(a)	*DISC DEGENERATIVE DISEASE C5-C6, C6-C7*	*No*	*Yes*	*20(%)*	*20(%)*	*20(%) for life*

"

4. The competent authority, after examining the case in the light of relevant rules and administrative/medical provisions decided that the disability: ID "DISC DEGENERATIVE DISEASE C5-C6, C6-C7" from which the applicant was found suffering at the time of Release Medical Board had been held as aggravated by Military Service but did not fulfil the eligibility conditions as laid down in the existing rules/provision for grant of disability element. Therefore, her claim for the same was rejected vide AG/PS-4 letter No N22048N/MNS/MPRS(0)/777/2019/AG/PS-4(Imp-I) dated 05.02.2020 with an advice that she may prefer an appeal to the Appellate Committee on First

Appeals (ACFA) within 06 months from the date of receipt of letter. The same has been intimated to the applicant vide DGMS(Army) / MPRS(O) letter No-NS-22018N/MNS-3/MPRS(O) dated 14.02.2020.

5. Subsequently, the applicant preferred a First Appeal on 28.02.2020 which has also been rejected vide AG/PS-4 letter No-NS- 22048N / MPRS(O) / N / 37 / 2020 / 1st Appeal/AG/PS-4(Imp-I) dated 15.07.2020 with an advice that she may prefer a second appeal to the Second Appellate Committee on Pension within 06 months from the date of receipt of letter.

6. No second appeal was filed by the applicant and rather the present OA was instituted on 24.08.2020. In view of its pendency since 24.08.2020, in the interest of justice, in terms of Section 21 (1) of the AFT Act 2007, we consider it appropriate to take up the OA for consideration.

CONTENTIONS OF THE PARTIES

7. The applicant submits that she was suffering from severe cervical and lumbar pain, especially whilst moving / lifting heavy medical equipments and handling difficult patients with physical and psychological issues, and that whilst posted at INHS Kalyani from July 2016, she complained of a problem several times which were managed conservatively with analgesics and physiotherapy, and that thereafter on 23.08.2017, when the situation aggravated, an MRI was done which indicated to the effect:-

"Findings:

- ***The LS spine is normal***

- *Both SI joints are normal.*
- *The cord ends at lower border of L1 level and is normal in bulk & signal characteristics. The thecal sac, cauda equina nerve roots and IV foramina appear normal*
- *The paravertebral soft tissues appear normal.*
- *Cervical spine screening reveals posterior disc osteophyte complex at the C5-6 level indenting the anterior thecal sac and the cord. There is no cord edema. There is reduced cervical lordosis."*

and thereafter, an MRI was done in July 2018 which indicated that there was a **diffuse disc bulge and disc desiccation at C5-C6, C6-C7, L4-L5 levels** and that and she was thus diagnosed with **Disc Degenerative Disease C5-C6, C6-C7,** and her Medical category was downgraded to **S1H1A1P3 (T-24) E1** wef 28.12.2018 at MH Golkunda.

8. *Inter alia* the applicant submits that during her re-categorization medical board an MRI was taken again and she was examined by a neurosurgeon who put her in permanent low medical category S1H1A1P2 (P) E1 for **disc degenerative disease** C5-C6, C6-C7 on 12.06.2019 at the Southern Command Hospital, Pune and the Medical Board proceedings assessed her disability at 20% for life.

9. In as much as admittedly the disability of the applicant was assessed with the percentage of disablement of 20% for life, one of the criteria required in terms of Regulation 37 of the Pension Regulations for the Army 2008 Part-I for grant of the disability element of pension stands satisfied. As regards, the

contention of the applicant that the disability of "DISC DEGENERATVIE DISEASE C5-C6, C6-C7" is attributable to an aggravated by military service, though the Release Medical Board dated 08.07.2019 opined the disability of the applicant to be aggravated by service due to physical stress and strain of military service whilst referring to Chapter VI of the GMO (Military Pensions) 2008 as opined in Part VII of the RMB which is as under:-

"

Disability	***Attributable to service (Y/N)***	***Aggravated by service (Y/N)***	***Detailed Justification***
DISC DEGENERATIVE DISEASE C5-C6, C6-C7	*NO*	*YES*	*DUE TO PHYSICAL STRESS AND STRAIN OF MILITARY SERVICE. HENCE REFER CHAPTER-VI, PARA-51 OF GMO 2008.*

",

the Competent Authority vide letter dated 05.07.2020 no. NS-22048N/MNS/MPRS(O)/777/2019/AG/PS-4(Imp-I) stated that though the RMB had opined the disability as being aggravated by military service, it did not fulfill the eligibility criteria as laid down in the existing rules / provisions for grant of the disability element. The first appeal dated 28.02.2020 of the applicant was declined vide letter dated 15.07.2020 no. NS-22048N/ MPRS(O)/NR/37/2020/1st Appeal/AG/PS-4(Imp-II) for the following reasons:-

