

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

C..  
OA 2124/2019

Ex CPO (GW) Awadh Sharan Tiwari ..... Applicant  
VERSUS  
Union of India and Ors. .... Respondents

For Applicant : Mr. Virender Singh Kadian, Advocate  
For Respondents : Mr. Prabodh Kumar, Advocate

CORAM

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

ORDER  
14.03.2024

Vide our detailed order of even date; we have allowed the OA 2124/2019. Learned counsel for the respondents makes an oral prayer for grant of leave to appeal in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007 to assail the order before the Hon'ble Supreme Court. After hearing learned counsel for the respondents and on perusal of our order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order to grant leave to appeal. Therefore, prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA) /  
MEMBER (J)

(LT GEN P M HARIZ)  
MEMBER (A)



**COURT NO. 2**  
**ARMED FORCES TRIBUNAL**  
**PRINCIPAL BENCH: NEW DELHI**

**OA 2124 / 2019**

**Ex CPO (GW) Awadh Sharan Tiwari** ... Applicant  
**Versus**  
**Union of India & Ors.** ... Respondents

**For Applicant** : Mr. V S Kadian, Advocate  
**For Respondents** : Mr. Prabodh Kumar, Advocate

**CORAM :**

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

**ORDER**

The applicant "No. 115396-R Ex CPO (GW) Awadh Sharan Tiwari" vide the present OA makes the following prayers:-

*"(a) Quash and set aside the impugned letter No.PEN/600/D/LRDO I / 2 / 2019 / 115396R dated 25.02.2019. And/or*

*(b) Direct the respondent to treat the disability of the applicant as attributable to or aggravated by military service and grant him disability element of pension with benefits of rounding off/ broad banding from 30% to 50%. And/or*

*(c) Direct respondents to pay the due arrears of disability element of pension with interest @12% p.a. from the date of his discharge. And/or*

*(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case."*

2. The applicant was enrolled in the Indian Navy on 04.02.1994 and discharged from service with effect from 28.02.2019 after completion of 25



years and 25 days qualifying service. Subsequently, he was sanctioned Service Pension vide PPO No. 30192050912 dated 28.02.2019.

3. At the time of discharge, the applicant was suffering with the disability of **"PRIMARY HYPERTENSION ICD I 10.0"** which was opined by the RMB dated 09.07.2018 as being neither attributable to nor aggravated by military service with assesment of percentage of disablement @ 30% for life. The net assessment qualifying for the applicant was assessed as 'NIL' and thus his claim for grant of disability pension was rejected by the Competent Authority vide letter no. PEN/600/D/LRDO/01:02/2019/115396R dated 25.02.2019.

4. Whilst rejecting the applicant's disability claim, he was given an opportunity to appeal against the rejection of the disability pension within six months from the date of issue of letter dated 25.02.2019 on such grounds as he may deem fit. The applicant submitted his first appeal-cum-representation dated 15.04.2019 which was forwarded with all relevant documents to HQ MoD/DPA(N), New Delhi vide letter no. PEN/600/D/1<sup>st</sup> Appeal/115396 dated 31.12.2019 on 19.11.2019. The applicant filed the instant OA on 19.11.2019 for grant of disability pension with broad-banding benefits from his date of retirement with all the consequential benefits in view of the non adjudication of his first appeal within six months of submission of the same and thus we consider it appropriate to take up the same for consideration in terms of Section 21 (2) (b) of the AFT Act 2007, in the interest of justice.



## **CONTENTIONS OF THE PARTIES**

5. The applicant submits that he joined the Indian Navy on 04.02.1994 in a fit medical category without any disability of any kind, with no note recorded on the medical records of his suffering from any disability whatsoever and with it having also not been stated on the records of the respondents that it could not be ascertained that any disability of the applicant could not be detected during a routine medical examination.
6. The applicant has further submitted that he was diagnosed to suffer from primary hypertension in August 2017 at Bhopal.
7. The applicant submits that in terms of the verdict of the Hon'ble Supreme Court in *Dharamvir Singh vs UOI & Ors* (Civil Appeal No. 4949/2013) 2013 AIR SCW 4236 decided on 02.07.2013 and the Government of India, Ministry of Defence letter dated 29.06.2017 which incorporates into the same, the guidelines laid down by the Hon'ble Supreme Court in *Dharamvir Singh* (supra) with specific reliance on observations in Para 28 thereof which reads 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."*

it has to be presumed that the disability that the applicant suffers from which had its onset in August 2017 has to be held to be attributable to and aggravated by military service.

