

COURT NO. 1, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 1626 of 2018

In the matter of :

**Colonel Vasantrao Pandurang
Shinde, Retd**

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri Aditya Singh Puar, Advocate

For Respondents : Shri Arvind Patel, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN P.M. HARIZ, MEMBER (A)

ORDER

Invoking the jurisdiction of the Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 read as under :

- (i) *Petitioner, hence, prays for grant of disability pension in accordance with the applicable Rules and as held by the Hon'ble Supreme Court vide Annexures A-1 to A-5 and The Entitlement Rules, 1982, by setting aside that part of the Medical***

- Board (Impugned Order 1) and the consequent rejections (Impugned Orders 2 and 3) wherein his disability has been opined to be neither attributable to, nor aggravated by military service being not only in conflict with the Rules but also in direct contravention of a series of decisions of the Hon'ble Supreme Court;**
- (ii) With a further prayer that the Hon'ble Tribunal may be pleased to direct that the Disability Pension thus awarded may be broad banded by the Respondents in terms of the judgment of the Hon'ble Supreme Court of India in C.A. 418/2012 ie Ram Avatar Vs Union of India;**
- (iii) That the Respondents may be directed to release the broad banded disability pension and its arrears with heavy costs and compensation and interest within a time-bound manner;**
- (iv) Any other relief which the Hon'ble Tribunal may deem fit in the interest of Petitioner.**

BRIEF FACTS

2. The applicant, having been found medically and physically fit, was commissioned in the Indian Army on 24.12.1982. On superannuation, the applicant retired from service on 31.07.2015 in permanent low medical category S1H1A1P2E1. The Release Medical Board (RMB) held on 13.06.2015 assessed the applicant's disability 'DIAG-CAD STEAWMI MILD LC DYSFUNCTION (LVEF 50%) RT DOM SVD PIC-LAD (DES), @ 40% for life. However, the disability was held as 'neither attributable to nor aggravated by military service' (NANA), based on which, the disability pension was denied to the applicant.

3. The initial claim of the applicant for the grant of disability pension was rejected by AG/PS-5 vide letter No.52334/IC-40793W/KUMAON/MP-(D)/458/2015/AG/PS-4(Imp) dated 29.09.2015. Against this rejection of the disability claim, the applicant preferred the first appeal dated 06.11.2015, however, the same was rejected by the Appellate Committee on First Appeals (ACFA) vide AG's branch letter No.No.52334 / KUMAON/ IC-40793W/ MP-6(D)/ 11/ 2016/ Appeal/AG/PS-4(Imp-II) dated 28.04.2017 on the ground

that the onset of ID was in peace station and the officer served in the same station till his release from service and thus the applicant's disability was considered as NANA. The applicant preferred the second appeal dated 15.06.2017, which was also rejected by the Second Appellate Committee on Pensions (SACP) vide detailed letter No. B/38046A/2002/2017/AG/PS-4 (2nd Appeal) dated 05.06.2018. Aggrieved by the same, the applicant has filed the instant OA.

4. The learned counsel for the applicant submitted that the applicant, at the time of joining the service, was declared fully fit medically and physically and no note was made in his medical record to the effect that the applicant was suffering from any disease at that time and any medical disability contracted by him during the course of his service should therefore be treated as attributable to and aggravated by the stresses and strains of his service. The learned counsel then stated that the strictly regimented routine and challenging conditions of service also cause a lot of stress and strain not only mentally but also physically. The learned counsel further submitted that because of

discharging duties for prolonged period in such strenuous and challenging conditions of service and staying away from his family with tremendous mental and physical pressure, the applicant's health got adversely affected and thus, on 13.06.2015, the applicant was diagnosed with CAD. The learned counsel further submitted that even after suffering from the above disability, the applicant continued to serve till his retirement which resulted in worsening his medical condition. The learned counsel further submitted that at the time of retirement from service, the applicant was in low medical category after more than 32 years of service, still his disability was considered as neither attributable to nor aggravated by service and despite the fact that as per Annexure III to Appendix II to the Entitlement Rules to Casualty Pensionary Awards to the Armed Forces Personnel, 1982, Myocardial Infarction and other forms of IHD are listed in the diseases affected by stress and strain of service.

