

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

A.

OA 425/2017

Ex Sgt Anand Kumar Bangarwa
VERSUS

..... Applicant

Union of India and Ors.

..... Respondents

For Applicant : Mr. V S Kadian, Advocate
For Respondents : Mr. Satya Ranjan Swain, Advocate
Maj A.R. Subramaniam, OIC, Legal Cell

CORAM

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

ORDER
01.04.2024

Vide our detailed order of even date we have allowed the OA 425/2017. 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)

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

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Ex Sgt Anand Kumar Bangarwa ... Applicant
Versus
Union of India & Ors. ... Respondents
For Applicant : Mr. V.S. Kadian, Advocate
For Respondents : Mr. S.R. Swain, Advocate

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

ORDER

The applicant vide the present OA 425/2017 has made
the following prayers:-

“(a) Quash and set aside the impugned letter No. AirHQ/99798/1/622324/DAV/DP/CC dated 07.11.2016 and treat the disability of the applicant as attributable to or aggravated by military service.

(b) Direct respondents to grant disability element of pension to the applicant by making a correct assessment of his disability and/or by granting benefit of rounding off @50% in terms of Govt. of India, Min of Defence letter no. 1(2)/97/D(Pen-C) dated 31.01.2001.

(c) Direct respondents to pay the due arrears of disability element with interest @12% from the date of discharge with all the consequential benefits.

(d) To pass such further order or orders, direction/directions as this Hon'ble Tribunal may deem fit and proper in accordance with law.”

2. The applicant Ex Sgt Anand Kumar Bangarwa was enrolled in the Indian Air Force on 28.02.1978 and discharged from service on 31.12.1993 under the clause "At his own request" after rendering a total of 15 years and 307 days of regular service. His release medical board not solely on medical grounds was held at 28 Wing AF vide AFMSF-16 dated 31.12.1993 and found him fit to be released in low medical category BEE (P) for the disability BRONCHIAL ASTHMA. The RMB has however considered his disability of Bronchial Asthma as neither attributable to nor aggravated by service, and that it was due to climatic conditions, not connected with service. The percentage of disability was assessed as 15-19% for lifelong with the disability qualifying for disability pension with duration Nil for life. However, on adjudication, PCDA (P) Allahabad has accepted the disability as aggravated by Air Force Service, but no change in assessment was made and it was assessed @15-19% vide letter no. Gts/AF/Cell/1995/Adj/Dis/540/95 dated 24.08.1995. Applicant sent a legal notice dated 13.10.2016,

seeking disability pension, which was rejected by the competent authority vide letter No. Air HQ/99798/1/622324/DAV/DP/CC dated 07.11.2016. Though there is nothing to indicate the institution of any appeal against the rejection of the disability pension claim filed by the applicant, taking into account, the factum that the present OA has been pending consideration since its institution on 08.03.2017 and as the pleadings are complete, we consider it appropriate to take up the OA for consideration in terms of Section-21(1) of the AFT Act, 2007.

CONTENTIONS OF THE PARTIES

3. The applicant submits that he joined the Indian Air Force on 28.02.1978 in a fit medical category without any note of disability recorded on the medical records of the respondents for the applicant and thus in terms of the verdict of the Hon'ble Supreme Court in ***Dharamvir Singh Vs. UOI & Ors*** in CA No. 4949/2013, the disability that the applicant suffers from, has to be held to be attributable or aggravated by military service. Specific reliance was also placed on behalf of the applicant on the observations of the Hon'ble Supreme

Court in CA No. 4949/2013 in Para-28 in
Dharamvir Singh Vs. UOI & Ors., which lays down 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."

to contend to the effect that the Govt of India vide its Min of Def letter F. No. 4(17)/2015/D(Pen/Legal) dated 29.06.2017 has also stated therein that if the individual meets the conditions as observed by the Hon'ble Supreme Court in **Dharamvir Singh Vs. UOI & Ors** in CA No. 4949/2013 then such a person was entitled to the prayer for the grant of disability element of pension. Reliance was also placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in **UOI & Ors. Vs. Rajbir Singh**, (2015) 12 SCC 264 to contend to similar effect.

4. The applicant has further submitted that the opinion of the Release Medical Board(RMB) in Part-V thereof to the effect:-

“

PART-V
OPINION OF THE MEDICAL BOARD

Disability	A	B	C
BRONCHIAL ASTHMA(OLD) Z-09.0	NO	NO	YES

”

which states that the disability of the applicant was not connected with military service and was neither

attributable to nor aggravated by military service is wholly arbitrary.

5. On behalf of the respondents, it was reiterated through the Counter Affidavit dated 02.10.2017, that in the instant case though the disability of the applicant was neither attributable to nor aggravated by military service, it was later adjudicated by the PCDA(P) Allahabad as 'Aggravated by service', and in as much as it was assessed @15-19% which is less than 20% as per the mandatory criteria, the applicant is not entitled to the grant of the disability element of pension.

ANALYSIS

6. It is essential to observe that the disability that the applicant suffers from, had its onset in the year 1983 as reflected by the statement of the case in Part-II of the RMB, which is as under:-

“

PART-II STATEMENT OF CASE

1. Chronological list of the disabilities

Disabilities	Date of origin	Place and unit where serving at the time
BRONCHIAL ASTHMA(OLD) Z-09.0	Sep 83	27 WING, AF

”

that is after a period of 5 years of joining the Indian Air Force and the said disability is indicated to have continued till his discharge, when he was discharged from service on 31.12.1993.

