

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

E..

OA 1585/2019

Ex Sgt Birendra Kumar

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Mr. Baljeet Singh, Advocate

For Respondents : Ms. Barkha Babbar, Advocate

CORAM

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

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

ORDER

02.01.2024

Vide our detailed order of even date; we have allowed the OA 1585/2019. 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)

(REAR ADMIRAL DHIREN VIG)  
MEMBER (A)

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**OA No. 1585 of 2019**

**Ex Sgt Birendra Kumar**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant : Mr. Baljeet Singh, Advocate**

**For Respondents : Ms. Barkha Babbar, Advocate**

**CORAM :**

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

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

**ORDER**

1. The applicant vide the present O.A 1585/2019 has made the following prayers:-

*"(a) To set aside the impugned order AirHQ/99798 /1/712071/DAV/DP/CC dated 23.07.2019(Annexure A-1)*

*(b) To direct the respondents to grant the disability pension @40% with effect from the date of discharge for life by considering the disability as attributable and aggravated by the military service.*

*(c) To direct the respondents to grant the benefit of rounding off of the disability of the applicant @50% (40% to be rounded off to 50%) with effect from the date of discharge.*

*(d) To direct the respondents to pay the due arrears of disability pension with interest@12% with effect from the date of discharge till actual payment.*

*(e) To pass such order or orders, direction/Directions as this Hon'ble Tribunal may deem fit and proper in accordance with law."*

2. The applicant, Ex Sgt Birendra Kumar, was enrolled in the Indian Air Force on 28.12.1995. He was discharged from service on 31.12.2018 under the clause "On fulfilling the conditions of his enrolment" after entering a total of 23 years and 04 days of service. After collecting the movement order on 11 Feb 2010, the applicant did not proceed on 12 Feb 2010 to 7 ASC BN on temporary duty. He had stayed in the SNCOs Mess without informing anybody. He was picked up from the billet and was referred to CHAF Bangalore with AFMSF-10 and admitted to CHAF Bangalore on 12 Feb 2010 for further evaluation by a psychiatrist. He went on 04 weeks sick leave from 11 March 2010 to 07 April 2010. He was again admitted to CHAF Bangalore on 08 April 2010. On 12 May 2010, he was transferred to CH (SC) Pune for further evaluation. Thereafter, again, he was transferred back to CHAF Bangalore on 31 May 2010. He was diagnosed as a case of ID- SCHIZOPHRENIA and opined to be placed in LMC A4G4 (T-24). His initial medical board was held at HQTC (U), AF vide AFMSF-15 dated 16 June 2010 for ID- PARANOID SCHIZOPHRENIA. Subsequently, he was placed in LMC A4G4(P) vide AFMSF-15 dated 27 Dec 2013.

3. The applicant's Release Medical Board not solely on medical grounds was held at 02 WG, AF vide AFMSF-16 dated 20 Feb 2018

which found him fit to be released in low medical category A4G4 (P) for ID-PARANOID SCHIZOPHRENIA. His disability was considered as Neither Attributable to Nor Aggravated by service (Reason: Onset while in peace station, Bangalore), as it was stated that no close time connection of active Field/HAA/Ops service was found and no trauma or physical stress related to military service in terms of Para 54 of Chapter VI of GMO 2008 was found. The Release Medical Board however assessed his disability ID Paranoid Schizophrenia @ 40% for life with net Assessment qualifying for disability pension was held to be Nil. The Release Medical Board was approved by the Dy PMO HQ WAC, IAF on 30 March 2018, on adjudication, the AOC AFRO also upheld the recommendations of the Release Medical Board and rejected the disability pension claim vide letter No. RO/3305/3/Med dated 29 June 2018. The outcome was communicated to the applicant vide a letter dated 04 Sep 2018 and he was informed that if he was not satisfied with this decision, he could prefer an appeal to the Appellate Committee within six months from the date of receipt of the letter. The applicant preferred an Appeal against the decision of the Release Medical Board held on 20.02.2018, which was considered by the Appellate Committee for First Appeal and was rejected vide a letter dated 13.02.2020 stating inter alia as follows:



