

COURT NO. 1, ARMED FORCES TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

OA No. 362/2019

No. 6932225X Ex Hav Promod Kumar TS

..... Applicant

Versus

Union of India & Ors.

..... Respondents

For Applicant : Mr. I.S. Yadav, Advocate

For Respondents : Ms. Barkha Babbar, Advocate

CORAM:

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

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

ORDER

1. Invoking the jurisdiction of this 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 are read as under: -

“(a) To declare the action of the respondents as unjust, arbitrary and illegal; and

(b) To quash the respondents order dated 24 March 2017, dated 06 November 2017 and dated 04 October 2018;

(c) To direct the respondents to grant the disability element of pension @ 40% and further the benefit of rounding off the disability pension

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from @ 40% to @ 50% (in terms of Para 7.2 of Notification dated 31.01.2001) w.e.f. date of retirement i.e., 01.02.2017;

(d) To direct the respondents to commute the fresh arrived disability element of the disability pension as per the percentage already commuted and pay the arrears of the difference of disability pension and the commutation so arrived after rounding off the disability to 50%;

(e) To grant an interest @ 18% on the delayed payment;

(f) To award exemplary costs upon Respondents; and,

(g) Pass any other further order or orders, direction / directions as this Learned Tribunal may deem fit and proper in accordance with law.”

BRIEF FACTS

2. The applicant was enrolled in the Indian Army on 01.02.1991 and superannuated w.e.f. 01.02.2017 on completion of 26 Years of qualifying service. The applicant was diagnosed with two disabilities, i.e., “CEREBRAL VENOUS THROMBOSIS” (hereinafter ‘CVT’) and “DEEP VEIN THROMBOSIS” (hereinafter ‘DVT’) in July, 2006 and in December, 2010 respectively.

3. The RMB at the time of release was held at Base Hospital, Delhi Cantt. on 01.12.2016 has assessed the composite disability @ 40% for life with remarks that the disability is neither attributable to and nor aggravated by military service. The RMB has assessed both the disabilities as N.A.N.A. on the ground that the disabilities had its onset in peace.

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4. The initial claim of the applicant for grant of the disability pension was rejected by the respondents vide its letter dated 24.03.2017 stating that the disabilities are neither attributable to nor aggravated by military service. The applicant preferred first appeal vide letter dated 31.05.2017 which was rejected on 06.11.2017 by the respondents. The applicant thereafter preferred a second appeal vide letter dated 13.01.2018 and the same was rejected on 04.10.2018.

5. The onset of the disabilities, i.e., CVT and DVT was on 04.07.2006 and 22.12.2010 respectively. as indicated in Part - IV in the Statement of the Case in the RMB as under: -

PART IV
STATEMENT OF CASE

1. Chronological list of the disabilities:-

Disabilities	Date of Origin	Rank of Indl	Place and unit where serving at the time
(a) CVT (CEREBRAL VENOUS THROMBOSIS)	04 Jul 2006	Hav	AOC Records
(b) DVT (DEEP VEIN THROMBOSIS)	22 Dec 2010	Hav	Ordnance Depot/Kolkata

6. The opinion given by the medical board in opining the disabilities to be neither attributable to nor aggravated by military service in Part - V of the RMB dated 01.12.2016 is as under: -

PART V

OPINION OF THE MEDICAL BOARD

Medical board having examined the individual and after perusing all available documents is of the consensus opinion as under :-

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)	Reasons/cause/specific conditions and period in service.
(a) CVT (CEREBRAL VENOUS THROMBOSIS)	No	No	Yes	Onset of ID in Peace ID has no causal connection with mil service being a congenital condition (Protein-S-Deficiency). Hence ID conceded as neither attributable nor aggravated by mil service as per Para 63, Chapter VI of GMO's (Mil Pension), 2008 amendment.
(b) DVT (DEEP VEIN THROMBOSIS)	No	No	Yes	

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

7. The percentage of the disablement put forth by the RMB for the disabilities as under Part - V, para 6 is reproduced as under: -

