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

OA No 162/2021

WITH

MA 1196/2023 AND 196/2021

Ex MWO Satyapal Singh Sharma ... Applicant
Versus
Union of India & Ors. ... Respondents

For Applicant - Mr. Ved Prakash, Advocate
For Respondents - Mr. Rajeev Kumar, Advocate

CORAM :

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

ORDER

MA 196/2021

This is an application filed under Section 22 of The Armed Forces Tribunal Act, 2007 seeking condonation of delay of **2581** days in filing the present OA. in view of the judgments 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, the MA 196/2021 is allowed despite opposition on behalf of the respondents and the delay of **1278** days in filing the OA 162/2021 is thus condoned. The MA is disposed of accordingly.

MA 1196/2023

2. Counter Affidavit was filed on 23.03.2023 and inadvertently it is seen that the same was registered as MA for condonation of delay whereas there is no such MA available on record as the counter affidavit was filed within time. Therefore no orders are called for on this application.

OA 162/2021

3. The applicant vide Para 8 of the present OA 162/2021 has made the following prayers:-

"(a) Quash impugned order Air HQ/99798/1/634393/07/13/DAV(DP/RMB) dated 29.08.2013 and Impugned Order No Air HQ 99798/4/1/634393/DAV/DP/CC dated 17.12.2020.

(b) Direct respondents to grant disability element of pension duly rounded off to 50% w.e.f his date of discharge..

(c) To direct the respondents to grant the benefit of rounding off of the disability of the applicant @50% (30% to be rounded off to 50%) with effect from the date of discharge.

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

(e) 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."

4. The applicant Ex MWO Satyapal Singh Sharma was enrolled in the Indian Air Force on 25.02.1976 and discharged from service on 31.07.2013 under the clause on "On attaining the age of superannuation" after rendering a total of 37 years and 157 days of regular service. The RMB not solely on medical grounds was held at 30 Wing, AF vide AFMSF-16 dated 31.08.2012 and found the applicant fit to be released in low medical category A4G2 (P) and suffering from the ID Primary Hypertension with the RMB having opined the disability as being neither attributable to nor aggravated by military service:

The opinion of the Medical Board in Part V thereof was to the effect:

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
1. PRIMARY HYPERTENSION (Old), Z 09.0	NO	NO	YES	Onset of Disability in peace station
Note. A disability "Not Connected with service" would be neither Attributable nor Aggravated by service. (This is in accordance with instructions contained in "Guide to Medical Officers(Mil Pension)-2002)				

The percentage of disablement was put forth in the RMB is as under:

6. What is the present degree if disablement as compared with a healthy person of the same age and sex?(Percentage will be expressed as Nil or as follows). 1-5%, 6-10%, 11-14%, 15-19% and thereafter in multiple of ten from 20-100%				
Disability	Percentage of disablement with duration	Composite Assessment for all disabilities with duration	Disability Qualifying for disability pension with duration	Net Assessment Qualifying for Disability pension
Primary Hypertension (Old) Z-09.0	30%	30%	Nil Life long	Nil Life long

The onset of the disability as indicated in Part-IV Statement of Case in the RMB as under:

Disability	Date of origin	Rank of the Individual	Place and unit where serving at the time.
Primary Hypertension (Old) Z09.0,	Sep 2010	MWO	Sarsawa, 30 Wing AF

5. The disability pension claim of the applicant was rejected by AOC AFRO vide letter No RO/3305/3/Med dated 19.03.2013 and the same was communicated to the applicant by Dte of Air Veteran, Air HQ vide letter No. Air HQ/99798/1/636933/07/13/DAV(DP/RMB) dated 29.08.2013 with an advice to the applicant to prefer an appeal to the Appellate Committee within six months of the receipt of the letter.