5. The learned counsel for the applicant further submitted that the instant matter is squarely covered by the judgments of the Hon'ble Supreme Court, such as,

Dharamvir Singh Vs. Union of India & Ors. [2013 AIR

SCW 4236], *Sukhvinder Singh Vs. Union of India and Ors. [2014 STPL (WEB) 468 SC]*, *Union of India & Anr. Vs. Rajbir Singh [2015 (2) SCALE 371]*, *Union of India & Ors. Vs Angad Singh Titaria [AIR 2015 SC 1898]* and *Union of India and another Vs. Manjeet Singh [AIR 2015 SC 2114]*, and submitted that the respondents' action in denying the disability pension was unjustified and unlawful, when the disability recorded by the RMB occurred during the active service and were caused due to stress and strain of service. He referred to Rules 5 and 14(b) of the Entitlement Rules, 1982 to submit that the deterioration of health is to be presumed to be due to service conditions; Rule 9 to submit that the onus of proof for condition of non-entitlement is not on the applicant; Rule 19 thereof to contend that if the worsening of a condition persists till the time of discharge, aggravation is to be accepted and also referred to various rules and regulations in support of the case of the applicant. The learned counsel, therefore, prayed that the disability in question may be held as attributable to and aggravated by military service and that the disability pension may be granted to the applicant.

6. *Per contra*, the learned counsel for the respondents contended that the applicant is not entitled to the relief claimed since the RMB, being an Expert Body, found the disability as "Neither Attributable to Nor Aggravated by Military Service" on the ground that the onset of the disease was in peace area and that the 14 days charter of duties does not suggest exceptional stress and strain of military service. The learned counsel further submitted that the SACP while rejecting the second appeal of the applicant, explained the reasons in detail for denying the disability pension. thus the applicant is not entitled to disability pension and, therefore, the OA deserved to be dismissed.

7. We have heard the learned counsel for the parties and have gone through the records.

8. It is an undisputed fact that at the time of joining the Indian Army on 24.12.1982, the applicant was found medically and physically fully fit in all respect. The present disability has admittedly diagnosed in May, 2015 and at the time of retirement, the applicant was placed in low medical category S1H1A1P2(P)E1.

9. The law on the issue of attributability of a disability is already settled by the Hon'ble Supreme Court in the case of **Dharamvir Singh Vs. Union of India [(2013) 7 SCC 316]**, which has been followed in subsequent decisions of the Hon'ble Supreme Court and in a catena of orders of this Tribunal, wherein the Apex Court had considered the question with regard to grant of disability pension and after taking note of the provisions of the Pension Regulations, Entitlement Rules for Casualty Pensionary Awards, 1982 and the General Rules of Guide to Medical Officers (Military Pensions), 2002 and Para 423 of the Regulations for the Medical Services of the Armed Forces, it was held by the Hon'ble Supreme Court that an Army personnel shall be presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance and in the event of his being discharged from service on medical grounds, any deterioration in his health, which may have taken place, shall be presumed due to service conditions. The Apex Court further held that the onus of proof shall be on the respondents to prove that the disease from which the

incumbent is suffering is neither attributable to nor aggravated by military service. The guidelines laid down vide the verdict in *Dharamavir Singh (supra)* are as under:-

"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."

10. The Hon'ble Supreme Court in the case of **Union of India & Ors. Vs. Rajbir Singh [2015 (2) SCALE 371]** decided on 13.02.2015, after taking note of its judgement in the case of *Dharamvir Singh (supra)* upheld the decision of this Tribunal granting disability pension and observed as under :

"15. 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....."