"

Ser no.	***Disabilities***	***Reason(s)***
(i)	*DISC DEGENERATIVE DISEASE C5-C6, C6-C7*	*As per RMB, Onset of ID was in 2016. It is observed from the case file that the offr was fit in SHAPE-I during the period of 2015-2016 and placed in LMC wef 28 Dec 2018. Therefore, the onset of ID would be*

		conceded as 28 Dec 2018 and the offr retired wef 13 Sep 2019. Hence, the conditions laid in Rule 11 of ER-2008 for conceding aggravation does not fulfilled and the offr served in peace area in his entire service till retirement. The appeal merits rejection.

"

stating to the effect that the onset of the disability would be considered as on 28.12.2018 and as the applicant had retired with effect from 13.09.2019, the conditions laid down in Rule 11 of the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008, for conceding aggravation were not fulfilled and that the applicant had served in a peace area in his entire service till retirement.

ANALYSIS

10. It is essential to advert to Rule 11 of the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel 2008 which is as under:-

> *"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 exteme climatic conditions, environmental factors related to service conditions e.g, Fields, Operations, High Altitudes etc."*

The rejection of the first appeal dated 15.07.2020 by the Appellate Committee on First Appeals was only on the ground that the applicant in her entire service had only served in a peace area and thus the parameters of aggravation in terms of Rule 11 of the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel 2008 were not fulfilled.

11. It is essential to observe that 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."***
>
> ***(emphasis supplied),___***

has not been obliterated.

12. It is essential to advert to para-33 of the verdict of 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 which is 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 casual connection with the service conditions."*
>
> *(emphasis supplied)*

13. In terms of Regulation 423(a) of the Regulations for the Medical Services of the Armed Forces 2010, the aspect of the disability having its onset in a field area / peace area / CI OPS area / HAA is rendered immaterial to ascertain the aspect of attributability of a disability having arisen due to military service or otherwise and all that is required to be established is whether the disability or death bore a causal connection with the service conditions.

14. Though the Release Medical Board dated 08.07.2019 opined that the disability was aggravated by military service due to physical stress and strain of military service, in terms of Chapter VI of Para 51 of the GMO (Military Pensions) 2008 it has opined that the said disability was not attributable to military service.

15. The applicant as per his posting profile reflected in Part II of the personal statement of the RMB was posted as under:-

"

S. no.	From	To	Place / Ship	Loc	P/F
(i)	14 Sep 2009	12 Jul 2012	CH (SC) Pune	PUNE	Peace
(ii)	13 Jul 2012	03 Aug 2015	MH Danapur	Danapur	Peace
(iii)	04 Aug 2015	10 Aug 2018	INHS Kalyani	Visakhapatnam	Peace
(iv)	11 Aug 2018	13 Sep 2019	MH Golconda	Hyderabad	Peace

"

As per Para 2 (a) in the personal statement and the response thereto in the RMB, it is indicated that the applicant suffered from no disability before joining the military service.

16. Para 51 of Chapter VI of the GMO (Military Pensions) 2008 reads as under:-

> *"51. **Low backache.** Low backache is a clinical entity which is characterised by pain in the lower back which may be associated with sciatica and neurological deficit. The causes of low backache are:*
> *(a) Musculofascial strain*
> *(b) Lumbar spondylosis*
> *(c) Facet joint arthropathy*
> *(d) Prolapsed inter vertebral disc*
> *(e) Sacroilitis*
> *(f) Ankylosing Spondylitis*
> *(g) Spondylolisthesis*
> *(h) Trauma*
>
> *Post traumatic low backache will be considered attributable. Aggravation due to stress & strain of service should be conceded in other cases."*

17. As observed hereinabove, the Appellate Committee on First Appeals opined that the onset of the disability was in 28.12.2018 which as per the posting profile of the applicant was after induction of the applicant into military service on 14.09.2009 which as per the posting profile of the applicant was in his fourth posting at MH Golconda, Hyderabad, where the applicant was posted from 11.08.2018 to 13.09.2019 i.e. after period of more than nine years of military

service and thus in terms of Para 51 of the GMO (Military Pensions) 2008, aggravation due to stress and strain of service is required to be conceded.

18. Significantly, the RMB placed on record and the rejection of the disability claim of the applicant vide the letter dated 05.02.2010 and the rejection of the first appeal of the applicant vide the impugned letter dated 15.07.2020 do not bring forth any contributory factors from the side of the applicant to indicate why the disability of this degenerative disease was due to any action of the applicant, and was for any other reason other than the stress and strain of military service.