7. Furthermore, in as much as the disability in the instant case had its onset in 1983 and the applicant was discharged in 1993 prior to the amendment to Chapter-VI of the GMO(Military Pension),2008, the relevant Guide to Medical Officers(Military Pension) is the GMO(Military Pension), 2002 which provides vide Para-5 thereof in relation to the disability of Bronchial Asthma, to the effect:-

"5. The term bronchial asthma would be reserved for those cases of chronic lung disease in which attacks of respiratory embarrassment develop. Bronchial asthma is essentially an allergic condition. The disease is predisposed by a variety of causes such as heredity, food, emanations from animals, bronchitis, nasal sinus infection, respiratory tract infection such as bronchitis, nasal polyp, gastrointestinal irritation, climate (cold air), locality, emotion and nervous shock. The other exciting factors are tobacco, smoke, dust, strenuous exercise, certain drugs and exposure to organic materials, fumes and chemical substances in working environment. Mere physical stress and strain occasioned with psychological factors are not appreciable cause of asthma. Asthmatics are very sensitive to both climate and locality but the effects are so variable in patients that no general rule can be laid down. Some patients are better in dry and others in damp and foggy climate. The dictum that one man's meat is another man's poison is eminently true of asthma. Sudden exposure to cold or occupations involving inhalation of vapours e.g., drivers, cooks, bakers, rubber workers may bring on an attack. While increased susceptibility to allergens and exciting factors may result from

*exacerbations of asthma occasioned by service factors, such manifestations in service would not automatically be regarded as necessarily amounting to permanent or persistent aggravation. Each case must be considered on its own merits and the question of persistence of aggravation can only be determined by previous history, nature and length of exposure to service factors, the effect of treatment, subsequent employment and progress of disease. Assessment is difficult in asthma during intermission. However, presence of residual lung signs such as (rhonchi, prolonged expiration) hyperinflated emphysematous lungs, pigeon chest deformity and impaired lung function tests are useful guide to chronicity of the disease. **All asthma cases should be accepted on the basis of aggravation.**"*

It is essential to observe that in terms of Para-5 of the GMO (Military Pension), 2002 as applicable to the case of the applicant, it has been provided therein that all asthma cases should be accepted on the basis of aggravation. The RMB has already observed herein above that the disability that the applicant suffered from, was due to climatic conditions. In the instant case wherein the applicant suffered from no disability prior to induction into military service, the said disability would have to be due to the climatic conditions to which the applicant was subjected to during military service.

8. Further, we find it pertinent to refer to Para 20 of Chapter-VII of the unamended GMO (Military Pension), 2002, which provides for the assessment of the Asthma, reproduced as under:

9. A perusal of the aforesaid provision reveals that the minimum assessment of the percentage of disablement of Asthma could be done @ 20% even if it was having an uncomplicated nature, thereby making it clear that the disability of the applicant - Bronchial Asthma could not have been assessed at less than 20%. In view of the aforesaid provision, we find it essential to observe that the disability of the applicant had to be assessed at the minimum threshold of 20%.

10. Furthermore, 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 of 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***.

11. Furthermore, in terms of the 'Entitlement Rules for Casualty Pensionary Awards, to the Armed Forces Personnel 1982 as applicable to the applicant who was discharged in 2004, in terms of Rule-5 thereof, there is a codified presumption that the deterioration in health in the case of discharge from service in a low medical category from that the Armed Forces Personnel had been inducted into military service has to be held Attributable to military service, is clearly spelt out therein. The same is also brought forth through Rule-19 of the said Rules of 1982 which provides that if the worsening of a condition persists till the time of discharge, that aggravation has to be accepted and in terms of Rule-20(a) of the said rules, if nothing at all is known of the disease and if the presumption of entitlement is not rebutted, then attributability has to be conceded. It is essential to observe that it has been stipulated in Para-5 of the GMO(MP),2002 as under:-

“

Each case must be considered on its own merits and the question of persistence of aggravation can only be determined by the previous history, nature and length of exposure to service factors, the effect of treatment, subsequent employment and progress of disease. Assessment is difficult in asthma during intermission. However, presence of residual lung signs such as (rhonchi,

prolonged expiration) hyperinflated emphysematous lungs, pigeon chest deformity and impaired lung function tests are useful guide to chronicity of the disease. All asthma cases should be accepted on the basis of aggravation",

Thus in view of the onset of the disability in the instant case being in 1983 which has continued till discharge of the applicant from service on 31.12.1993 with a percentage of disablement @15-19%, which is in view of our observations made in Para 10 hereinabove, has to be assessed at 20%, the said disability already accepted by the respondents to be aggravated by military service has to be held to be of such quantification as entitling of the applicant to the grant of the disability element of pension as per rules.

CONCLUSION

12. The OA 425/2017 is thus allowed. The applicant is thus entitled to the grant of disability element of pension @20% for life for the disability of Bronchial Asthma with rounding off to 50% for life, from the date of discharge, which in terms of the verdict of the Hon'ble Supreme Court in **UOI & Ors. vs Ramavtar** in Civil Appeal No. 418/2012.

13. The respondents are thus directed to calculate, sanction and issue the necessary PPO to the applicant for grant of the disability element of pension as directed herein above, within a period of three months from the date of receipt of copy of this order, to commence from the period of three years prior to the institution of this OA ~~instituted~~^l on 08.03.2017 and the amount of arrears shall be paid by the respondents accordingly, failing which the applicant will be entitled to interest @6% p.a. from the date of receipt of a copy of the order by the respondents.

Pronounced in the open Court on the 01st day of April, 2024.

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

[JUSTICE ANU MALHOTRA]
MEMBER (J)

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