6. The Legal Notice dated 31.10.2020 filed by the applicant was rejected vide letter No. Air HQ 99798/4/1/634393/DAV/DP/CC dated 17.12.2020 to the effect:

> *"3. As per Rule 153 of Pension Regulations for IAF, 1961 (Part-I), 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 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 :-*
>
> *(a) Disability must be either attributable to or aggravated by service.*
>
> *(b) Degree of disablement should be assessed at 20% or more."*

7. It is stated vide the aforesaid letter that post Hon'ble Apex Court Judgement in ***Dharamvir Singh's*** case (Civil Appeal No 4949/2013), GOI MoD has not revised the policy on Disability Pension in the case of neither Attributable Nor Aggravated (NANA) by AF Services.

8. It was further submitted to the effect that the normal time limit of making an appeal is six months and maximum permissible time limit is five years from date of initial adjudication rejection as per para 2 of MoD letter No 1(3)/2008/D(Pen/Pol) dated 17.05.2016; therefore, it is

regretted to inform that the case of the applicant cannot be considered due to delay in making appeal beyond maximum permissible time limit of five years.

9. No second appeal was preferred by the applicant. We thus take up the OA for consideration in terms of Section 21(1) of the AFT Act 2007, in the interest of justice.

CONTENTIONS RAISED

10. The applicant submitted that he has attained the present disability after serving for a long period of 34 years in SHAPE-1 which makes it clear that the disease was not pre-existing and his disability was due to service. The posting profile of the applicant is reflected in Part I of the Personal Statement of the applicant in the RMB dated 31.08.2012 which is as under:

"

PART I

PERSONAL STATEMENT

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

SL. NO	FROM	TO	PLACE/SHIP	P/F	SL. NO	FROM	TO	PLACE/SHIP	P/F
(i)	28.02.76	13.05.77	3 GTS, AF	P	(vii)	27.05.91	24.03.96	CTI, AF	F
(ii)	14.05.77	06.07.79	18 Wing, AF	P	(viii)	25.03.96	03.06.01	3 BRD, AF	P
(iii)	07.07.79	31.07.80	3 GTS, AF	P	(ix)	04.06.01	10.08.03	815 SU, AF	P
(iv)	01.08.80	25.09.83	51 ASP, AF	P	(x)	11.08.03	10.08.08	CTI AF	P
(v)	26.09.83	05.10.86	46 Sqn, AF	P	(xi)	11.08.08	24.07.11	43 Wing, AF	P
(vi)	06.10.86	26.05.91	33 Sqn, AF	P	(xii)	25.07.11	Till date	30 Wing, AF	P

"

The applicant submits that in Para 3 of the said statement it is reflected as under:

> "3. Did you suffer from any disability before joining the Armed forces? If so give details and dates. **NO**

11. The applicant has further submitted that at the time he was inducted into the Indian Air Force, he was medically fit and after having undergone a thorough medical examination at the Training Centre, he was posted to various places during his service.

12. Inter alia, the applicant places reliance on the verdict of the Hon'ble Supreme Court in ***Dharamvir Singh Vs UOI & Ors*** /(Civil Appeal No 4949/2013) 2013 AIR SCW 4236]. with specific reliance on the observations in para-28 of the said verdict 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."

13. The applicant has also placed reliance on the verdict of the Hon'ble Supreme Court in ***UOI & Ors. Vs Rajbir*** in Civil Appeal No. 2904/2011, decided on 13.02.2015, in the case ***of Sukhvinder Singh vs UOI & Ors*** [2014 STPL (Web) 468 SC] and in ***UOI &Ors vs Manjit Singh*** (AIR 2015 SC 2114), to contend to the effect that in as much as in the absence of any cogent

reasons recorded by the Medical Board for the cause of the disability that had arisen during the course of service of the applicant and with which the applicant did not suffer at the time of enrolment into the Military Service, the same has to be presumed to have arisen in the course of military service. The applicant also submits that in terms of the verdict dated 10.12.2014 of the Hon'ble Supreme Court in ***UOI Vs Ram Avtar*** in Civil Appeal No.418/2012, the applicant is entitled to rounding off of the disability pension assessed @30% for life to 50% for life from the date of discharge.

14. The respondents through the counter affidavit dated 15.03.2023 filed on their behalf submit to the effect that as per Rule 153 of the Pension Regulations for IAF, 1961 (Part-I), 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 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.

