

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

A.

OA 1959/2020 with MA 2259/2020

Cdr AK Chaturvedi (Retd.) Applicant

VERSUS

Union of India and Ors. Respondents

For Applicant : Mr. Shakti Chand Jaidwal, Advocate

For Respondents : Dr. Vijendra Singh Mahndiyan, Advocate

CORAM

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

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

ORDER
15.05.2024

Vide our detailed order of even date we have allowed the OA 1959/2020. 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 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, the prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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O R D E R

MA 2259/2020

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 3615 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 in the application, the MA 2259/2020 is allowed and the delay of 3615 days in filing the OA 1959/2020 is thus condoned. The MA is disposed of accordingly.

OA No. 1959/2020

Invoking the jurisdiction of this Tribunal; under Section 14, the applicant has filed this application and the reliefs claimed in Para 8 read as under:

- (a) *Call for relevant records of the applicant and after perusal thereof, et aside the impugned order dated 25.09.2020 passed by the respondents, rejecting second and final appeal of the applicant for grant of disability pension to him as time-barred;*
- (b) *Direct the respondents to treat disabilities of the applicant, namely. "(i) Primary Hypertension (ii) IGT and (iii) Dyslipidemia" as attributable to/ aggravated by stress and strain of Naval Service;*
- (c) *Direct the respondents to grant disability pension to the applicant @ 40% for life w.e.f. 01.01.2002, as degree of disablement has been assessed @ 40% for life by AMB;*
- (d) *Direct the respondents to pay disability pension to the applicant at enhanced rate of 50% for life w.e.f. 01.01.2002 by broad-banding applicant's disabilities from 40% to 50% as per Govt. Policy dated 31.01.2001;*
- (e) *Direct the respondents to pay to the applicant an interest @ 10% p.a. on*

*arrears of the disability pension w.e.f.
01.01.2002 and/or;*

*(f) Issue such other order(s)/direction(s) as
may be deemed appropriate in the facts
and circumstance of the case.*

BRIEF FACTS

2. The applicant was commissioned in the Indian Navy on 05.04.1971 and retired from Naval service on 31.12.2001 in the rank of Cdr. The Release Medical Board dated 16.03.2009 held that the applicant was fit to be discharged from service in composite low medical category for the disabilities "(i) Primary Hypertension @30% for life, (ii) IGT @ 11-14% for life and (iii) Dyslipidemia Nil for life with composite disability @40% for life while the net qualifying element for disability was recorded as NIL for life on account of the disabilities being treated as neither attributable to nor aggravated by military service.

3. The claim of the applicant for the disability pension was rejected by the competent authority vide letter No. PN/6413/2002 dated 23.10.2006. The applicant had preferred the first appeal against rejection of his claim for grant of the disability element of pension which was rejected

vide letter No PN/6413/2002 dated 12.06.2009. The applicant preferred a second appeal dated 21.08.2020, which was rejected for being time barred as per GoI, MoD letter No. 1(3)/2008/D(Pen/Pol) dated 17.05.2016 having been filed after five years of rejection of the first appeal. Aggrieved by the rejection of the same, the applicant has filed the present OA. In the interest of justice thus, it is considered appropriate and essential to take up the present OA for consideration.

4. The applicant during the oral arguments on 06.10.2023 and on 10.01.2024 prayed for the grant of disability of Primary Hypertension alone.

ANALYSIS

5. In so far as the disability of "Primary Hypertension" is concerned, the consistent view taken by this Tribunal is based on the law laid down by the Hon'ble Supreme Court in the case of **Dharamvir Singh v. Union of India and others** (2013) 7 SCC 316, the Entitlement Rules for Casualty Pensionary Awards, 1982, and observations in para-28 of the said verdict 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 nonbattle 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 nonentitlement 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."

The verdicts of the Hon'ble Supreme Court in **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, are to similar effect.

6. 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 may also 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.

