

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

O.A. No. 401 of 2019

In the matter of :

Ex CPO Satyavir Singh Yadav ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Mr. Ved Prakash, Advocate

For Respondents : Dr. Vijendra Singh Mahndiyan,
Advocate

CORAM:

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

O R D E R

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) ***Quash impugned order letter no. PEN/600/D/LRDO I:02/2013/114173 K dated 28.02.2013.***
- (b) ***Direct respondents to grant disability element of pension duly rounded off to 75% to the applicant wef date of discharge i.e 01.03.2013.***
- (c) ***Direct respondents to pay the due arrears of disability element of pension with interest @ 12% p.a from the date of retirement with all the consequential benefits .***
- (d) ***Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.***

BRIEF FACTS

2. The applicant was enrolled in the Indian Navy on 06.02.1985 and he was discharged from service on 28.02.2013 on expiry of his term of engagement. The Release Medical Board dated 02.09.2012 held that the applicant was fit to be discharged from service in composite low medical category S2A2(P) PMT for the disabilities of (i) Primary Hypertension @30% for life (ii) Bicuspid Aortic Valve @ 30% for life for life and (iii) Coronary Artery Disease @ 30% for life compositely assessed @ 60% for life while the net qualifying element for disability was recorded as NIL for life on account of all the disabilities being treated as neither attributable to nor aggravated by military service.

3. The initial claim for the grant of the disability pension of the applicant was rejected by the competent authority vide letter No. PEN/600/LRDO/1:02/2013/114173K dated 28.02.2013. The applicant was given an option to prefer an appeal against the rejection of disability pension within 60 months. It is on record that the applicant had served a legal notice through his counsel for consideration of appeal and grant of disability pension from the date of discharge,

however, no response was received from the respondents till the time of filing of this O.A. Aggrieved by the same, the applicant has filed the instant OA and thus, in the interest of justice, we take up the same for consideration.

CONTENTIONS OF THE PARTIES

4. The learned counsel for the applicant submitted that the prayers made in the present OA are confined to the grant of disability element of pension in relation to the disabilities of Primary Hypertension @30% for life and Coronary Artery Disease @ 30% for life only and the prayer made for grant of disability element of pension in relation to disability ID Bicuspid Aortic Valve is not pressed.

5. The learned counsel for the applicant submitted that at the time of enrolment, the applicant was found mentally and physically fit for service and there is no note in the service documents that he was suffering from any disease at that time and the disabilities of the applicant were detected during the service, hence the same are attributable to and aggravated by military service, and the respondents erred in rejecting the claim of disability pension stating that the RMB held the disability as neither attributable to nor aggravated

by military service as the onset of the disease was in peace station. The learned counsel for the applicant contended that the instant matter is squarely covered by a catena of decisions of the Hon'ble Supreme Court including **Dharamvir Singh Vs. Union of India & Ors. [2013 (7) SCC 316** and the claim of the applicant is also supported by relevant rules.

6. The learned counsel for the applicant also placed reliance on the verdict of the Hon'ble Supreme Court of India in the case of **UOI & Ors. Vs. Rajbir Singh**, (2015) 12 SCC 264 and **UOI & Ors Vs. Angad Singh Titaria**, (2015) 12 SCC 257 wherein the law laid down by the Apex Court in *Dharamvir Singh (supra)* was followed and petitions for disability pension were allowed.

7. *Per contra*, the learned counsel for the respondents controverts the arguments put forth on behalf of the applicant and contended that the applicant is not entitled to the relief claimed for, since the RMB, being an Expert Body, found the disabilities "Neither Attributable to Nor Aggravated by Military Service" for the reasons stated therein. The counsel further submitted that in June, 2007, the applicant was diagnosed with Primary Hypertension and in December,

2011, the applicant was diagnosed with Coronary Artery Disease while posted in peace area and was managed conservatively. The learned counsel further submitted that the applicant's disabilities do not fulfil the necessary conditions for being eligible to get disability pension in terms of Regulation 101 of the Navy Pension Regulations, 1964, thus the applicant is not entitled to disability pension and, therefore, the OA deserved to be dismissed.

ANALYSIS

8. We have heard the learned counsel for the parties and have gone through the records produced before us.

9. In the present case, the disabilities Primary Hypertension and Coronary Artery Disease have been assessed by the RMB @ 30% each for life respectively. Accordingly, the issue which is to be considered now is whether the disabilities suffered by the applicant are to be held attributable to and aggravated by military service or not?