15. The respondents further place their reliance on Para-5 of 'Entitlement Rules for Casual Pensionary Awards to the Armed Forces Personnel, 2008, and submit that the mere fact that a disease has manifested during military service does not per se establish attributability to or aggravation by military service.

ANALYSIS

16. 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 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.***

Para 43 of the GMO(Military Pension) 2008 is 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)

17. In view of the guidelines laid down vide the verdict of the Hon'ble Supreme Court in ***Dharamvir Singh Vs. Union of India & Ors.***(Supra) and the factum that the non-existence of the ID of Hypertension at the time when the applicant joined military service is not refuted by the respondents, the contention of the respondents that the disability of hypertension assessed has been rightly opined by the Release Medical Board and the AFCA at 30% as neither being attributable to nor aggravated by military service,- cannot be accepted.

18. It is essential to observe that the verdict of the Hon'ble Supreme Court in ***Rajbir Singh*** (supra) vide Paras 12 to 15 lays down to the effect:-

"12. Reference may also be made at this stage to the guidelines set out in Chapter-II of the Guide to Medical Officers (Military

Pensions), 2002 which set out the "Entitlement: General Principles", and the approach to be adopted in such cases. Paras 7, 8 and 9 of the said guidelines reads as under:

"7. Evidentiary value is attached to the record of a member's condition at the commencement of service, and such record has, therefore, to be accepted unless any different conclusion has been reached due to the inaccuracy of the record in a particular case or otherwise. Accordingly, if the disease leading to member's invalidation out of service or death while in service, was not noted in a medical report at the commencement of service, the inference would be that the disease arose during the period of member's military service. It may be that the inaccuracy or incompleteness of service record on entry in service was due to a non-disclosure of the essential facts by the member e.g. pre-enrolment history of an injury or disease like epilepsy, mental disorder, etc. It may also be that owing to latency or obscurity of the symptoms, a disability escaped detection on enrolment. Such lack of recognition may affect the medical categorisation of the member on enrolment and/or cause him to perform duties harmful to his condition. Again, there may occasionally be direct evidence of the contraction of a disability, otherwise than by service. In all such cases, though the disease cannot be considered to have been caused by service, the question of aggravation by subsequent service conditions will need examination.

[pic] The following are some of the diseases which ordinarily escape detection on enrolment:

(a) Certain congenital abnormalities which are latent and only discoverable on full investigations e.g. Congenital Defect of Spine, Spina bifida, Sacralisation,

(b) Certain familial and hereditary diseases e.g. Haemophilia, Congential Syphilis, Haemoglobinopathy.

(c) Certain diseases of the heart and blood vessels e.g. Coronary Atherosclerosis, Rheumatic Fever.

(d) Diseases which may be undetectable by physical examination on enrolment, unless adequate history is given at the time by the member e.g. Gastric and Duodenal Ulcers, Epilepsy, Mental Disorders, HIV Infections.

(e) Relapsing forms of mental disorders which have intervals of normality.

(f) Diseases which have periodic attacks e.g. Bronchial Asthma, Epilepsy, Csom, etc.

8. The question whether the invalidation or death of a member has resulted from service conditions, has to be judged in the light of the record of the member's condition on enrolment as noted in service documents and of all other available evidence both direct and indirect.

In addition to any documentary evidence relative to the member's condition to entering the service and during service, the member must be carefully and closely questioned on the circumstances which led to the advent of his disease, the duration, the family history, his pre-service history, etc. so that all evidence in support or against the claim is elucidated. Presidents of Medical Boards should make this their personal responsibility and ensure that opinions on attributability, aggravation or otherwise are supported by cogent reasons; the approving authority should also be satisfied that this question has been dealt with in such a way as to leave no reasonable doubt.