8. The applicant further places reliance on the verdicts of the Hon'ble Supreme Court of India in *UOI & Ors. vs Rajbir Singh* (2015) 12 SCC 264, in *Sukhvinder Singh vs UOI & Ors*, dated 25.06.2014 reported in 2014 STPL



(Web) 468 SC and *Union of India and others Vs. Angad Singh Titaria*, Civil Appeal No. 11208 of 2011, decided on 24.02.2015 to contend to similar effect.

9. On behalf of the applicant reliance was also placed on his posting profile as reflected in Part I in his personal statement of the RMB dated 09.07.2018 which is as under:-

S. no	From	To	Place / Ship	P/F (HAA/Ops/Sea service/others)	S. no	From	To	Place / Ship	P/F (HAA/Ops/Sea service/others)
1	04.02.1994	31.07.1994	INS CHILKA	P	2	01.08.1994	09.10.1994	INS RANVIR	F
3	10.10.1994	20.11.1994	INS VENDURU TYHY	P	4	21.11.1994	07.02.1995	INS DRONACHARYA	P
5	08.02.1995	27.02.1995	INS PRATAP	F	6	28.02.1995	20.05.2000	INS KONKAN	F
7	21.05.2000	19.04.2001	ND NAGAPATNAM	P	8	20.04.2001	30.06.2004	INS BHAVNAGAR	F
9	01.07.2004	11.04.2005	INS ADITYA	F	10	12.04.2005	23.04.2007	INS UTKROSH	P
11	24.04.2007	06.05.2012	INS KOZHIKODE	F	12	07.05.2012	03.05.2013	NCB GOA	P
13	04.05.2013	30.05.2015	INS CANKARSO	F	14	31.05.2015	17.12.2017	NO 1 MP NU NCC	P
15	18.12.2017	Till date	INS TRATA						

wherein it is depicted to the effect that the applicant was posted seven times to field postings from:-

- (i) 01.08.1994 to 09.10.1994 at INS RANVIR;
- (ii) 08.02.1995 to 27.02.1995 at INS PRATAP;
- (iii) 28.02.1995 to 20.05.2000 at INS KONKAN;
- (iv) 20.04.2001 to 30.06.2004 at INS BHAVNAGAR;
- (v) 01.07.2004 to 11.04.2005 at INS ADITYA;



(vi) 24.04.2007 to 06.05.2012 at INS KOZHIKODE; and

(vii) 04.05.2013 to 30.05.2015 at INS CANKARSO.

with it having been submitted on behalf of the applicant that the posting profile of the applicant is itself an indicator of the tough terrain to which the applicant had been deployed to, thus causing severe stress and strain which resulted into his disability.

10. The applicant thus submits that the opinion of the medical board in Part V of the RMB which is to the effect:-

<i>Disability</i>	<i>Attributable to service (Y/N)</i>	<i>Aggravated by service (Y/N)</i>	<i>Not connected with service (Y/N)</i>	<i>Reason / Cause / Specific condition and period in service</i>
PRIMARY HYPERTENSION ICD NO I 10.0	NO	NO	YES	Onset while posted in peace vide para 43 to chapter VI of GMO 2008 (Military Pension).

is wholly arbitrary and be set aside.

11. The applicant has also sought the rounding off the disability element of pension from 30% to 50% for life in terms of the verdict of the Hon'ble Supreme Court in *Union of India vs Ram Avtar* decided on 10.12.2014 in Civil Appeal no. 418 of 2012.

12. On behalf of the respondents, it was submitted to the effect that the applicant's posting profile clearly depicted that he was posted at a peace posting



at NO 1 MP NU NCC at the time of the onset of the disability in August 2017 and that there was no infirmity thus in the opinion of the Release Medical Board in opining that there was no causal connection with the onset of the disability which arose in peace with military service.

13. Reliance was also placed on behalf of respondents on Para 43 Chapter VI of the GMO (Military Pensions) 2008 to contend to the effect that the disability that the applicant suffered from, does not have any causal connection with military service. The respondents thus prayed that the OA be dismissed.

### *ANALYSIS*

14. 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*.

15. The applicant in the instant case was discharged from service on 28.02.2019 and thus the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel 2008 come into play in the instant case.