6. What is present degree of 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 multiples of ten from 20 % to 100 %.				
Disabilities (as numbered in Para 1 Part IV)	Percentage of disabilities with duration	Composite assessment for all disabilities with duration (Max 100) % with duration	Disability qualifying for disability pension with duration	Net assessment qualifying for disability pension (Max 100 %) with duration
1	2	3	4	5
(a) CVT (CEREBRAL VENOUS THROMBOSIS)	20 % for life	40 % for life	Nil for life	Nil for life
(b) DVT (DEEP VEIN THROMBOSIS)	20 % for life		Nil for life	

8. The posting profile of the applicant is indicated in the Part-I in the personal statement of the applicant in the RMB is as under: -

PART I
PERSONAL STATEMENT

1. Give details of service (P=Peace OR F=Field / Operational / Sea Service)						
Ser No	From	To	Unit	Place	P/F	
(a)	01 Feb 91	30 Dec 91	AOC Trg Centre	Secunderabad	Peace	
(b)	23 Feb 92	18 Nov 92	COD Chheok	Allahabad	Peace	
(c)	18 Nov 92	05 Jan 96	223 ABOD	Suranassi	Peace	
(d)	05 Jan 96	03 Mar 99	16 (I) ABOU	Pathankot	Peace	
(e)	03 Mar 99	17 Aug 02	20 Mtn DOL	Binaguri	Peace	
(f)	17 Aug 02	06 Feb 06	509 Army Base Wksp	Agra	Peace	
(g)	06 Feb 06	16 Feb 09	AOC Records	Secunderabad	Peace	
(h)	16 Feb 09	11 Jun 12	OD Kolkata	Kolkata	Peace	श्री. ब्रजमोहन Lt Col/Ala
(j)	11 Jun 12	Till date	CVD	Delhi	Peace	श्री. सी.एच. /CCME

2. Give particulars of any iseases wounds or injuries from which you are suffering					
Illness, wound, injury	First Started		Rank of Indl	Where treated	Approximate dates and periods treated
	Date	Place			
CVT (Cerebral Venous Thrombosis)	04 Jul 2006	AOC Records Secunderabad	Hav	MH Secunderabad	04-07-2006 to 27-11-2006
DVT (Deep Vein Thrombosis)	22 Dec 2010	Ordnance Depot Kolkota	Hav	Comd Hosp Kolkota	18-09-2010 to 31-12-2010

9. The rejection of the first appeal of the applicant vide letter dated 06.11.2017 was on the following grounds: -

“Onset of both IDs was in peace station and the individual continued to serve in peace they are after in sheltered appointment. He was managed adequately in service hospitals with no worsening due to service conditions. The IDs are conceded as neither attributable to nor aggravated by Military Service in terms of Para 63 Chapter VI of GMO 2002 amendment 2008 and ER 2008.”

10. Subsequently, the applicant preferred second appeal dated 13.01.2018 for grant of disability element which was adjudicated and rejected vide order dated 04.10.2018 on the following grounds: -

“Onset of ID (i) 'Cerebral Venous Thrombosis' was in Jul 2006 at Secunderabad when he presented sudden onset Lt hemiparesis,

headache and recurrent episodes of generalized tonic clonic seizures. Investigations revealed a factor V deficiency and Protein C resistance. MRI Brain revealed a parenchymal hemorrhagic infarct in the Lt frontal and parieto occipital region with perifocal oedema. He was managed initially with low molecular weight heparin and later with oral anticoagulants and anti-epileptic agents. He was placed in low medical category and kept under observation. ID (ii) 'DVT (Deep Vein Thrombosis)' was detected in Dec 2010 at Kolkata when he presented with recurrent swelling of both lower limb and upper limbs since May 2010. He was evaluated and investigations revealed features suggestive of deep vein thrombosis of superficial femoral veins of both legs. He was placed in the low medical category and was managed with anticoagulants and DVT stockings. At RMB, there was evidence of chronic DVT and old infarcts in the brain. IDs (i) 'Cerebral Venous Thrombosis' and (ii) 'Deep Vein Thrombosis' are a result of hypercoagulable state which may be congenital or acquired. Acquired causes include prolonged surgery, trauma, immobilization, malignancy, sepsis, diabetes and hyperviscosity syndromes. In the instant case, the individual was detected with Factor V and Protein S deficiency which led to the IDs. Hence, the IDs are not attributable to service. Onset of both IDs was in peace and he continued to serve in peace thereafter in sheltered appointment. He was managed adequately in Service Hospitals with no worsening due to service conditions: Hence, both the IDs are conceded as neither attributable to nor aggravated by military service."