9. On the question whether any persisting deterioration has occurred, it is to be remembered that invalidation from service does not necessarily imply that the member's health has deteriorated during service. The disability may have been discovered soon after joining and the member discharged in his own interest in order to prevent deterioration. In such cases, there may even have been a temporary worsening during service, but if the treatment given before discharge was on grounds of expediency to prevent a recurrence, no lasting damage was inflicted by service and there would be no ground for admitting entitlement. Again a member may have been invalided from service because he is found so weak mentally that it is impossible to make him an efficient soldier. This would not mean that his condition has worsened during service, but only that it is worse than was realised on enrolment in the army. To sum up, in each case the question whether any persisting deterioration on the available [pic]evidence which will vary according to the type of the disability, the consensus of medical opinion relating to the particular condition and the clinical history."

13. In Dharamvir Singh's case (supra) this Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words:

"29.1. Disability pension to be granted to an individual who is invalided 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 to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).

29.2. 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 read with Rule 14(b)].

29.3. The 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).

29.4. 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)]. [pic] 29.5. 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 [Rule 14(b)].

29.6. 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 [Rule 14(b)]; and 29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 - "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."

14. Applying the above principles this Court in Dharamvir Singh's case (supra) found that no note of any disease had been recorded at the time of his acceptance into military service. This Court also held that Union of India had failed to bring on record any document to suggest that Dharamvir was under treatment for the disease at the time of his recruitment or that the disease was hereditary in nature. This Court, on that basis, declared Dharamvir to be entitled to claim disability pension in the absence of any note in his service record at the time of his acceptance into military service. This Court observed:

"33. In spite of the aforesaid provisions, the Pension Sanctioning Authority failed to notice that the Medical Board had not given any reason in support of its opinion, particularly when there is no note of such disease or disability available in the service record of the appellant at the time of acceptance for military service. Without going through the aforesaid facts the Pension Sanctioning Authority mechanically passed the impugned order of rejection based on the report of the Medical Board. As per Rules 5 and 9 of the Entitlement Rules for Casualty Pensionary Awards, 1982, the appellant is entitled for presumption and benefit of presumption in his favour. In the absence of any evidence on record to show that the appellant was suffering from "generalised seizure (epilepsy)" at the time of acceptance of his service, it will be presumed that the appellant was in sound physical and mental condition at the time of entering the service and deterioration in his health has taken place due to service."

15. The legal position as stated in Dharamvir Singh's case (supra) is, in our opinion, in tune with the Pension Regulations, the Entitlement Rules and the Guidelines issued to the Medical Officers. The essence of the rules, as seen earlier, is that a member of the armed forces is presumed to be in sound physical and mental condition at the time of his entry into service if there is no note or record to the contrary made at the time of such entry. More importantly, in the event of his subsequent discharge from service on medical ground, any deterioration in his health is presumed to be due to military service. This necessarily implies that no sooner a member of the force is discharged on medical ground his entitlement to claim disability pension will arise unless of course the employer is in a position to rebut the presumption that the disability which he suffered was neither attributable to nor aggravated by military service. From Rule 14(b) of the Entitlement Rules it is further clear that if the medical opinion were to hold that the disease suffered by the member of the armed forces could not have been detected prior to acceptance for service, the Medical Board must state the reasons for saying so. Last but not the least is the fact that the provision for payment of disability pension is a beneficial provision which ought to be interpreted liberally so as to benefit those who have been sent home with a disability at times even before they completed their tenure in the armed forces. There may indeed be cases, where the disease was wholly unrelated to military service, but, in order that denial of disability pension can be justified on that ground, it must be affirmatively proved that the disease had nothing to do with such service. The burden to establish such a disconnect would lie heavily upon the employer for otherwise the rules raise a presumption that the deterioration in the health of the member of the service is on account of military service or aggravated by it. A soldier cannot be asked to prove that the disease was contracted by him on account of military service or was aggravated by the same. The very fact that he was upon proper physical and other tests found fit to serve in the army should rise as indeed the rules do provide for a presumption that he was disease-free at the time of his entry into service. That presumption continues till it is proved by the employer that the disease was neither attributable to nor aggravated by military service. For the employer to say so, the least that is required is a statement of reasons supporting that view. That we feel is the true essence of the rules which ought to be kept in view all the time while dealing with cases of disability pension."