16. 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 provide as under:-

**"6. Causal connection:**

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

**7. Onus of proof.**

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

**10. Attributability:**

**(a) Injuries:**

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

*(i) Injuries sustained when the individual is 'on duty', as defined, shall be treated as attributable to military service, (provided a nexus between injury and military service is established).*

*(ii) In cases of self-inflicted injuries while 'on duty', attributability shall not be conceded unless it is established that service factors were responsible for such action.*

**(b) Disease:**

*(i) For acceptance of a disease as attributable to military service, the following two conditions must be satisfied simultaneously:-*

*(a) that the disease has arisen during the period of military service, and*

*(b) that the disease has been caused by the conditions of employment in military service.*



(ii) *Disease due to infection arising in service other than that transmitted through sexual contact shall merit an entitlement of attributability and where the disease may have been contracted prior to enrolment or during leave, the incubation period of the disease will be taken into consideration on the basis of clinical course as determined by the competent medical authority.*

(iii) *If nothing at all is known about the cause of disease and the presumption of the entitlement in favour of the claimant is not rebutted, attributability 'should be conceded on the basis of the clinical picture and current scientific medical application.*

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

**II. Aggravation:**

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

*(emphasis supplied),\_\_*

Thus, the ratio of the verdicts in *Dharamvir Singh Vs. Union Of India & Ors* (Civil Appeal No. 4949/2013); (2013 7 SCC 316, *Sukhvinder Singh Vs. Union Of India & Ors*, dated 25.06.2014 reported in 2014 STPL (Web) 468 SC, *UOI & Ors. Vs. Rajbir Singh* (2015) 12 SCC 264 and *UOI & Ors. Vs. Manjeet Singh* dated 12.05.2015, Civil Appeal no. 4357-4358 of 2015, as laid down by the Hon'ble Supreme Court are the fulcrum of these rules as well.



17. Furthermore, Para 423 (a) 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.*

*(emphasis supplied),\_\_*

has not been obliterated.

18. It is essential to observe that para-33 of the verdict of the Hon'ble Supreme Court in **Dharamvir Singh** (supra) is 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)

and it is thus apparent that in terms of the verdict of the Hon'ble Supreme Court in *Dharamvir Singh* (supra) as observed by para 33 therein vide para 423 of the Regulations for Medical Services of the Armed Forces Personnel 2010, it is immaterial whether a disability had its onset in a peace area or a CI/ops area or field area or high altitude area and what is required to be established is the causal connection between the onset of the disability and military service.

19. It is essential to advert to para 43 Chapter VI of the GMO (Military Pensions) 2008 which reads 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."*

20. In the instant case the onset of the disability of primary hypertension was in August 2017 soon after the applicant had been posted in the field posting from 04.05.2013 – 30.05.2015 at INS CANKARSO. It is essential to observe that it has been stipulated in Para 43 Chapter VI of the GMO (Military Pensions) 2008 itself to the effect that in certain cases the disease has been reported after long and frequent spells of service in field / HAA active operational area and such cases can be explained by variable responses exhibited by different individuals to stressful situations, making it apparent that stressful situations are inter alia causative factors of the onset of the disability of hypertension. In the instant case, as has been observed hereinabove, the applicant was posted in seven field postings prior to the onset of the disability and thus, apparently in terms of Para 43 of Chapter VI of the GMO (Military Pensions) 2008 the applicant's disability of primary hypertension has to be held to be attributable to and aggravated by military service.

21. Furthermore, Para 10(b)(iii) of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008, provides to the effect:-

*"If nothing at all is known about the cause of disease and the presumption of the entitlement in favour of the claimant is not*



*rebutted, attributability should be conceded on the basis of the clinical picture and current scientific medical application."*

### **CONCLUSION**

22. In the circumstances, thus, the OA 2124 / 2019 is allowed and the applicant is held entitled to the grant of the disability element of pension qua the disability of the applicant i.e. "PRIMARY HYPERTENSION ICD NO I 10.0" assessed at 30% for life, which is directed to be broad banded to 50% for life in terms of the verdict of the Hon'ble Supreme Court in *Ram Avtar* (supra) with effect from the date of his discharge and the respondents are directed to issue the corrigendum PPO with directions to the respondents to pay the arrears within a period of three months from the date of receipt of a copy of this order, *failing which*, the respondents would be liable to pay interest @ 6% p.a. on the arrears due from the date of this order.

23. No order as to costs.

Pronounced in the Open Court on the 14 day of March, 2024.

[LT GEN C .P. MOHANTY]  
MEMBER (A)

[JUSTICE ANU MALHOTRA]  
MEMBER (J)

/AP/