*"....In terms of Para 54, Chapter VI, GMO 2002/2008, psychiatric disorders are conceded as attributable if they arise in combat areas/HAA/extremely isolated posts/service in sea/MT accidents causing loss of life or during catastrophic disasters, or if they arise as part of post-traumatic stress. Aggravation is conceded if they arise within three months of denial of leave after death of a close family member or in case of heinous crimes against family members. Aggravation is also conceded if, after being diagnosed with the disease, an individual serves in HAA/CI Ops/Field. None of these have factored in the ibid case. Accordingly the disability is conceded as neither attributable to nor aggravated by service".*

4. The Applicant was informed that if he so desired he could make a second and final appeal to the Second Appellate Committee within six months of the date of issue of this letter. No second appeal was filed by the Applicant.

5. A Legal Notice - cum - Representation dated 11 July 2019 prior to the disposal of the First Appeal dated November, 2018 which was disposed of on 13.02.2020, (much after stipulated period of six months of the said legal notice/Appeal), was however sent on behalf of the Applicant seeking for grant of the disability element of pension alongwith benefits of broad banding from 40% to 50% which was replied to vide letter dated 23.07.2019 in which it was mentioned that Para 153 of the Pension Regulations for IAF, 1961(Part-1) was not

fulfilled in the case of the Applicant since the disability was neither attributable to nor aggravated by Air Force Service, and therefore the applicant was not entitled for the grant of disability element of pension. We consider it appropriate in the interest of justice to take up the OA for consideration in terms of Section-21(1) of the AFT Act, 2007.

### ***CONTENTIONS OF THE PARTIES***

6. The applicant submits that he was enrolled in the Indian Air Force on 28.12.1995 in a fit medical condition without any disability of any kind, neither physical nor mental and that the disability that applicant suffers from was attributable to and aggravated by military service. The applicant submits that the onset of the disability of Paranoid Schizophrenia was recorded in February 2010 whilst the applicant was in the active service and was posted to HQ TC (U), Bangaluru and was discharging duties of his trade i.e. Medical Assistant which involved carrying out Emergency Room treatment, reception duties and frequent night duties as Duty Med Asst. The applicant submits that the real onset commenced when he was posted to 853 SU AF, Bhuj immediately after the earthquake in the year 2002. The applicant submits that as all the permanent structures (i.e. buildings, security walls etc) were destroyed by the earthquake, he

was forced to stay in tents for a long time. He further submits that his duties increased manifold including Night Guard Duty/Duty Med Asst duty. Moreover, he was not given any day rest and was required to report on duty at 1000h after doing the night duty and that in the year 2003 during his posting at Bhuj, he got a message that his sister had been bitten by a snake. The applicant submits that he requested for leave for treatment of his sister, but he was denied leave due to service exigencies and further detailed for temporary duty, and that subsequently, his sister died due to lack of proper medical treatment. The applicant submits that this incident made him hopeless and weakened his mind by thinking that his presence would have saved the life of his sister by providing timely and proper medical treatment to her and even after the onset of his disability, the applicant was posted to various air force units wherein his duties involved prolonged working hours including frequent night duties. These frequent night duties hampered with his circadian rhythm and were immensely strenuous, both physically and mentally, further aggravating his disease.

7. The applicant further submits that the RMB opined that the disability had its onset in a peace area and there was no close time association with active Field/HAA/CI OPS Area and that there was no

trauma or stress related to military service. The applicant however submits that the disease of Paranoid Schizophrenia develops due to environmental factors and in the present case the applicant's disease has further aggravated due to the reason that he was one after the other posted to stations at different geographical locations and submits that the disability that he suffers from was attributable to and aggravated by Air Force Service. Reliance was also placed on behalf of the applicant on the Govt of India, Min of Def letter no. F.No 4(17)/2015/D(Pen/Legal) dated 29.06.2017 wherein it was directed that if an individual met certain conditions as observed in the order of the Hon'ble Supreme Court in *Dharamvir Singh v. UOI & Ors* (Supra) that such applicant would be entitled for the disability element of pension. Inter alia the applicant seeks the benefit of broadbanding of the disability element of pension in terms of Govt. of India, Min of Defence letter no. 1(2)/97/D(Pen-C) dated 31.01.2001 and in terms of the verdict of the Hon'ble Supreme Court in *UOI & Ors. vs. Ramavtar*, Civil Appeal No. 418/2012.

