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

OA No. 1806 of 2018

Ex JWO Ramesh Chand ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Mr. Praveen Kumar, Advocate

For Respondents : Dr Vijendra Singh Mehndiyan, Advocate

CORAM :
HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER(J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

The applicant vide the present O.A 1806/2018 has made the following prayers:-

> *"(a) Quash and set aside the Impugned letter dated 07.11.2016.*
> *(b) Direct Respondents to grant disability pension @50% after rounding off from @30% for life as recommended by RMB to the applicant with effect from 01 Apr 2003 i.e. the date of discharge from service with interest @12% p.a. till final payment is made.*
> *(c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case."*

2. The applicant Ex JWO Ramesh Chand (S No.242215-N) was enrolled in the Indian Air Force on 22.01.1966 and discharged from service

on 31.03.2003 under the clause "On attaining the age of superannuation" after rendering total of 37 years and 69 days of regular service. The applicant underwent initial medical examination and was declared fit in medical category 'AYE' vide AFMSF-2A dated 18.01.1966. On 14.05.2002, the applicant with complaints of retrosternal burning since 10.05.2002 reported to the SMC while serving at 36 Wing and was admitted to SS Govt Hospital, Vadodara on the same day. The applicant was evaluated and diagnosed with ID-Unstable Angina and was managed conservatively and was transferred to INHS, Asvini for further evaluation. The applicant was advised CAG and was transferred to MH CTC Pune on 17.05.2002 and the PCT was done on 20.05.2002. The Cardiologist of the MH(CTC), Pune, opined that the applicant be placed in Low Medical Category P2(P) and he was recommended to be released from service in LMC P2(P) for the ID-CAD(Unstable Angina) PTCA with POBA-LAD Stent-LCX. The initial medical board qua the applicant was held at 36 Wing, AF vide AFMSF-15 dated 29.07.2002 and recommended LMC BEE(P). The Release Medical Board not solely on medical grounds was held at 36 Wing, AF vide AFMSF-16 dated 07.08.2002 which found the applicant fit to be released in Low Medical Category BEE(P) for ID-CAD(Unstable Angina) PTCA with POBA Stent-LCX. However, the RMB considered the disability of the applicant as being neither attributable to nor aggravated by service opining the disability to be a constitutional one and not connected with service vide Para(d), Part-III of the RMB. The percentage of disablement was assessed @30% for life

and the proceedings of the RMB were approved by the Dy PMO HQ SWAG, IAF dated 26.08.2002. On adjudication, the PCDA(A) also upheld the recommendations of the RMB and rejected the disability pension claim of the applicant vide letter No. Gts/AF/Cell/04/Dis/930 dated 11.07.2004 and the outcome to this effect was communicated to the applicant vide letter No.RO/2703/242215/03/03/P&W(DP) dated 17.08.2004 with an option to the applicant that he may prefer an appeal to the Appellate Committee within six months from the date of receipt of letter. The applicant's First appeal was rejected by the respondents vide letter No. Air HQ/99798/5/80/2017/242215/DP/DAV-III dated 31.08.2017. The applicant filed OA 1880/2017 thereafter i.e. on 25.10.2017 for the grant of the disability element of pension and the same was disposed of by this Armed Forces Tribunal (PB), New Delhi with directions to the applicant to file a second appeal within a period of four weeks from the date of order dated 30.01.2018 with further directions to the respondents to dispose of the said appeal within a period of four months from the date of receipt of the said order. The applicant submitted that he had not filed his second appeal till then stating that he had not received any adjudication of the first appeal. In as much as a copy of the adjudication of the first appeal was placed on record in OA 1880/2017, the said second appeal of the applicant dated 31.01.2018 was not disposed of by the respondents till the institution of the instant OA on 25.10.2018 despite orders dated 30.01.2018 in OA

1880/2017 within the stipulated period of time as per the averments made in para 6 of the brief facts of the counter affidavit dated 29.05.2019 itself indicating that the same had not been disposed of till then nor was there any submission on behalf of the respondents made on 13.12.2023 when we took up the matter for hearing that there had been any adjudication of the said appeal, in terms of Section 21(2)(b) of the Armed Forces Tribunal Act, 2007, we thus consider it appropriate and essential to take up the instant OA for consideration.