7. The 'Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 1982', (as applicable in the instant case, in view of discharge of the applicant from

service on 31.12.2001), provide vide Paras 8, 9, 13, 14 and 19 thereof as under:

"8. Attributability/aggravation shall be conceded if causal connection between death/disablement and military service is certified by appropriate medical authority.

Onus of proof:

9. The claimant shall not be called upon to prove the conditions of entitlement. He/she will receive the benefit of any reasonable doubt. This benefit will be given more liberally to the claimants in field/afloat service cases.

Injuries:

13. In respect of accidents or injuries, the following rules shall be observed:

- (a) Injuries sustained when the men is 'on duty', as defined, shall be deemed to have resulted from military service, but in cases of injuries due to serious negligence/misconduct the question of reducing the disability pension will be considered.**
- (b) 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; in cases where attributability is conceded, the question of grant of disability pension at full or at reduced rate will be considered.**

Disease:

14. In respect of diseases, the following rule will be reserved :-

- (a) Cases in which it is established that conditions of Military Service did not determine or contribute to the onset of the disease but influenced the subsequent courses of the disease, will fall for acceptance on the basis of aggravation.**
- (b) 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 individual's acceptance for military service. 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.

- (c) If a disease is accepted 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.*

19. Aggravation: If it is established that the disability was not caused by service, attributability shall not be conceded. However, aggravation by service is to be accepted unless any worsening in his condition was not due to his service or worsening did not persist on the date of discharge/claim."

Furthermore, Regulation 423 of the Regulations for the Medical Services of the Armed Forces 1983 which relates to 'Attributability to Service' provides as under:-

"423 . Attributability to service- (a) For the purpose of determining whether the cause of a disability or death 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. It is, however, essential to establish whether the disability or death bore a casual connection with the service conditions. All evidence, 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 carry the 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 favour, 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 doubt could be given more liberally to the individual, in cases occurring in field service/active service areas.

(b) The cause of a disability or death resulting from wound or injury, will be regarded as attributable to service if the wound/injury was sustained during the actual performance of 'duty' in armed forces. 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 disability resulted from self-infliction, negligence or misconduct.

(c) The cause of a disability or death result 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 is attributable to or aggravated by service or not will be decided as regards it;; 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 cause 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 attributed to service will, however, be decided by the pension sanctioning authority."

(emphasis supplied),__

as applicable at the relevant time has not been obliterated, and is rather succeeded by Regulation 423 of the Regulations for the Medical Services of the Armed Forces 2010.

8. It is essential to observe that vide para-33 on the verdict of the Hon'ble Supreme Court in **Dharamvir Singh** (Supra) it is laid down to the effect:-

"33. As per Rule 423(a) of General Rules for the purpose of determining a question whether the cause of a disability or death resulting from disease is or is not

attributable to service, it is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a field service/active service area or under normal peace conditions.

"Classification of diseases" have been prescribed at Chapter IV of Annexure I; under paragraph 4 post traumatic epilepsy and other mental changes resulting from head injuries have been shown as one of the diseases affected by training, marching, prolonged standing etc. Therefore, the presumption would be that the disability of the appellant bore a casual connection with the service conditions."

(emphasis supplied)

9. The applicant has served in the Indian Navy for 30 years and the onset of the disability of "Primary Hypertension" occurred in December 1995 after 24 years of service, whilst he was posted at Delhi. The accumulated stress and strain of such a long service on the applicant cannot be overlooked.

CONCLUSION

10. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is entitled for disability element of pension in respect of the disability 'Primary Hypertension'. Accordingly, we allow this application holding that the applicant is entitled to disability element of pension @ 30% rounded off to 50% for life with effect from the date of his discharge i.e. 31.12.2001, 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.

11. 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 however are directed to commence to run from a period of three years prior to the institution of the present OA, in terms of the verdict of the Hon'ble Supreme Court in **Union of India & Ors Vs Tarsem Singh (supra)** which 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 this day of 15th May, 2024.


[REAR ADMIRAL/DHIREN VIG]
MEMBER (A)


[JUSTICE ANU MALHOTRA]
MEMBER(J)

/pooja/