8. The respondents, through their Counter Affidavit, submit to the effect that there is no infirmity in the RMB having opined that the disability that the applicant suffered from was neither attributable to nor aggravated by military service nor was there any infirmity in the

rejection of the first appeal by the Appellate Committee on First Appeal(ACFA). Inter alia, the respondents submit that the mere occurrence of any disease in service doesn't mean that it has happened due to service and submit that there are other factors also which instigate the occurrence of a disease. It is submitted by the respondents that some of the diseases which escape detection on enrolment as well as certain congenital abnormalities which are latent and only discoverable on full investigations, unless adequate history is given at the time by the member including gastric and duodenal ulcers, epilepsy, mental disorders, have to be excluded from the attributability.

9. The respondents also place reliance on the reasons given for the rejection of the first appeal vide the letter no. AirHQ/99798 /5/364 /19/712071/DP/AV-III(Appeals) dated 13.02.2020 to the effect:-

***"In terms of Para 54, Chapter VI, GMO 2002/2008, psychiatric disorders are conceded as attributable if they arise in combat areas/HAA/extremely isolated posts/service in sea/MT accidents causing loss of life or during catastrophic disasters, or if they arise as part of post-traumatic stress. Aggravation is conceded if they arise within three months of denial of leave after death of a close family member or in case of heinous crimes against family members. Aggravation is also conceded if, after being diagnosed with the disease, an individual serves in HAA/CI Ops/Field. None of these have factored in the ibid case. Accordingly the disability is conceded as neither attributable to nor aggravated by service".***

to submit to the effect that none of the factors in which aggravation would be conceded for the disability being attributable or aggravated by military service exist in the instant case.

10. Reliance was also placed on behalf of the applicant on the order dated 30.05.2013 of this Tribunal in OA 1204/2019 in the case of *Ex Hav(ACP-1) Satnarian Singh vs. UOI & Ors.*, in which case the applicant thereof who was suffering from "Moderate Depressive Episode with Somatic Syndrome" was granted the benefit of the disability element of pension.

#### ***ANALYSIS***

11. 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)* ,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*.



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:-*

*(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.

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.*

*(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),\_\_*

has not been obliterated.

Thus the differentiation between the cause giving rise to the disability or death having occurred in an area declared to be a Field Service/Active Service area or was under normal peace conditions, is rendered immaterial vide Para-423(a)(supra), which till date has not been rescinded.

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." -*



15. Para 54, Chap VI of GMO 2008, provides to the effect:-

**"54. Mental & Behavioural (Psychiatric) Disorders.**

*Psychiatric illness results from complex interplay of a endogenous (genetic/biological) and exogenous (environmental, psychosocial as well as physical) factors. This is true for the entire spectrum of psychiatric disorders (Psychosis & Neurosis) including substance abuse disorders. The relative contribution of each, of course, varies from one diagnostic category to another and from case to case.*

*The concept of attributability or aggravation due to the stress and strain of military service can be, therefore, evaluated independent of the diagnosis and will be determined by the specific circumstances of each case.*

*(a) Attributability will be conceded where the psychiatric disorder occurs when the individual serving in or involved in:-*

*(i) Combat area including counterinsurgency operational area*

*(ii) HAA service.*

*(iii) Deployment at extremely isolated posts*

*(iv) Diving or submarine accidents, lost at sea.*

*(v) Service on sea.*

*(vi) MT accidents involving loss of life or Flying: accidents (both as flier and passenger) in a service aircraft or aircraft accident involving loss of life in the station.*

*(vii) Catastrophic disasters particularly while aiding civil authorities like earthquake, cyclone, tsunami, fires, volcanic eruptions (where one has to handle work in proximity of dead or decomposing bodies).*

*(b) Attributability will also be conceded when the psychiatric disorder arises within serious/multiple injuries (e.g. year amputation upper/lower limb, paraplegia, quadriplegia, severe head injury resulting in hemiplegia of gross neurocognitive deficit which are themselves considered attributable to military service. Traumatic Stress Disorder (PTSD). This includes Post Traumatic Stress Disorder(PTSD).*