11. Aggrieved by the decision of the respondents, the applicant has filed the instant OA. In the interest of justice, in accordance with Section 21(1) of the AFT Act, we take up the present OA.

CONTENTIONS OF THE PARTIES

12. The learned counsel for the applicant submitted that the applicant was enrolled in the Army, after being medically examined thoroughly, declared fit, free from any disease on 01.02.1991 and promoted up to the Rank of Havildar. The applicant was SHAPE-1 in medical category since joining the Army and it was in July 2006 when he was first detected with the disease of "CVT (CEREBRAL VENOUS THROMBOSIS)" and the applicant was placed in low medical category with the 20% disability for life.

13. The learned counsel for the applicant further submitted that the applicant in Dec 2010 suffered the disease of "DVT (DEEP VEIN THROMBOSIS)" and was again placed in low medical category with 20% disability for life.

14. The Release Medical Board held in December 2016 and the applicant was recommended to be released in Low Medical Category (LMC) 'S1H1A1P2E1' with the disabilities "CVT" and "DVT" with composite assessment @ 40% for life.

15. The learned counsel for the applicant submitted that the Govt. issued a policy in the year 2007 wherein the JCOs/ORs who are in the low medical category were to be discharged from the service and pursuant to the same, the applicant's discharge order was issued and Invalidment Medical Board was

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held on 01.04.2008 under which the disability of CVT was assessed as aggravated by military service due to mental stress and strain and the applicant was granted disability at @ 20% (for CVT) for life. The learned counsel further submitted that the Govt policy was struck down and the applicant discharge order was canceled and the applicant continued in the service and was finally discharged from service on completion of terms of his engagement w.e.f. 01.02.2017. The learned counsel for the applicant submitted that the medical board cannot change the opinion without any justification and on the ground that the disabilities have been detected in the peace station.

16. The learned counsel in support of his claim has placed reliance on the judgment of the Hon'ble Supreme Court in *Dharamvir Singh Vs. Union of India and Ors. [(2013) 7 SCC 316]*, which has been considered and taken note of by the Hon'ble Apex Court in many judgments, wherein the Hon'ble Supreme 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 and the General Rules of Guidance to Medical Officers 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.* Referring to Rule 9 of the Entitlement Rules for Casualty Pensionary Awards, 1982, the learned counsel for the applicant submitted that the applicant should have been given benefit of doubt and the disability should have been conceded aggravated by service only.

17. The learned counsel for the applicant also placed reliance on the judgment of the Hon'ble Supreme Court in *UOI v. Rajbir Singh (Civil Appeal No. 2904/2011)* whereby it was held that the disability must be presumed to have been arisen in the course of service which must, in the absence of any reason recorded by the Medical Board, be presumed to have been attributable to or aggravated by military service. The learned counsel submitted that there is admittedly neither any note in the service records of respondents at the time of the applicant's entry into service nor have any reasons been recorded by the Medical Board to suggest that the disease which the applicant was found to be suffering from could not have been detected at the time of his entry into service, and *UOI and Other v. Ram Avatar (C.A. No. 418/2012 dated 10 December*



2014), whereby the benefit of rounding off of the disability pension was granted.

18. The learned counsel also placed reliance on the judgment of the Hon'ble Supreme Court in *D.S. Nakara v. Union of India [AIR 1983 SC 130]* wherein it was held that the right to pension is a fundamental right which has to override any other provisions that are inconsistent or imposing unreasonable restrictions upon it. The learned counsel also submitted that the Hon'ble AFT (RB), Kolkata in the case of *Manoj Kumar v. Union of India [T.A. No. 50/2011 decided on 17 July 2023]* has held that the disability pension is entitled in such circumstances and the same is to be rounded off in terms of Govt. letter dated 31 Jan 2001.