(emphasis supplied)

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

"6. Causal connection:

For award of disability pension/special faraily pension, a causal connection between disability or death and military service has to be established by appropriate authorities.

7. Onus of proof.

Ordinarily the claimant will not be called upon to prove the condition of entitlement. However, where the claim is preferred after 15 years of discharge/retirement/ invalidment/release by which time the service documents of the claimant are destroyed after the prescribed retention period, the onus to prove the entitlement would lie on the claimant.

10. Attributability:

(a) 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 contacted prior to enrolment or during leave, the incubation period of the disease will be taken into consideration on the basis of clinical course as determined by the competent medical authority.

(iii) If nothing at all is known about the cause of disease and the presumption of the entitlement in favour of the claimant is not rebutted, attributability 'should be conceded on the basis of

the clinical picture and current scientific medical application.

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

11. Aggravation:

A disability shall be conceded aggravated by service if its onset is hastened or the subsequent course is worsened by specific conditions of military service, such as posted in places of extreme climatic conditions, environmental factors related to service conditions e.g. Fields, Operations, High. Altitudes etc."

20. Thus, the ratio of the verdicts in ***Dharamvir Singh*** vs ***UOI & Ors*** (Civil Appeal No. 4949/2013) [(2013) 7 SCC 316], ***Sukhvinder Singh*** vs ***UOI & Ors***, dated 25.06.2014 reported in 2014 STPL (Web) 468 SC, ***UOI & Ors. vs Rajbir Singh*** [(2015) 12 SCC 264] and ***UOI & Ors*** versus ***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.

21. Furthermore, Regulation 423 of the Regulations for the Medical Services of the Armed Forces 2010 which relates to 'Attributability to Service' provides as under:-

"423.(a). For the purpose of determining whether the cause of a disability or death resulting from disease is or not attributable to Service. It is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a Field Area/Active Service area or under normal peace conditions. It is however, essential to establish whether the disability or death bore a causal

connection with the service conditions. All evidences both direct and circumstantial will be taken into account and benefit of reasonable doubt, if any, will be given to the individual. The evidence to be accepted as reasonable doubt for the purpose of these instructions should be of a degree of cogency, which though not reaching certainty, nevertheless carries a high degree of probability. In this connection, it will be remembered that proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. If the evidence is so strong against an individual as to leave only a remote possibility in his/her favor, which can be dismissed with the sentence "of course it is possible but not in the least probable" the case is proved beyond reasonable doubt. If on the other hand, the evidence be so evenly balanced as to render impracticable a determinate conclusion one way or the other, then the case would be one in which the benefit of the doubt could be given more liberally to the individual, in case occurring in Field Service/Active Service areas.

(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.

22. It has already been observed by this Tribunal in a catena of cases that peace stations have their own pressure of rigorous military training and associated stress and strain of the service. It has also to be taken into consideration that most of the personnel of the armed forces have to work in the stressful and hostile environment, difficult weather conditions and under strict disciplinary norms. The onset of the disability of Primary Hypertension as reflected in the RMB is in September 2010 at Sarsawa, after 34 years of service in the Indian Air Force. The applicant was deputed to various postings in the Indian Air Force stations before the onset of the disability. The cumulative stress and strain of the service tenure where the applicant was exposed to severe conditions cannot be overlooked.

CONCLUSION

23. Thus, the OA 162/2021 is allowed and the applicant is held entitled to the grant of the disability element of pension qua the disability of Primary Hypertension @ 30% 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***, is rounded off to 50% for life from the date of discharge. However, the arrears will be restricted to three years from the date of filing of this OA in view of the law laid down in the case of ***Union of India and others Vs. Tarsem Singh [2008 (8)SCC 649].***

24. The respondents are directed to calculate, sanction and issue the necessary Corrigendum PPO to the applicant within three months from the date of receipt of the copy of this order and in the event of default, the applicant shall be entitled to the interest @6% per annum on the arrears till the date of payment.

Pronounced in the open Court on the 19th day of Januray 2024.

[LT GEN CP MOHANTY]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/akc/