19. The Hon'ble Supreme Court in ***Dharamvir Singh*** vs ***UOI & Ors*** (supra) vide observations in Para 28 thereof has laid down the guiding canons therein 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 similar effect are the observations of the Hon'ble Supreme Court in para 15 of its verdict in ***UOI & Ors. vs Rajbir Singh*** in Civil Appeal no. 2904/2011 dated 13.02.2015 (2015) 12 SCC 264 to the effect:-

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. This necessarily implies that no sooner a member of the force is discharged on medical ground his entitlement to claim disability pension will arise unless of course the employer is in a position to rebut the presumption that the disability which he suffered was neither attributable to nor aggravated by military service. From Rule 14(b) of the Entitlement Rules

it is further clear that if the medical opinion were to hold that the disease suffered by the member of the armed forces could not have been detected prior to acceptance for service, the Medical Board must state the reasons for saying so. Last but not the least is the fact that the provision for payment of disability pension is a beneficial provision which ought to be interpreted liberally so as to benefit those who have been sent home with a disability at times even before they completed their tenure in the armed forces. ***There may indeed be cases, where the disease was wholly unrelated to military service, but, in order that denial of disability pension can be justified on that ground, it must be affirmatively proved that the disease had nothing to do with such service. The burden to establish such a disconnect would lie heavily upon the employer for otherwise the rules raise a presumption that the deterioration in the health of the member of the service is on account of military service or aggravated by it. A soldier cannot be asked to prove that the disease was contracted by him on account of military service or was aggravated by the same. The very fact that he was upon proper physical and other tests found fit to serve in the army should rise as indeed the rules do provide for a presumption that he was disease-free at the time of his entry into service. That presumption continues till it is proved by the employer that the disease was neither attributable to nor aggravated by military service. For the employer to say so, the least that is required is a statement of reasons supporting that view. That we feel is the true essence of the rules which ought to be kept in view all the time while dealing with cases of disability pension."***

(emphasis supplied)

Likewise the verdict of the Hon'ble Supreme Court in ***Sukhvinder Singh*** vs ***UOI & Ors***, dated 25.06.2014 reported in 2014 STPL (Web) 468 SC vide para 9 thereof lays down to the effect:-

"9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence.

Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Thirdly, there appears to be no provisions authorising the discharge or invaliding out of service where the disability is below twenty per cent and seems to us to be logically so. Fourthly, wherever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension."

Significantly, the observations in Paragraphs 22, 23, 24 & 25 of the Hon'ble Supreme Court in ***UOI & Ors*** versus ***Manjeet Singh*** dated 12.05.2015 Civil Appeal no. 4357-4358 of 2015 are to the effect:-

"22. Be that as it may, adverting inter alia to Rule 14(b) of the Rules, we are of the unhesitant opinion that reasons, that the diseases could not be detected on medical examination prior to acceptance in service, ought to have been obligatorily recorded by the Medical Board sans whereof, the respondent would be entitled to the benefit of the statutory inference that the same had been contracted during service or have been aggravated thereby. There is no reason forthcoming in the proceedings of the Medical Board, as to why his disabilities eventually adjudged to be constitutional or genetic in nature had escaped the notice of the authorities concerned at the time of his acceptance for Army service. On a comprehensive consideration of the Regulation, Rules and the General Principles as applicable, the service profile of the respondent and the proceedings of the Medical Board, we are constrained to hold that he had been wrongly denied the benefit of disability pension. His tenure albeit short, during which he had to be frequently hospitalized does not irrefutably rule out the possibility, in absence of any reason recorded by the Medical Board that the disability even assumed to be constitutional or genetic, had not been induced or aggravated by the arduous military conditions. The requirement of recording reasons is not contingent on the duration of the Army service of the member thereof and is instead of peremptory nature, failing which the decision to board him out would be vitiated by an inexcusable infraction of the relevant statutory provisions. Having regard to the letter and spirit of the Regulation, Rules and

the General Principles, the prevailing presumption in favour of a member of the Army service boarded out on account of disability and the onus cast on the authorities to displace the same, we are of the unhesitant opinion that the denial of disability pension to the respondent in the facts and circumstances of the case, have been repugnant to the relevant statutory provisions and thus cannot be sustained in law. The determination made by the High Court of Jammu and Kashmir at Jammu is thus upheld on its own merit.

23. The authorities cited at the Bar though underline the primacy of the opinion of the Medical Board on the issue, however, do not relieve it of its statutory obligation to record reasons as required. Necessarily, the decisions turn on their own facts. With the provisions involved being common in view of the uniformity in the exposition thereof, a dilation of the adjudications is considered inessential.