*(c) Aggravation will be considered in Psychiatric disorders arising within 3 months of denial of leave due to exigencies of service in the face of:*

*(i) Death of parent when the individual is the only Child/son.*

*(ii) Death of spouse or children.*

*(iii) Heinous crimes (e.g. murder, rape or dacoity) against members of the immediate family.*

*(iv) Reprisals or the threat of reprisals against members of the immediate family by militants/terrorists owing to the fact of the individual being a member of the Armed Forces.*

*(v) Natural disasters such as cyclones/earthquakes involving the safety of the immediate family.*

*(vi) Marriage of children or sister when the individual is the only brother thereof and specially if their father is deceased.*

*(d) Aggravation will also be conceded when after being diagnosed as a patient of psychiatric disorder with specific restrictions of employability the individual serves in such service environment which worsened his disease because of the stress and strain involved like service in combat area including counterinsurgency operations, HAA, service on board ships, flying duties.*

*(e) Attributability may be granted to any psychiatric disorder occurring in recruits and results in invalidment from service only when clearly identifiable severe stressors including sexual abuse or physical abuse are present as causative factor/factors for the illness."*

16. The onset of the disability in the instant case was in February 2010 whilst the applicant was posted from 16.07.2007 to 08.04.2012 at HQTC(U), Bangaluru. Undoubtedly, as per the entire posting profile of the applicant as reflected in Part-I in Personal Statement of the applicant to the effect:-

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)
01	01/01/96	24/01/97	MTC Bangaluru	P	06	07/06/04	16/07/06	225i Sqn Pathankot	P
02	25/01/97	25/07/97	CHAFD Bangaluru	P	07	17/07/06	15/07/07	12 AFND Delhi	P
03	26/07/97	24/02/02	5BRD Sular	P	08	16/07/07	08/04/12	HQTC(U) Bangaluru	P
04	25/02/02	08/02/04	853SU Bhuj	P	09	09/04/12	26/07/15	6 Wg Barrackpur	P
05	09/02/04	06/06/04	2251 Sqn Mulanpur	P	10	27/07/15	Till date	2 Wg Pune	P

the applicant was deputed in the peace area. However, as observed by the Hon'ble Supreme Court in *Dharamvir Singh Vs. UOI & Ors.* in Para-33 thereof, it makes virtually no difference as to whether the onset of the disability was in a peace area or field area, counter insurgency area or a high altitude area as each case has to be assessed on its own merits and what is required to be established is the factum of the causal connection if any with the disability.

17. The applicant has contended to the effect that in as much as the onset of the disability is stated to have had its onset when the applicant was posted at Bengaluru, the contention of the applicant that his duties included night Guard Duty/Duty Med Asst were increased

manifold during the time of the attack at 853 SU AF, Bhuj and that the applicant submits that during this period of time, he was not given any day rest and was required to report on duty at 1000H after doing the night duty, and that the same needs to be considered.

Significantly, in Para-54(a)(vii) of the GMO, it has been stipulated that Attributability will be conceded where the psychiatric disorder occurs when the individual is serving in or involved in:-

(i).

.

*(vii) Catastrophic disasters particularly while aiding civil authorities like earthquake, cyclone, tsunami, fires, volcanic eruptions (where one has to handle work in proximity of dead or decomposing bodies).*

and furthermore, in terms of Para-54(c)(v), natural disasters such as cyclones/earthquakes involving the safety of the immediate family, are aggravated factors when they arise within three months after denial of leave. Significantly, the contentions in Para 4.9 and 4.10 of the present OA have not been refuted by the respondents, nor has the posting profile filed by the applicant been refuted by the respondents. In these circumstances, the contentions put forth by the applicant that the disability he suffers from was a consequence of the applicant having been involved in the rescue operations in the aftermath of the earthquake in the year 2002 cannot be overlooked. The contentions

put forth by the applicant that in the year 2003 during his posting at Bhuj, he got a message that his sister had been bitten by snake and he requested for leave for treatment of his sister, which was denied and that he was detailed for Temporary Duty and due to the same the applicant suffered from the disability is also a contention which has not been effectively refuted by the respondents.