10. With regard to the attributability of a disability, the consistent stand taken by this Tribunal is based on the law laid down by the Hon'ble Supreme Court in the case of

Dharamvir Singh Vs. Union of India and others [(2013) 7

SCC 316], which has been followed in subsequent decisions of the Hon'ble Supreme Court and in the number of orders passed by the Tribunal, wherein the Apex Court had considered the question with regard to payment 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, 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 to be 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 relevant para thereof is reproduced hereunder :

"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."

11. The 'Entitlement Rules for Casualty Pensionary Awards, to the Armed Forces Personnel 2008, which take effect from 01.01.2008 provide vide Paras 6,7,10,11 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 contacted 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."

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 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.

(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)

has not been obliterated.

12. As per Para 43 of Chapter VI of the 'Guide to Medical Officers (Military Pension), 2002 amended 2008 (hereinafter referred to as 'GMO (MP) 2008'), the provisions for determining the aggravation of hypertension by the service conditions have been provided as under :

"43. Hypertension - The first consideration should be to determine whether the hypertension is primary or secondary. If (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."

Further, in a recent judgment dated 20.08.2024 in the case of **Union of India and others Vs. Ex Gnr Dhiraj Kumar & Anr. [CWP-19136-2024 (O&M)]**, the Hon'ble High Court of Punjab and Haryana upheld the decision of the AFT granting disability pension for hypertension.

13. Further, as regards the disability ID CAD, in Para 47 of Chapter VI of the GMO (MP) 2008, various factors including prolonged stress and strain and physical hardship caused by serving in field and high altitude areas have been provided which cause the heart diseases to the army personnel. It would be relevant to reproduce Para 47 of the GMO (MP) 2008, which reads as under:-

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

[Emphasis supplied]

14. In the present case, the applicant, despite having been diagnosed with Primary Hypertension in 2007, continued to perform military duties and was posted to different places, which may have been the cause for the applicant to be diagnosed with Coronary Artery Disease later on in 2011 and it may be an offshoot of the first disability of hypertension. In this connection, an article by *WebMD* dated 01.03.2023 available on the internet may be referred to wherein the correlation of high blood pressure and CAD is described as under :

“..... general medical studies have shown that hypertension/high blood pressure can lead to CAD because it adds force to the artery walls. Over time, this can damage these blood vessels and lead to more plaque buildup. The narrowed artery limits or blocks the flow of blood to the heart muscle, which means it might not get enough oxygen.....”

15. In the present case, it is not disputed that the applicant had been posted in peace stations in his entire service tenure, however, the applicant was posted in different stations having different climatic, social and environmental conditions and he performed strenuous and stressful duties with prolonged working hours, lack of rest etc. The Tribunal has already observed in large number of cases that military services in peace stations have their own pressure of rigorous

military training and associated stress and strain, physically and mentally, of the service and the contention that there is no evidence of stress and strain of service in peace station should not be considered for the purpose of granting disability pension. It may also be taken into consideration that the most of the personnel of the armed forces, during their service, work in the stressful and hostile environment, difficult weather conditions and under strict disciplinary norms. Moreover, there is no note made in the applicant's medical documents that he was suffering from any disease at the time of joining the service. There is no record to show that the applicant has suffered the disability due to hereditary or unhealthy lifestyle or there is any family history therefor. We are, therefore, of the considered view that the benefit of doubt in these circumstances should be given to the applicant in view of above judgments and settled law and provisions on the point of attributability/aggravation and the disabilities suffered by the applicant should be held attributable to and aggravated by the military service.

16. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is held

entitled for the disability element of pension in respect of both the disabilities i.e. Primary Hypertension @ 30% and Coronary Artery Disease @ 30% for life, composite assessment of which is being calculated as per MoD letter No. 16036/RMB/IMB/DGAFMS/MA(pens) dated 14.12.2009, as under:-

Disability (i) Primary Hypertension = 30%

Disability (ii) Coronary Artery Disease: $(100-30)=70 \times 30 / 100 = 21\%$

Composite Assessment of both the disabilities = $30+21 = 51\%$

CONCLUSION

17. In view of the above, OA 401 of 2019 is allowed. The respondents are directed to grant the disability element of pension to the applicant @ 51% for life, which is directed to be rounded off to 75% for life, with effect from the date of discharge in terms of the judicial pronouncement of the Hon'ble Supreme Court in the case of **Union of India Vs. Ram Avtar (Civil Appeal No. 418/2012)** decided on 10.12.2014. However, as the applicant approached the Tribunal after a considerable delay, in view of the law laid down by the Hon'ble Apex Court in *Tarsem Singh's case*

(supra), arrears will be restricted to three years prior to the date of filing of this OA i.e. 12.03.2019.

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

19. There is no order as to costs.

Pronounced in open Court on this 26th day of November, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

/Pooja/