

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

B..

OA 1580/2019

Ex Sgt Md Amanullah

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Mr. VS Kadian, Advocate

For Respondents : Mr. Shyam Narayan, Advocate

CORAM

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

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

ORDER
14.03.2024

Vide our detailed order of even date; we have allowed the OA 1580/2019. Learned counsel for the respondents makes an oral prayer for grant of leave to appeal in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007 to assail the order before the Hon'ble Supreme Court. After hearing learned counsel for the respondents and on perusal of our order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order to grant leave to appeal. Therefore, prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

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

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ORDER

1. The applicant vide the present O.A 1580/2019 has made the following prayers:-

“(a) Quash and set aside Impugned letter No AirHQ/99798/5/105/19/780625/DP/AV-III dated 04.07.2019. And/or

(b) Direct the respondent to treat the disability of the applicant as attributable/aggravated by military service and grant disability element of pension to the applicant with benefits of rounding off/broad banding of the disability element. And/or

(c) To direct the respondents to pay the due arrears of the disability element of pension with interest @12 p.a. from the date of retirement with all the consequential benefits.

(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost of the application in favour of the applicant and against the respondents.”

2. During the course of submissions made on behalf of the applicant on 19.01.2024, it was submitted that the prayer made through the present OA is confined to seeking the grant of the disability element of pension in relation to the disability of Primary Hypertension alone and the prayer for the grant of the disability element of pension for Dyslipidemia is not pressed.

3. The applicant 780625 Ex Sgt Amanullah was enrolled in the Indian Air Force on 08.06.1998 and discharged from service on 30.06.2018 under the clause "On fulfilling the condition of Enrolment" after rendering total 20 years and 23 days of regular service. His Release Medical Board not solely on medical ground, was held at 17 Wing, AF vide AFMSF-16 dated 21.07.2017 and found him fit to be released from service in low medical category A4G2(P). The RMB assessed the disability of the applicant of Primary Hypertension with a percentage of disablement @30% for life with Nil assessment qualifying for disability pension. The AOC AFRO also upheld the recommendations of RMB and rejected the disability pension claim vide letter No. RO/3305/3/Med Cat(D) dated 14 June 2018. The outcome of the same was also communicated to the applicant vide letter No. Air HQ/ 99798/ 1/708625/ 06/18/DAV /DP/ RMB dated 14.06.2018, with an advice that he may prefer an appeal to the

Appellate Committee within six months from the date of receipt of the letter. The percentage of disablement stated in the said RMB is as under:-

“

6. What is present degree of disease/disablement as compared with a healthy person of the same age and sex?(Percentage will be expressed as Nil or as follows) 5%,10%,15% and thereafter in multiples of ten from 20% to 100%				
Disease/Disability (As numbered in Para 1 Part VI)	Percentage of disablement	Composite assessment for all disabilities (Max 100%) with duration	Disability Percentage Qualifying for Disability Pension with duration	Net Assessment Qualifying for disability Pension (Max 100%) with duration
1.PRIMARY HYPERTENSION(OLD) (ICD I 10.0, Z 09. 0)	30% for lifelong	30% (Thirty percent for lifelong)	Nil for lifelong	Nil for lifelong
2. DYSLIPIDEMIA(OLD) (ICD E 75, Z 09.0)	1-5% for lifelong		Nil for lifelong	Nil for lifelong

”

4. Furthermore, the RMB opined the said disability of the applicant as being neither attributable to nor aggravated(NANA) by military service 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 & period in Service
1.PRIMARY HYPERTENSION(OLD) (ICD I 10.0, Z 09. 0)	NO	NO	YES	The onset of disability was in Nov 05 while posted to 7BRD Tughlakabad, a peace station. There was no close time association

				with stress/strain of field/HAA/CI Ops of service. Hence, the disability is neither attributable nor aggravated by service. As per Para 43 of Chapter VI of GMO-2008 refers.
2. DYSLIPIDEMIA(OLD) (ICD E 75, Z 09.0)	NO	NO	YES	The onset of disability was in Jul 12, while posted to AFLC Barrackpore, a peace station and the disability is a life style related metabolic disorder and not connected with Military service. Hence, the disability is neither attributable nor aggravated by service.
<u>Note:</u> A Disability "Not Connected with Service" would be neither Attributable nor aggravated Service. This is accordance with instructions contained in "Guide to medical officer(Mil Pension)- 2008".				

5. The onset of the disability is reflected in Part-IV in the Statement of Case of the said RMB as under:-

PART-IV
STATEMENT OF CASE

1. Chronological list of the disease/disabilities:

Disabilities	Date of Origin	Rank of the Indl	Place and Unit where serving at the time
1.PRIMARY HYPERTENSION(OLD) (ICD I 10.0, Z 09. 0)	NOV 05	LAC	7BRD/Tughlakabad
2. DYSLIPIDEMIA(OLD) (ICD E 75, Z 09.0)	Jul 12	SGT	AFLC/Barrackpore