19. The learned counsel also placed reliance on the ruling of the Hon'ble Apex Court in the case of *Gorakhpur University and Ors. v. Dr. Shitla Prasad Nagendra and Ors. [AIR 2001 SC 2433]* wherein it was held that pension and gratuity are no longer matters of any bounty to be distributed by the Government but are valuable rights acquired and property in their hands and any delay in settlement and disbursement thereof should be viewed seriously and dealt with severely by imposing penalty in the form of payment of interest.

20. *Per contra*, the learned counsel for the respondents submitted that the applicant is not entitled to the relief claimed since the RMB, being an expert body, found the disabilities of the applicant as “Neither Attributable to Nor Aggravated by Military Service” and the disability qualifying for the disability pension was assessed by the competent medical authority as “Nil for life.” The learned counsel also submitted that the applicant was discharged from service w.e.f. 01.02.2017 on fulfilling the terms of engagement/age limit vide Army Ordnance Corps Records Discharge Order dated 13.11.2015 and that as per Para 173 of the Pension Regulations for the Army, 1961, “Unless otherwise specifically provided, a disability pension consisting a service element and disability element may be granted to an officer who is invalided out of service on account of a disability which is either attributable to or aggravated by military service in non – battle casualty cases and the disability is assessed at 20% or more.”

21. The learned counsel for the respondents submitted that as per Para 53 (a) of the Pension Regulations for the Army 2008 (Part - I), "An individual released / retired / discharged on completion of terms of engagement or on completion of service limits or on attaining the prescribed age (irrespective of his period of engagement), if found suffering from a disability attributable to or aggravated by military service and so recorded by Release Medical Board,

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may be granted disability element in addition to service pension or service gratuity from the date of retirement/ discharge, if the accepted degree of disability is assessed at 20 percent or more. However, in the matter at hand, per AFMSF-16 dated 01 Dec 2016, the disability qualifying for with duration was assessed by the competent medical for life as well as, the disability of the Applicant was found to be “neither attributable to nor aggravated by military service” (NANA) and the composite assessment for all the disabilities was also made Nil for life. Therefore, the Applicant is not entitled for the disability element of disability pension.

22. The learned counsel for the respondents also puts on record that the applicant’s first and second appeal against the rejection of the initial claim of the disability pension which was communicated to him vide letter dated 24.03.2017 were also rejected vide letters dated 06.11.2017 and 04.10.2018 respectively and that the relief should be denied to the applicant. The learned counsel also submitted that the RMB being an expert competent body submitted that “onset of both the IDs was in peace and both the IDs have no causal connection with the military service being a congenital condition (Protein-S-Deficiency). Hence, the both the IDs were conceded as neither attributable to nor aggravated by the military service as per para 63, Chapter VI of GMO 2002 (Mil Pension), 2008 amendment.

ANALYSIS

23. We have heard the learned counsel for the parties at length and have gone through the records produced before us. We find that the disabilities suffered by the applicant have composite assessment at @ 40%. The issues which need to be considered here are two folds, i.e.;

- a) Whether the disabilities of the applicant are attributable to or aggravated by military service or not?
- b) Whether the applicant is entitled for the benefit of rounding off the disability element of disability pension?

24. It is an undisputed fact that at the time of joining the Indian Army on 01.02.1991, the applicant was found medically and physically fit and the onset of the disabilities, "CVT" and "DVT" were from July 2006 and December 2010 onwards respectively, i.e., after rendering around 15 years and more of service and due to the disabilities, the applicant was placed in Low Medical Category (LMC) S1H1A1P2E1.

25. 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 (upra)*, 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

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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 and the General Rules of Guidance to Medical Officers 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.”

26. The Hon’ble Supreme Court in the case of **Union of India & Ors. Vs. Rajbir Singh [Civil Appeal Nos. 2904 of 2011]** decided on 13.02.2015, after considering the case in 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.....”

27. The ‘Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel 2008’, which take effect from 01.01.2008 provide vide Paras 6,7,10 and 11 thereof 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.

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 courses 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 Altitude etc.”

Thus, the ratio of the verdicts in *Dharamvir Singh Vs. Union of India & Ors. [(2013) 7 SCC 316]* and *Union of India Vs. Rajbir Singh [(2015) 12 SCC 264]*, as laid down by the Hon'ble Supreme Court are the fulcrum of these rules as well.