11. Further, in Para 47 of Chapter VI of the Guide to Medical Officers (Military Pensions) 2002, amended 2008 (hereinafter referred to as 'GMO (MP) 2008', various factors including prolonged stress and strain and physical hardship caused by serving in field and high altitude areas have been provided which cause the heart diseases to the army personnel. It would be relevant to reproduce Para 47 of the GMO (MP) 2008, which is as under:-

"47. Ischaemic Heart Disease (IHD). IHD is a spectrum of clinical disorders which includes asymptomatic IHD, chronic stable angina, unstable angina, acute myocardial infarction and sudden cardiac death (SCD) occurring as a result of the process of atherosclerosis. Plaque fissuring and rupture is followed by deposition of thrombus on the atheromatous plaque and a variable degree of occlusion of the coronary artery. A total occlusion results in myocardial infarction in the territory of the artery occluded. Prolonged stress and strain hastens atherosclerosis by triggering of neurohormonal mechanism and autonomic storms. It is now well established that autonomic nervous system disturbances precipitated by emotions, stress and strain, through the agency of catecholamines affect the lipid response, blood pressure, increased platelet aggregation, heart rate and produce ECG abnormality and arrhythmias. The service in field and high altitude areas apart from physical hardship imposes considerable mental stress of solitude and separation from family leaving the individual tense and anxious as quite often separation entails running of separate establishment, financial crisis, disturbance of child education and lack of security for family. Apart from this, compulsory group living restricts his freedom of activity. These factors jointly and severally can become a chronic source of mental stress and strain precipitating an attack of IHD. IHD arising in while serving in Field area/HAA/CI Ops area or during OPS in an indl who was previously in

SHAPE-I will be considered as attributable to mil service....."

[Emphasis supplied]

12. In the present case, although the disability was noted when the applicant was posted in peace area, the probability of earlier service over a prolonged period having served in different and difficult geographical and environmental conditions having contributed to mental as well as physical stress and strain resulting in CAD cannot be overlooked. Thus, forming an opinion on the basis of 14-day charter of duties is not justifiable. Moreover, it has already been observed by the Tribunal in large number of cases that peace stations have their own pressure of rigorous military training and associated stress and strain of the service. It may also be taken into consideration that the most of the officers/personnel of the armed forces live without their family, work in the stressful and hostile environment, difficult weather conditions and under strict disciplinary norms. Admittedly, the applicant was commissioned in the Indian Army in December, 1982 and superannuated from service on 31.07.2015. The disability has first occurred in 2015 i.e. after about 33 years of long service and even after

having suffered with the disability in question, the applicant continued to serve till his retirement. There is no record to show that the applicant had suffered from CAD due to hereditary and unhealthy life style. Therefore, we hold that the disability of the applicant is attributable to and aggravated by military service.

13. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is held entitled for the disability element of pension in respect of the disability i.e. CAD @ 40% for life with the benefit of rounding off to 50% for life from the date of discharge.

14. Therefore, the OA 1626 of 2018 is allowed. The respondents are directed to grant the disability element of pension to the applicant for the disability CAD @ 40% for life, which is directed to be rounded off to 50% for life from the date of his retirement i.e. 31.07.2015 in terms of the judicial pronouncement of the Hon'ble Supreme Court in the case of **Union of India Vs. Ram Avtar (Civil Appeal No. 418/2012)** decided on 10.12.2014. However, there being considerable delay in approaching the Tribunal by the applicant, in view of the law laid down in the case of **Union of India & Ors. Vs.**

Tarsem Singh [2009 (1) AISLJ 371], arrears will be restricted to three years prior to the date of filing of this OA i.e. 25.09.2018.

15. Accordingly, the respondents are directed to calculate, sanction and issue necessary PPO to the applicant within a period of three months from the date of receipt of copy of this order, *failing which*, the applicant shall be entitled to interest @ 6% per annum till the date of payment.

16. There is no order as to costs.

Pronounced in open Court on this 3rd day of July, 2024.

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

**[LT GEN P.M. HARIZ]
MEMBER (A)**

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