CONTENTIONS OF THE PARTIES

3. The applicant submits that he had joined the Indian Air Force on 22.01.1966 in a fit medical standard as required for the recruitment in the Armed Forces at the time of enrolment after he was subjected to a thorough medical examination conducted by the recruiting medical officer and there was no note of any disease on the records of the respondents that he suffered from any disease. *Inter alia*, the applicant submits that he was again put to a thorough medical examination at the Training Centre before training and thereafter, he was posted to different units in peace as well as in field areas. The applicant submits that during posting to Palam, he was deployed on his trade duties where he had to work for long hours in day and night shifts and had to faced hardships. *Inter alia*, the applicant submits that he had also stayed away from family and stayed alone while on courses/training exercises and non-family stations which added to the stress and strain of

service. The applicant places reliance on his posting profile as reflected in the Release Medical Board which reads as under:

Posting Details

" 242215-N JWO Ramesh Chand Med/Asstt 36 Wing

Sl No.	Unit	Place		Date from	Field/peace
1.	MTC, AF	Bangalore	22.1.66	5.3.67	P
2.	109 HU	Chandigarh	6.3.67	3.4.68	P
3.	3 Wing	Palam	4.4.68	26.3.73	P
4.	3 CAEU	Leh	27.3.73	25.3.74	F
5.	30 ED	Bombay	26.3.74	1.3.78	P
6.	CHAFB	Bangalore	2.3.78	14.6.80	p
7.	IAM	Bangalore	15.6.80	1.4.83	P
8.	48 Sqn	Allahabad	11.4.83	16.5.86	P
9.	48 Sqn	Chandigarh	17.5.86	12.4.87	P
10.	14 Wing	Chabua	13.4.87	13.10.91	P
11.	AFA	Hyderabad	14.10.91	16.2.97	P
12.	36 Wing	Baroda	17.2.97	Till date	P

"

4. The applicant submits that his duties as Medical Assistant required a combination of both physical and mental abilities and he also updated himself with current medical conditions and additional medical terms. The applicant submits that in the year 1980 he was posted to IAM, Bangalore where he participated in completion of the annual medical records of other air warriors posted to that unit. The applicant submits that in the year 1987 he was posted to 14 Wing, Chabua, Assam where he had to work on various latest medical equipments and also participated in the Kargil war in 1999 and had to work there day and night during the entire war period. The applicant submits that he was also detailed to perform various other

duties i.e. PAD/GD duties, Guard duties during nights. The applicant submits that during the year 1997, he was posted to 36 Wing, Baroda where he had to work in the medical lab, emergency ward and other various important sections of SMC and his posting at this place was for six years till he was finally discharged from service from this unit in the year 2003. The applicant submits that he suffered from the disability of CAD(Unstable Angina)PTCA with POBA LAD STENT LCVX in May 2002 and his disability aggravated due to hard duties, extended working hours, nature of duties and extreme military conditions. The applicant submits that the Release Medical Board having opined the disability as being neither attributable to nor aggravated by military service, is wholly incorrect. The applicant submits that he was released from the Indian Air Force on 31.03.2003 with permanent Low Medical Category BEE(P) and the Release Medical Board assessed his disability CAD(Unstable Angina)PTCA with POBA LAD STENT LCVX in May 2002 @30% composite but the RMB recommended the same as being neither attributable to nor aggravated by military service and no medical documents were provided to him for the grounds that the disability is not attributable to or aggravated by military service.

5. The applicant places reliance on the verdict of the Hon'ble Supreme Court in ***Dharamvir Singh vs. UOI & Ors.*** in Civil Appeal No. 4949/2013(2013 AIR SCW 4236 to contend that the Hon'ble Supreme Court observed therein that whether disability is attributable to or

aggravated by military service is to be determined under the 'Entitlement Rules for Casualty Pensionary Awards 1982' and the Govt of India, MoD letter No.1(1)/81/D*(Pen-C) dated 20.06.1996 and the General Rules of Guide to Medical Officer(MP) 2002 amended 2008 with specific reference to observations in Para-28 of the said verdict of the Hon'ble Supreme Court which read 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."

6. Reliance was placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in case of ***Union of India & Ors*** Vs ***Rajbir Singh*** in Civil Appeal No.2904/2011 decided on 13.02.2015 to contend to the effect that in absence of any reason recorded by the Medical Board, the disability must be presumed to have been attributable to or aggravated by military service.