24. Though noticeably, the decision rendered in LPA(SW) 212/2006; Union of India and Others vs. Ravinder Kumar, as referred to in the impugned judgment, was reversed by this Court in Civil Appeal No.1837/2009, we are of the respectful view that the same cannot be construed to be a ruling relating to the essentiality of recording of reasons by the Medical Board as mandated by the Regulations, Rules and the Guiding Principles. This decision thus is of no determinative relevance vis-a-vis the issues involved in the present appeal.

25. The last in the line of the rulings qua the dissensus has been pronounced in a batch of Civil Appeals led by Civil Appeal No. 2904 of 2011; Union of India & Others vs. Rajbir Singh in which this Court on an exhaustive and insightful exposition of the aforementioned statutory provisions had observed with reference as well to the enunciations in Dharamvir Singh vs. Union of India 2013(7) SCC 316, that the provision for payment of disability pension is a beneficial one and ought to be interpreted liberally so as to benefit those who have been boarded out from service, even if they have not completed their tenure. It was observed that there may indeed be cases where the disease is wholly unrelated to Army service but to deny disability pension, it must affirmatively be proved that the same had nothing to do with such service. It was underlined that the burden to establish disability would lie heavily upon the employer, for otherwise the Rules raise a presumption that the deterioration in the health of the member of the service was on account of Army service or had been aggravated

by it. True to the import of the provisions, it was held that a soldier cannot be asked to prove that the disease was contracted by him on account of Army service or had been aggravated by the same and the presumption continues in his favour till it is proved by the employer that the disease is neither attributable to nor aggravated by Army service. That to discharge this burden, a statement of reasons supporting the view of the employer is the essence of the rules which would continue to be the guiding canon in dealing with cases of disability pension was emphatically stated. As we respectfully, subscribe to the views proclaimed on the issues involved in Dharamvir Singh (supra) and Rajbir Singh(supra) as alluded hereinabove, for the sake of brevity, we refrain from referring to the details. Suffice it to state that these decisions do authoritatively address the issues seeking adjudication in the present appeals and endorse the view taken by us."

20. 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*** (supra), 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***.

21. 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 faraily 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) <u>Injuries:</u>

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) <u>Disease:</u>

(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 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),___

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.

22. Though undoubtedly, para 423 (a) of the Regulations for the Medical Services of the Armed Forces 2010 relates to the aspect of the attributability of the disability, it cannot be overlooked that in the facts and circumstances of the instant case by the disability of the applicant had its onset on 28.12.2018 according to the respondents as per the impugned letter, the said disability arose after more than nine years on the commissioning of the applicant into military

service and despite it having had its onset thus, in a peace area, and despite the applicant having been deployed always in a peace area, the cumulative stress and strain on the applicant during his service tenure cannot be overlooked, and that the rigours of military life are equally existent in peace stations, has been held by this Tribunal in a catena of orders.

23. In the facts and circumstances of the instant case, it is essential also to observe that as the Release Medical Board vide its opinion had categorically opined the disability to be aggravated by military service, in terms of Para 51 of the GMO (Military Pensions) 2008, it was essential for the respondents to reconsider the said opinion only through a higher medical board and not through an administrative decision as has been done in the instant case.

24. As laid down by the Hon'ble Supreme Court in ***Ex. Sapper Mohinder Singh Vs. Union of India*** in Civil Appeal No. 164 of 1993, decided on 14.01.1993, the opinion of the medical authorities is required to be given due weight and credence and cannot be brushed aside by an administrative authority without a further medical examination by a higher Medical Board.

25. The applicant is indicated to have been enrolled in the MNS (SSC) as a nursing officer and submits that she had been performing her duties in intensive care units, labor rooms, acute wards, where she worked in challenging work conditions with excessive physical stress and strain, inclusive of duties on day and night shifts and emergency drills which have taken a toll on her health.

CONCLUSION

26. In the circumstances, the **OA 1513 / 2020** is allowed and the applicant is held entitled to the grant of the disability element of pension qua the disability of the applicant i.e. **DISC DEGENERATIVE DISEASE C5-C6, C6-C7** assessed at 20% for life which is directed to be broad banded to 50% for life in terms of the verdict of the Hon'ble Supreme Court in ***Union of India*** vs ***Ram Avtar*** decided on 10.12.2014 in Civil Appeal no. 418 of 2012 with effect from the date of his discharge and the respondents are directed to issue the corrigendum PPO with directions to the respondents to pay the arrears within a period of three months from the date of receipt of a copy of this order, *failing which*, the respondents would be liable to pay interest @6% p.a. on the arrears due from the date of this order.

27. No order as to costs.

Pronounced in the Open Court on the 23 day of January, 2024.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/AP/