18. **Apparently, the disability that the applicant suffers from had its onset in February 2010 after 15 years of his induction on 28.12.1995 in the Indian Air Force. It is essential to advert to the Summary & Opinion of the GD SPL(Psychiatry) dated 29.01.2018 of the Station Medicare centre 2 Wg AF as detailed in the medical case sheet of the applicant, which is to the effect:-**

**“SUMMARY & OPINION BY MAJ MANISHA JINDAL, GD  
SPL(PSYCHIATRY) DATED 29 JAN 2018”**

**Disability- Paranoid Schizophrenia (ICD 10, F-20)**

**Onset- Bangalore(Peace), Feb 2010**

**Previous Med Cat- A4G4(P) wef 06 Feb 17**

**Hospitalization- From 12 Jan 18 to till date CH(SC)**

**Reason for Referral This 41 years old air warrior, with 22 years of service was transferred in from SMC 2 Wg AF, for opinion of Psychiatrist for RMB vide letter No RO/2504/2/RW(Dis.) dated 14 Nov 17.**

**History of Illness Detailed history and perusal of old documents revealed that in Feb 2010 patient had become unduly suspicious, thinking that his colleagues and superiors were abusing and making fun of him. He started hearing their voices discussing about him with derogatory content. He also used to believe that TV programs**

were doing his psychological assessment. He became fearful, avoided coming out of his room, skipped his meals. He refused to proceed on TD suspecting it to be a plot against him. In this background, he was hospitalized at CH(AF) Bangalore on 10 Feb 2010. Psychiatric evaluation revealed delusions of persecution and reference, third person auditory hallucinations (commenting type). He was diagnosed as a case of Paranoid Schizophrenia and started on antipsychotics (Tab Haloperidol 5mg and Tab Olanzapine 5 mg). He responded to the treatment and was discharged in LMC A4G4(T-24) wef Jun 2010.

He remained asymptomatic till Feb 2013, when during his recat, his medications were stopped in view of sustained remission. He manifested again with auditory hallucinations and delusions of persecution. He was again hospitalized and managed at CH(EC), Kolkata with Tab Risperidone 3 mg HS. He responded well and was discharged in the existing LMC L.e. A4G4(P).

In Sep 2014, while on OPD follow up and on maintenance antipsychotics (Risperidone 3 mg OD), he had low mood, decreased self confidence and reduced interest in pleasurable activities. He was admitted at BH Barrackpore where MSE revealed low mood, delusion of reference and persecution and third person auditory hallucinations (people talking ill of him and might harm him). He had initial insomnia, palpitations, apprehension of few days duration. Cap Fluoxetine was added along with Tab Risperidone. Patient showed good response and after improvement, he was discharged to unit on in existing med cat A4G4(P).

He remained well till June 2016, when his colleague had apparently made a negative remark on him. He developed fearfulness, belief that his colleagues were discussing about him, sadness of mood, decreased initiative and social interaction. He became demotivated for service. OPD evaluation revealed a tearful individual having fearfulness, hopelessness and helplessness, in the absence of any suicidal ideas.

He was managed as post-psychotic depression, with readjusting the treatment (Tab Escitalopram 10 mg and Tab Risperidone 3mg). He responded well and became completely asymptomatic in 6 wks duration. During his recat in Dec 2016, he was noted to be in remission and drug compliant. He was continued in LMC A4G4 (P).

After discharge patient maintained remission of symptoms and was compliant with treatment with no recurrence of symptoms.



Past and Family History. No Past head trauma, seizures, STD, any medical, surgical or psychiatric illness. Individual hails from urban background of Nalanda district Bihar. His father passed away in May 2015 at the age of 80 yrs due to Alzheimer's disease. His 75yrs old mother is a homemaker, suffering from Arthritis. He is the 4th of 04 siblings. Claims cordial relation with his family members. No history of any other psychiatric/medical/surgical illness in the family.