7. *Inter alia*, the applicant also seeks the broad banding of the disability element with percentage of disablement assessed @30% for life for 05 years by the RMB which is to the effect:

"

Disability(as Numbered in questio Part II	Percentage Of disablement	Probable duration of this Degree of disablement	Composite assessment (all disabilities
CAD(UNSTABLE ANGINA) PTCA POBA LAD STENT LCZ(177)	30%	Five years	Thirty percent

"

to 50% for life in terms of the verdict of the Hon'ble Supreme Court in Civil Appeal No.418 of 2012 titled ***Union of India & Ors*** Vs ***Ram Avtar*** decided on10.12.2014. The applicant also places reliance on the verdict

of the Hon'ble Supreme Court in ***Commander Rakesh Pande*** Vs ***Union of India & Ors*** decided on 28.11.2019 wherein the disability element of pension in relation to the disabilities for life time duration was granted and submits that his disability was of a permanent nature. Reliance was also placed on behalf of the applicant on the order dated 15.04.2019 of this Tribunal in OA 951/2016 in ***Ex MWO(HFO) Vishambhar Singh*** Vs ***Union of India & Ors*** and the order dated 18.05.2023 in OA 1917/2021 in ***MWO Ramesh Chand Choudhary(Retd)*** Vs ***Union of India & Ors*** and order dated 03.11.2023 in OA No.152/2022 in ***Ex MWO Bijay Kumar Sah*** Vs ***Union of India & Ors*** and submits that in each of the said cases, the applicants therein were granted the disability element of pension in relation to the disability of CAD @30% for life.

8. The applicant inter alia submits to the effect that the disability that the applicant suffered from i.e. CAD(Unstable Angina) PTCA with POBA Stent-LCX had its onset on 05.05.2002 after the induction of the applicant in the Indian Air Force on 22.01.1966 i.e. after 36 years of service in the Indian Air Force and the cumulative stress and strain on the applicant during his service in the Indian Air Force cannot be overlooked.

9. On behalf of the respondents reliance was placed on the opinion of the Release Medical Board in para 3 and also on para 3(d) thereof which is to the effect:

"3.

Disability	A	B	C
CAD(UNSTABLE ANGIN PTCA POBA –LAD STENT-LCX(177)	No	No	Yes

"

(d) In the case of a disability under 'C' the Board should state what exactly in their opinion is the cause thereof.

"*It is a constitutional disease not connected with service.*"

Inter alia, the respondents place reliance on the personal history of the applicant in the Summary of Case which reads to the effect:

"PERSONAL HISTORY" *He smokes 10-12 cigarettes since 40 years, take alcohol socially non-vegetarian.*

10. On behalf of the respondents, it was submitted that the applicant being a smoker himself was responsible for his condition in as much as he smoked 10-12 cigarettes a day for the last 40 years and also took alcohol socially. On behalf of the respondents it was submitted that the applicant being a smoker, his disability can not be considered to be attributable to military service.

11. The respondents have thus prayed that the present OA be dismissed.

ANALYSIS

12. Undoubtedly, in the instant case, the onset of the disability *qua* the applicant was after 36 years of his engagement in the Indian Air Force and also after the applicant had been posted at Leh from 27.3.1973 to 25.3.1974, a field station and it is also essential to observe that in terms of Para 423 of the Regulations for the Medical Service in the Armed Forces and also the observations of the Hon'ble Supreme Court in para 33 of the verdict in **Dharamvir Singh** Vs **Union of India & Ors** judgment observe to the effect:

> ***"For the purpose of determining whether the cause of a disability or death resulting froms 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.***

13. It is essential however, to advert to Para 47 of Chapter VI of the GMO(MP) 2002, which would be applicable in the instant case in view of the discharge of the applicant on 31.01.2003 which reads to the effect:

> *47. Ischaemic Heart Disease (IHD) IHD is a constitutional disease. It is almost always due to occlusive thrombus at the site of rupture of an atheromatous plaque in the coronary artery. 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, heartrate and produce ECG abnormality and arrhythmias. Therefore where exceptional and prolonged stress and*

strain of service can reasonably be established, aggravation can be conceded. The other hand acute and severe mental and physical stress of very short duration may precipitate acute cardiovascular catastrophe by suddenly creating marked reduction of blood supply relative to its demand and favours coronary spasm, resulting in ischaemia. Therefore intimate causal relationship must be accepted and attributability can be conceded.

