

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

G.

OA 1554/2020 with MA 1799/2020

Ex Sgt Bijendra Kumar Malik

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Mr. Durgesh Kumar Sharma, Advocate

For Respondents : Mr. K K Tyagi, Advocate

CORAM

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

HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER
01.04.2024

Vide our detailed order of even date we have allowed the OA 1554/2020. Learned counsel for the respondents makes an oral prayer for grant of leave to appeal in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007 to assail the order before the Hon'ble Supreme Court. After hearing learned counsel for the respondents and on perusal of order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order to grant leave to appeal. Therefore, the prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(LT GEN C.P. MOHANTY)
MEMBER (A)

KT/TS

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

OA 1554/2020 with MA 1799/2020

Ex Sgt Bijendra Kumar Malik

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Durgesh Kumar Sharma, Advocate
For Respondents : Mr. K K Tyagi, Advocate

CORAM :

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER

MA 1799/2020

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of **3593** days in filing the present OA. In view of the verdicts 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 in the application, the MA 1799/2020 is allowed despite

opposition on behalf of the respondents and the delay of **3593** days in filing the OA 1554/2020 is thus condoned.

OA 1554/2020

The applicant vide the present OA seeks the following prayers:-

“(a) Quash and set aside the impugned letter dated 24 Aug 2020.

(b) Direct respondents to grant disability pension @50% after rounding off from 30% for life as recommended by RMB to the applicant with effect from 01 December 2010 i.e. the date of discharge from service with interest @ 12% p.a. till final payment is made.

(c) Direct the respondents to pay Rs. 50,000/- towards mental harassment and agony to applicant by respondent and also direct the respondent to Pay Rs. 50,000/- for litigation cost.

(d) Any other relief which the Hon’ble Tribunal may deem fit and proper in the fact and circumstances of the case.”

2. The applicant Ex Sgt Bijendra Kumar Malik No. 760308 was enrolled in the Indian Air Force on 15.11.1990 and was discharged therefrom on 30.11.2010 under the clause of “on fulfilling the conditions of enrollment” after rendering total 20 years and 16 days of regular service. The applicant was observed to be in LMC with effect from September 2005 for the disability of **Essential Hypertension** with its onset at Tezpur and he was last reviewed on 28.01.2010 and was recommended to be placed in LMC A4G3(P). The RMB dated 28.01.2010 found the applicant fit to be released in LMC A4G3(P) for the said disability of Essential Hypertension but opined the said disability

to be neither attributable to nor aggravated by military service though assessed the same to be with a percentage of disablement of 30% for life.

3. On adjudication, the AOC AFRO upheld the recommendations of the RMB and rejected the disability pension claim of the applicant vide letter No. RO/3305/3A Med Cat (D) dated 05.05.2010 and the same was communicated to the applicant vide letter no. RO/2703/760308/11/10/P&W (DP/RMB) dated 13.05.2010 with an option to prefer an appeal to the Appellate Committee within six months from the date of receipt of their letter. No such First Appeal was filed by the applicant but a legal notice dated 08.08.2020 was filed by the applicant which was responded to by the respondents vide letter no. HQ/99798/1/760308/DAV/DP/CC dated 24.08.2020 which has been impugned through the present OA. Vide letter dated 24.08.2020, the respondents placed reliance on Rule 153 of the Pension Regulations for the IAF, 1961 submitting to the effect that the primary conditions for the grant of disability pension are *"Unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided/discharged from service on account of a disability which is attributable to or aggravated by AF service and is assessed at 20% or over."* submitting to the effect that the disability pension is granted to those who fulfill the following two criteria simultaneously :-

(i) Disability must be either attributable to or aggravated by service.

(ii) Degree of disablement should be assessed at 20% or more.

and submitted further to the effect that the RMB had already opined that the disability of the applicant was neither attributable to nor aggravated by military service and thus the applicant did not fulfill one of the requisite requirements of Rule 153 of the Pension Regulations for the IAF 1961 for the grant of disability pension in terms of section 21(1) of the AFT Act, 2007.