6. The applicant's posting profile in Part-1 of his Personal Statement in the RMB dated 14.09.2017 is as under:-

**PART I
PERSONAL STATEMENT**

1. Give details of the service (P=Peace OR F= Field/Operational/Sea Service)

SL. NO	FROM	TO	PLACE/SHIP	P/F (HAA/Ops/Sea service/others)	SL. NO	FROM	TO	PLACE/SHIP	P/F (HAA/Ops/Sea service/others)
1	20-02-99	29-11-01	2208 SQN/ Naliya	MFA	2	30-11-01	16-08-02	AFSTN Tambaram	P
3	17-08-02	13-11-02	RCPD/New Delhi	P	4	14-11-03	19-08-07	7BRD/ Tughlakabad	P
5	20-08-07	04-08-11	14BRD/ Guwahati	P	6	05-09-11	14-09-14	AFLC(BKP)/ Barrackpore	P
7	15-09-14	25-09-16	7WG/Ambala	P	8	26-09-16	Till Date	7C &MU/ Darbhanga	P

7. The First appeal dated 14.07.2018 filed by the applicant for the grant of disability pension was rejected by the Appellate Committee on First Appeal (ACFA) vide letter no. Air HQ/99798/5/105/2019/708625/DP/AV-III dated 04.07.2019. The reasons stated were that the disability was considered neither attributable to nor aggravated by military service, and thus the applicant is not entitled to the disability element of pension in terms of Regulation 153 for IAF, 1961(Part-1), as and that the RMB proceedings had found the disability of the applicant to be neither attributable nor aggravated by Air Force service.

CONTENTIONS OF THE PARTIES

8. The applicant submits that he was enrolled in the Indian Air Force on 08.06.1998 in a fit medical category without any note of disability recorded on the records of the respondents and thus submits that the disability that he suffers from has to be held attributable to and aggravated by military service, in terms of the verdict of the Hon'ble Supreme Court in *Dharamvir Singh Vs. Union Of India & Ors* (Civil Appeal No. 4949/2013). Inter alia, the applicant places reliance on the guiding canons laid down by the Hon'ble Supreme Court in Para-28 thereof which are 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."

Likewise, reliance was placed on behalf of the applicant on the Letter No. 1(2)/97/D(Pen-C) dated 31.01.2001 to contend to a similar effect.

9. It was also submitted on behalf of the applicant that Regulation 423 of the Regulations for the Medical Services of the Armed Forces Personnel, 2010 brings forth that it is immaterial whether the Armed Forces Personnel posted in a peace area, CI Ops/HAA or Field area at the time of onset of the disability and what is required to be established is the existence of a causal connection between military service and the onset of the disability which the applicant submits is clearly brought forth through the facts and circumstances of the instant case.

10. On behalf of the respondents, it was submitted that the RMB had opined the disability of the applicant to be neither attributable to nor aggravated by military service and that the said opinion of the medical authority was required to be given due weight and credence. It is the contention of the respondents that in terms of Regulation-153 of the Pension Regulations for the IAF, 1961(Part-I), the primary conditions for the grant of disability pension are as follows:

“Unless otherwise specifically provided, disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by Air Force service and is assessed at 20% or over.” In other words, 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.”***

The respondents thus prayed that the present OA be dismissed.

ANALYSIS

11. On 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)***, 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 regarding any disability. In the event of his subsequent discharge 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*.

12. 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 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:-

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

(ab) 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.

13. Regulation 423 of the Regulations for the Medical Services of the Armed Forces 2010, provides to the effect:-

“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.

and has not been obliterated.

14. The verdict of the Hon'ble Supreme Court in ***Dharamvir Singh Vs. UOI & Ors.*** vide Para-33 thereof, also stipulates 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)

15. It is essential to advert to Para-43 of Chapter-VI of Clinical Aspects of certain diseases of GMO(MP), 2008, which relates to Hypertension which reads as under:-

"43. Hypertension- The first consideration should be to determine whether the hypertension is primary or

secondary. If secondary, entitlement considerations should be directed to the underlying disease process (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. (emphasis supplied).”

The same itself is a clear indicator that stress and strain are causative factors of the onset of the disability of Primary Hypertension. In the facts and circumstances of the instant case, the probability of the disability of Primary Hypertension having its onset due to stress and strain of military service, cannot be overlooked. Despite the disability of the applicant having had its onset in a peace area, the same has to be held to be attributable to military service, in terms of Regulation 423 of the Regulations for the Medical Services of the Armed Forces 2010, it is stipulated categorically to the effect that the arising of the onset of disabilities in the peace area/CI Ops Area/HAA or Field area *per se* is immaterial to ascertain the aspect of attributability of a disability to military service and what is required to be established whether there exists a causal connection between the arising of the

disabilities and military service or not. In these circumstances, it is thus held that the disability of the Primary Hypertension which in the instant case had its onset after six years of induction into military service in his fourth posting. Furthermore, there are no contributory factors brought through the RMB by the respondents from the side of the applicant to negate the grant of the prayer has to be held to be attributable to and aggravated by military service.

CONCLUSION

16. The OA 1580/2019 is allowed. The applicant is thus entitled to the grant of disability element of pension @30% for life for the disability of Primary Hypertension with rounding off to 50% for life, from the date of discharge i.e. 30.06.2018, which in terms of the verdict of the Hon'ble Supreme Court in *UOI & Ors. vs Ramavtar* in Civil Appeal No. 418/2012.

17. 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 4th day of March, 2024.

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

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/TS/