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.

Severe regimentation in the day to day service life, working to deadlines, prolonged hours of uncongenial duties are inherent in the working of services. In addition, severe mental trauma associated with operations of high pressure planning and similar other duties in three services, severe physical stress and strain of field service and active operational areas, stresses of multitude of duties and responsibility must be given consideration while establishing causal relation between acute cardiovascular catastrophe and service.

The magnitude of physical activity and emotional stress is no less in peace area. Tough work schedules and mounting pressure of work during peace time compounded by pressure of duties, maintenance of law and order, fighting counter insurgency and low intensity war in deceptively peaceful areas and aid to civilians in the event of natural calamities have increased the stress and strain of service manifold. Hence no clear cut distinction can be drawn between service in peace areas and field areas taking into account quantum of work, mental stress and responsibility involved. In such cases, aggravation due to service should be examined in favour of the individual.

It is concluded that a myocardial infarction may be attributable to or aggravated by service or unrelated to service factors as follows :-

(a) Attributability will be conceded where : A myocardial infarction arises during service in close time relationship to a service compulsion involving severe trauma or exceptional mental, emotional or physical strain, provided that the interval between the incident and the development of symptoms is approximately 24 to 48 hours. Attributability will be conceded in cases related to activities like high pressure planning for/in operation or extreme physical strain, but not in cases of stress and strain in office or extra/work duties which are matters of normal official

life. Attributability can also be conceded when the underlying disease is either embolus or thrombus arising out of trauma in case of boxers and surgery, infectious diseases. e.g. SBE, vaccinia, exposure to HAA, extreme heat. However, IHD occurring in a setting of hypertension, diabetes and vasculitis, entitlement can be judged on its own merits.

(b) Aggravation will be conceded in cases in which there is evidence of :-

(i) Severe mental and/or emotional stress due to participation in operation or high pressure planning for operation or other similar activities involving equivalent stress and strain.

(ii) Severe physical stress in the field or other similar activities involving stress in peace or training during the preceding two weeks.

(iii)Atheroma manifesting itself clinically as angina, myocardial infarction, sudden death and abnormalities of the electrocardiogram.

In such cases aggravation will be conceded if an individual known to be suffering from ischaemic heart disease, or one in whom it can be otherwise established that there has been a failure to make a diagnosis of ischaemic heart disease, as a result of which he was not given suitable duties in a lower medical category and kept under observation, but allowed to continue to perform duties in a higher medical category with its connected stress and strain, resulting in illness of critical or catastrophic proportions leading to death.

There would be cases where neither immediate nor prolonged exceptional stress and strain of service is evident. In such cases the disease may be assumed to be the result of constitutional factors, heredity and way of life such as indulging in risk factors e.g. smoking. Neither attributabililty nor aggravation can be conceded in such cases."

(Emphasis supplied)

It is thus apparent that in terms of said Para 47 of Chapter VI of GMO(MP)-2002 itself smoking is a contributory factor for the disability *qua* the applicant in the instant case.

14. It is essential to advert on the observations in Para 11-13 of our order dated 21.12.2023 in OA 2361/2019 in *Gp Capt Alok Goel(Retd)* Vs *Union of India & Ors.* to the effect:

"11. The medical aspects of smoking and heart disease and vascular disease is available in open domain, such as ***NHLBI, NIH*** *article on https://www.nhlbi.nih.gov/health/heart/smoking updated on March 24, 2022, as is available on the internet, to the effect that smoking is harmful to nearly every organ in the body, including heart, blood vessels, lungs, eyes, mouth, reproductive organs, bones, bladder and digestive organs and thus smoking is a major risk factor for many diseases including heart disease; any amount of smoking, even occasional smoking, can cause damage to heart and blood vessels; smoking also increases risk for peripheral artery disease (PAD); when plaque builds up in the arteries that carry blood to the head, organs, arms, and legs and people have an increased risk for coronary heart disease, heart attack and stroke. Another medical review on the webpage of* ***MEDICAL NEWS TODAY*** *published on January 6, 2023 and on the website at https://www.medicalnewstoday.com/articles/can-smoking-cause-a-stroke, also states:*

"Smoking increases the risk of stroke because it causes inflammation and damage to the blood vessels and can lead to a build-up of plaque in the arteries. This makes it harder for the heart to pump blood. Smoking also impacts circulation throughout the body by constricting small arteries".....