Personal History. Individual was born in 1977. Uneventful childhood and adolescence, educated upto class XII. He joined Air Force in 1995 on his own will. Got married in Apr 1999 and claims cordial relationship with wife. He has 02 healthy children.

AFMSF 10 dated 11 Jan 18 mentioned him as punctual, dedicated and disciplined air warrior who is average in professional duties, satisfactory in regimental duties, with average social interaction and motivation, abstinent from alcohol and satisfactory compliance with treatment.

Course in the Hospital. On admission, his general and systemic examination was normal. MSE revealed a kempt, cooperative individual with euthymic affect and goal directed thinking. His sensorium was clear and bio-drives were stable. In view of absence of any depressive features, his medication i.e. Tab Escitalopram was tapered off. He was managed with Tab Risperidone 3mg HS. Serial MSE and ward observation did not reveal any overt psychopathology.

Recommendation. This 41 years old air warrior, with 22 years of service was transferred in from SMC 2 Wg AF, for opinion of Psychiatrist for RMB vide letter No RO/2504//2/RWI (Dis.) dated 14 Nov 17. Patient has been observed in LMC for Paranoid Schizophrenia since Jun 2010. In view of chronic nature of illness & multiple relapses, he is recommended to be released from service in LMC S2 (P)/AF equivalent for Paranoid Schizophrenia.

Advice.

1. To continue Tab Risperidone 3 mg HS
2. To be followed up monthly in ECHS empanelled hospital Govt hospital.

SD/-

(Manisha Jindal)

Major

Graded Spl(Psychiatry)

CH(SC), Pune

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**Significantly, the past and family history and personal history of the applicant do not indicate any contributory factors from the side of the applicant in as much as he has abstained from alcohol and does not have any family history of traumas or seizures or any psychiatric ailments.**

19. The applicant's history of illness reveals he became unduly suspicious in February 2010 and thinking that his colleagues and superiors were abusing and making fun of him, hearing voices, discussing him with derogatory content and believing that TV programs were doing his psychological assessment and his becoming fearful, avoiding coming out of the room, skipping meals, refusing to proceed on TD suspecting it be a plot against him, third person auditory hallucinations or comments and he continued to be asymptomatic and thereafter he was given medication and was discharged from hospital in June 2010 and remained asymptomatic till February 2013 and during his re-categorisation his medications were stopped in view of sustained remission. He manifested again with auditory hallucinations and delusions of persecution and was again hospitalized and responded well and was discharged in the existing LMC i.e. A4G4(P). On OPD follow up in September, 2014, he had low mood, decreased self confidence and reduced interest in

pleasurable activities and was admitted to BH Barrackpore and was treated, showed good response and after improvement, was discharged to a unit in existing medical category A4G4(P). The applicant, as per the said history of illness, remained well till June 2016 when his colleague apparently made a negative remark about him and he developed fearfulness, belief that his colleagues were discussing him, sadness of mood, decreased initiative and social interaction and he became demotivated for service and the OPD evaluation revealed a tearful individual having fearfulness, hopelessness and helplessness, in the absence of any suicidal ideas. He was managed as post psychotic depression with readjusting the treatment and continued in LMC A4G4(P) on his having responded and had become asymptomatic and after his discharge, he maintained remission of symptoms and was compliant with treatment with no recurrence of symptoms.

20. Apparently, the history of the illness reflects the disability suffered by the applicant from February 2010 intermittently thereafter in February 2013, September 2014, June 2016 and December 2016. *However, it cannot be overlooked that the onset of the disability as already observed herein above was observed after a period of 5 years after induction into service and even after the treatment given to*

*him, he continued to have no recurrence of symptoms from December 2016 onwards and as has already observed herein above, there were no contributory factors from the side of the applicant.* In these circumstances, thus the contention of the applicant that he started *suffering from the disability after his participation in activities at 853 SU AF, Bhuj after the earthquake in the year 2001 when all buildings, security walls were destroyed and he had perforce to stay in tents for a long time with increased Night Guard Duties/Duty Med Asst Duties, thereafter also in year 2003 his sister suffered a snake bite and he was denied leave due to service exigencies and his sister died due to lack of proper medical treatment,* the aspect of the latency of aggravation of the aspect of denial of leave to the applicant due to exigencies of service in the year 2003 when his sister was bitten by a snake and she died thereafter has in terms of Para-54(c) has to be taken into account as a causative factor for the aggravation of the disability and would have to be read *ejusdem generis* with the stipulated death detailed therein being the death of the parent, when the individual is the only child/son, death of spouse or children. Furthermore vide Para-54(c)(v), the aspect of the natural disasters such as earthquakes has already been taken into account as an aggravating factor for the disability in question.