28. 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 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 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 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 the doubt could be given more liberally to the individual, in case occurring in Field Service/Active Service areas.

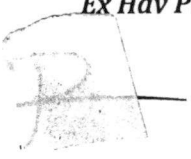
(b). Decision regarding attributability of a disability or death resulting from wound or injury will be taken by the authority next



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)

29. Qua the disabilities CVT and DVT, we find that the RMB has denied attributability to the applicant by stating that the disabilities are neither attributable to nor aggravated (NANA) by military service on the ground of onset of both the disabilities were in the Peace location therefore, the applicant is not entitled to the disability element of disability pension.

30. Qua the disabilities having 'Thrombosis' as an effect, it is essential to advert to Para 63 of Chapter-VI of the GMO, 2008 which is as under:

“(e) Deep Vein Thrombosis (DVT). DVT is a result of hypercoagulable state, which may be congenital (thrombophilia) or acquired. Congenital causes include Protein-C & Protein-S deficiency, antithrombin deficiency, Factor V Leiden, dysfibrinogenaemias and homocysteinemia and are not attributable. Acquired causes of DVT include prolonged surgery, trauma, immobilization, malignancy, antiphospholipid syndrome, nephrotic syndrome, sepsis, chronic inflammatory conditions, diabetes and hyperviscosity syndromes. DVT following prolonged surgery, trauma, sepsis or prolonged immobilization in a hospitalized patient is attributable to service.”

31. Qua the attributability of the first disability i.e., Cerebral Venous Thrombosis (CVT) is concerned, through various studies on the subject, it is known that the disease is caused by complete or partial occlusion of the cerebral major cerebral venous sinuses (cerebral venous sinus thrombosis) or the smaller feeding cortical veins (cortical vein thrombosis). CVT is frequently missed or diagnosed late because it can mimic other acute neurological conditions and can only be recognized with optimal and timely brain imaging. To further understand the subject, we would like to reproduce the extracts of *peer reviewed articles* available in the public domain, it is mentioned as under:

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“Prothrombotic conditions are the most common implicated risk factor for CVT. Patients with hereditary thrombophilia have an increased predisposition for developing any form of thrombosis, including CSVT. G20210A prothrombin polymorphism, factor V Leiden, and antiphospholipid syndrome are most frequent causes. Protein C, S deficiency, and antithrombin III deficiency are less commonly encountered risk factors.

32. The reason given by the RMB while rejecting the representations preferred by the applicant, in view of the facts in the present case, are in correspondence to the relevant para of the GMO 2008, cited above. Moreover, in the present case, the posting profile of the applicant produced before us apparently shows that since the enrolment, the applicant had served in the peace postings and there is nothing on record to show that service had been rendered in the *High-Altitude Areas (HAA)* where the risk of thrombosis is much higher due to subzero temperatures and high altitude. The RMB in its reasoning for denying the attributability of both the IDs is as follows:

“Onset of both the IDs was in peace. IDs have no causal connection with military service being a congenital condition (Protein-S Deficiency). Hence both the IDs conceded as neither attributable nor aggravated by military service as per Para 63, Chapter VI of GMO (Military Pension) 2008 amendment.”

The medical board opined the disabilities to be ‘congenital’ in nature, *i.e.*, factor V deficiency and protein C resistance, which is genetic a condition for the given

disabilities and the same cannot be conceded as attributable to or aggravated by military service.

33. In view of the aforesaid consideration and parameters, applicant's claim for entitlement of the disability element for disabilities Cerebral Venous Thrombosis (CVT) and Deep Vein Thrombosis (DVT) stands rejected.

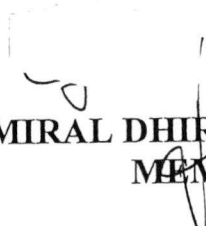
CONCLUSION

34. There is no error in the findings of the medical board and we find no infirmity in the proceedings, henceforth, the O.A. 362 of 2019 is dismissed being devoid of merit.

35. There is no order as to costs.

Pronounced in the open Court on this 7th day of October, 2024.


[JUSTICE RAJENDRA MENON]
CHAIRPERSON


[REAR ADMIRAL DHIREN VIG]
MEMBER (A)