"Tobacco smoke contains thousands trusted sources of toxic and cancer-causing chemicals that pass from the lungs into the bloodstream when a person inhales it.

These chemicals alter and damage cells and increase the risk of stroke and other cardiovascular diseases".

12. Thus, in view of scientific articles in print media and internet indicate that people who are into heavy smoking are more likely to have heart attacks, high blood pressure, blood clots and other disorders of the cardiovascular system. Since there is medical evidence that smoking increases the risk of heart attacks including other diseases related to blood vessels and despite the same, if one decides to smoke out of his free will despite a statutory warning printed on the cigarette packet with the applicant in the instant case having also been reported to have consumed alcohol the night before the incident in question, we do not consider it appropriate to set aside the decision of the RMB in not conceding attributability or aggravation by service and declaring the diseases of the applicant as NANA."

"13. xxxxxxxxxx

It is well known and also indicated in various reviews available on the internet that heart attacks and strokes are closely related. One such review article on https:/ /www.healthgrades.com/right-care/stroke/heart-disease-and-stroke-whats-the-connection updated on April 21, 2021 as available on the internet suggests to the effect :

"Heart disease and stroke may seem like different diseases, but they're actually closely related and caused by the same disease process in your arteries."……

"Atherosclerosis is a slow build-up of fatty plaque inside your arteries. Plaque can build up at the same time in the arteries that supply blood to a person's heart and brain; atherosclerosis narrows your arteries and reduces blood supply to your heart and brain. This makes it more likely that a blood clot will form and completely block blood flow. When a clot forms in the arteries of your heart, it causes a heart attack. When a clot forms in your brain, it causes a stroke."

15. It is essential to advert to the order dated 09.12.2021 in OA 102/2011 in case of ***Cdr Birbal Singh(Retd)*** Vs ***Union of India & Ors*** of the Armed Forces Tribunal, Regional Bench, Jaipur wherein the grant of the disability element of pension was declined to the applicant thereof on the ground, *inter alia*, in relation to Coronary Artery Disease(Anti Stemi, DVD, Pamilad, PCI-Ramus)observing to the effect:

"The fact is mentioned clearly in Medical Case Sheet that the Applicant is a Chronic Smoker and Chronic Alcoholic for 38 years which clearly establishes that the disease suffered by the Applicant were due to sheer negligence on part of the Applicant and are clearly not Attributable to or Aggravated by Service."

The challenge to this order before the Hon'ble Supreme Court was dismissed vide order dated 12.07.2022 of the Hon'ble Supreme Court in Civil Appeal No.4699 of 2022.

16. As regards the reliance that the applicant has placed on the order dated 15.04.2019 in OA 951/2016 titled *EX MWO(HFO)*

Vishambhar Singh vs. *Union of India & Ors,* it is essential to observe that vide para 4 thereto:

> ***"The plea that applicant has been a smoker and heavy drinker, is not reflected in the RMB proceedings nor is a ground for rejection of claim of the applicant for grant of disability pension,"***

unlike in the instant case, where in the RMB proceedings that the applicant himself has placed on record through the Summary of the Case is reflected the personal history of the applicant to the effect that he smoked 10-12 cigarettes a day from 40 years.

17. The applicant in the instant case is a smoker and the onset of the disability in the instant case cannot be held to be attributable to or aggravated by military service in view of the personal history apparently given by the applicant himself that he consumed 10-12 cigarettes a day for years i.e. 40 years i.e. from 1961-62 and even prior to the induction of the applicant in the Indian Air Force where he worked for 36 years.

18. Thus, in view of the circumstances of the instant matter, we do not find any infirmity in the opinion of the Release Medical Board denying the disability element of pension to the applicant *qua* the disability of CAD(UNSTABLE ANGIN PTCA POBA –LAD STENT-LCX(177) for it being neither attributable to nor aggravated by military service

and the applicant thus is not entitled to the grant of the disability element of pension for which the applicant is himself responsible being a chain smoker.

CONCLUSION

19. The OA 1806/2018 is thus dismissed.

20. However, there is no order to costs.

Pronounced in the open Court on 23 this day of January, 2024.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/Chanana/