21. It is the contention of the learned counsel for the applicant placing reliance on the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008 vide Para-8 thereof which reads to the effect:-

***"8. Post discharge claims:***

***(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."***

to submit to the effect that even in cases where the member of the Armed Forces has retired or has been discharged from service, any disability which was not present at the time of the member's retirement/ discharge from service but arose within 7 years thereafter, may be considered 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. It has thus been submitted on behalf of the applicant that the spirit and principle incorporated in Para-8(a) of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008 ought to equally apply to cases of the Armed Forces Personnel in service, to assess the aspect of

attributability to service and aggravation by service of the disease from which the said personnel is afflicted during service, if it arises within a period of 7 years after discharge/ retirement and 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.

22. Thus in the instant case, in as much as prior to the onset of the disability of the applicant in February, 2010, the latent period from 2002 onwards of the occurrence of the earthquake at Bhuj and demise of his sister of the applicant in 2003 when she was bitten by a snake and the denial of leave to the applicant due to service exigencies as a consequence of which appropriate medical treatment could not be provided by the applicant to his sister and she succumbed to the said snake bite would have to be taken into account to analyse the aspect of the arising of the disability within a period of seven years from onset of the disability in 2002 and 2003, and that the manifestation thereof in February 2010 as a delayed manifestation of a pathological process set in motion by service conditions obtaining prior to discharge to thus recognize the disability being attributable to service.

23. The Summary and Opinion of the graded specialist in Psychiatry dated 29.01.2018 qua the applicant already adverted to

herein above, brings forth that the applicant had no past history nor any family history of the disability nor was he suffering from any addiction. Significantly, Para 10(b)(iii) of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008, which provides to the effect:-

*“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.”*

Furthermore, it is essential to observe that in the instant case, the onset of the disability of the applicant as per the records of the respondents was in February 2010 whereafter he continued to serve till his discharge on 31.12.2018 in the Low Medical Category A4G4(P) with the applicant having continued to be placed in the said category from 31.05.2010 onwards.

24. In as much as he joined the Indian Air Force in a fit medical category and was deployed in the trade of Medical Assistant in the terms of the verdict of the Hon'ble Supreme Court in *UOI & Ors. Vs. Rajbir Singh* (2015) 12 SCC 264 as observed in Para-15 to the effect:-

“15.

*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."*

it is thus apparent in the instant case, that the presumption of aggravation of the disability being due to military service, has not been dislodged by the respondents in any manner, taking into account, the factum that the applicant joined the Indian Air Force in a fit medical category. The verdict of the Hon'ble Supreme Court in *UOI & Ors. Vs. Manjeet Singh* dated 12.05.2015, Civil Appeal no. 4357-4358 of 2015, categorically lays down vide Para-25 thereof, to the effect:-

*"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."*

25. Thus, the respondents having failed to discharge the burden placed on them to establish that the disability that the applicant suffers from or that the deterioration in the health of the applicant was not on account of any aggravation by military service, the applicant in the instant case is entitled to the grant of the disability element of pension

in relation to the disability of Paranoid Schizophrenia(Old) assessed @40% for life.

### **CONCLUSION**

26. The OA 1585/2019 is allowed. The applicant is held entitled to the grant of disability element of pension in relation to Paranoid Schizophrenia(Old) @40% for life which in terms of the verdict of the Hon'ble Supreme Court of India in Civil Appeal 418/2012 dated 10.12.2014 titled as *UOI & Ors. Vs. Ramavtar*, the said disability is rounded off to 50% for life from the date of discharge.

27. 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 2 day of January, 2024.

[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)

[JUSTICE ANU MALHOTRA]  
MEMBER (J)

/TS/