4. In view of the pendency of the present OA since 12.10.2020, in the interest of justice, we consider it appropriate to take up the OA for consideration.

5. The applicant places reliance on his posting profile as reflected in Part I of the RMB dated 28.01.2010 which is as under :-

PART I									
POSTING PROFILE									
Sl No	From	To	Place	P/F/HA	Sl No.	From	To	Place	P/F/HA
01	15.11.90	28.06.91	ETI Bangalore	P	07	02.12.97	30.09.02	2 Wing, Pune	P
02	28.06.91	28.11.92	E & ITI Bangalore	P	08	30.09.02	15.03.05	20 Sqn, Pune	P
03	28.11.92	05.06.93	Barackpore	P	09	15.03.05	12.09.07	11 Wg (T/Flt), Tezpur	P
04	05.06.93	13.07.95	101SQN, Ambala	P	10	12.09.07	22.09.08	11 Wg, Tezpur	P
05	13.07.95	31.03.97	24 Sqn, Ambala	P	11	22.09.08	15.01.09	15 Wg Bareilly	P
06	31.03.97	02.12.97	24 Sqn, Pune	P	12	15.01.09	Till Now	24 Sqn, Bareilly	P

to submit to the effect that the disability of Essential Hypertension which had its onset on 16.09.2005 at Tezpur was in the 09th posting of the applicant after a period of 15 years of service in the Indian Air Force as an instrument fitter. The applicant thus submits that the cryptic reasoning given by the Medical Board in Part V in the RMB stating as under :-

PART V
OPINION OF THE MEDICAL BOARD

1. Causal relationship of the disability with service conditions or otherwise.				
Disability	Attributable to service (Y/N)	Aggravated by service(Y/N)	Not connected with service (Y/N)	Reason/cause/specific condition and period in service.
Essential Hypertension	No	No	Yes	ID is NANA

does not specify any reasons or state as to why the disability of Essential Hypertension from which the applicant suffered from was neither attributable to nor aggravated by military service. Furthermore, the applicant has placed reliance on paragraphs 2 and 3 of the RMB which reads to the effect :-

2. Did the disability exist before entering service ? (Y/N/Could be) NO
3. In case the disability existed as the time of entry, is it possible that it could not be detected during the routine medical examination carried out at the time of entry. N/A

to submit to the effect that it is borne out thereby expressly that the applicant suffered from no disability when he was inducted in the Indian Air Force and that there were no reasons as to why the said disability

could not be detected at the time of routine medical examination conducted at the time of his entry. Inter alia the applicant submits that the physical examination of the applicant conducted as per the medical case sheet dated 15.01.2010 reflects as under :-

On Examination- Pulse- 76/min, BP-136/90 mm of Hg. Ht-161 cms,

Wt- 63.0 kgs. IBW-58.0 Kg

Waist-84 cms Hip-94 cms WHR-0.89 BMI-22.48 Kg/M2

No pallor, icterus, clubbing, cyanosis or lymphadenopathy.

which thus indicates that there were no contributory factors from the side of the applicant for causation of any lifestyle disease as sought to be contended on behalf of the respondents.

6. Reliance was placed on behalf of the applicant on the observations of the Hon'ble Supreme Court in *Dharamvir Singh Vs. Union Of India & Ors* (Civil Appeal No. 4949/2013) in Para 28 thereof :-

“28. A conjoint reading of various provisions, reproduced above, makes it clear that:

(i) Disability pension to be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable or aggravated by military service to be determined under “Entitlement

Rules for Casualty Pensionary Awards, 1982" of Appendix-II (Regulation 173).

(ii) A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service. [Rule 5 r/w Rule 14(b)].

(iii) Onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally. (Rule 9).

(iv) If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service. [Rule 14(c)].

(v) If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service. [14(b)].

(vi) If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons. [14(b)]; and

(vii) It is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II of the "Guide to Medical (Military Pension), 2002 – "Entitlement : General Principles", including paragraph 7,8 and 9 as referred to above.

to submit to the effect that in as much as the applicant suffered from no disability at the time of induction into the Indian Air Force in the absence of any specific reasons given by the RMB as to why the disability could not be detected at the time of induction into the Indian Air Force, the disability which had its onset after 15 years of service into Indian Air Force has to be held to be attributable to and aggravated by military service.

7. Inter alia the applicant places reliance on Para 423 of the Regulations for Medical services for the Armed Forces, 2010 to submit to the effect that the same virtually obliterates the aspect of the attributability of the disability to the place where the disability had its onset whether in a peace area, CI/ Ops area or HAA though what has essentially to be ascertained is the existence of a causal connection between the onset of the disability and military service.

8. Inter alia, reliance was placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in *UOI & Ors. vs. Rajbir Singh* to submit to the effect that in the said case *Hony Flt Lt P.S. Rohilla C.A*

No. 5840/2011 who suffered from Primary Hypertension and in the case of *Ex Sub Ratan Singh* C.A. No. 5819/2012 they were both granted the benefit of the grant of the disability element of pension with the disability having been held to be attributable to and aggravated by military service.

ANALYSIS

9. On behalf of the respondents it was the avowed contention that in as much as the disability of the applicant had its onset in a peace area, there was no close time association with any stress and strain with military service and that the disability that the applicant suffers from has no causal connection with military service.

10. On a consideration of the submissions made on behalf of either side, it is essential to observe that the factum that as laid down by the Hon'ble Supreme Court in *Dharamvir Singh (Supra)* that, a personnel of the Armed Forces has to be presumed to have been inducted into military service in a fit condition, if there is no note or record at the time of entrance in relation to any disability, - in the event of his subsequently being discharged from service on medical grounds, the disability has to be presumed to be due to service unless the contrary is established, - is no more *res integra*.

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

"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),__

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. In relation to the same it is essential to advert to Regulation 423 of the Regulations for the Medical Services of the Armed Forces 2010 which relates to 'Attributability to Service' and 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. Reliance was also placed on behalf of the applicant on Para 33 of the verdict of the Hon'ble Supreme Court in the case of ***Dharamvir Singh Vs. Union Of India & Ors*** (Civil Appeal No. 4949/2013) wherein it has been observed 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.”

14. It is essential to observe also that the existence of stress and strain and rigours of military service even in peace stations has been accepted in a catena of orders of this Tribunal.

15. It is essential to advert to Para 43 of the Chapter VI of the 'Guide to Medical Officers (Practice Military Pension, 2008) which is 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."

which itself thus stipulates brings forth that stress and strain is aggravated due to military service.

16. In the circumstances of the instant case, as there is nothing to indicate any contributory factors from the side of the applicant in view of the physical examination conducted of the applicant coupled with the factum that the disability had its onset in the 15th year of the service of the applicant in the Indian Air Force with it being settled vide a catena of orders of this Tribunal that the rigours of stress and strain of military service exist even in peace areas, the applicant in the instant case, in the absence of the any note or record on the records of the respondents to explain the reasons for the onset of the disability or to bring forth that the applicant suffered from any disability before induction into the Indian Air Force,- the disability that the applicant suffered from has to be held to be attributable to and aggravated by military service.

CONCLUSION

17. Thus, in the instant case, the applicant is held entitled to the grant of the disability element of pension in relation to the disability of Essential Hypertension assessed with a percentage of disablement at 30% which in terms of the Hon'ble Supreme Court in *Union of India & Ors. vs. Ram Avtar* in Civil Appeal No. 418/2012 decided on 10.12.2014 is broad banded to 50% for life. However, in as much as the OA had been instituted on 12.10.2020, with the discharge of the applicant from Military service on 30.11.2010, the arrears of the grant of the disability element of pension shall confine to commence to run from a period of three years prior to institution of the present OA.

18. 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 and the amount of arrears shall be paid by the respondents, failing which the applicant will be entitled for interest @6% p.a. from the date of receipt of copy of the order by the respondents.

Pronounced in the open Court on the 18th day of April, 2024.

[LT GEN C.P. MOHANTY]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/yogita/