

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

D..

OA 967/2019 with MA 1632/2019

Gp Capt Ajai Kumar Agnihotri (Retd) ..... Applicant  
VERSUS

Union of India and Ors. .... Respondents

For Applicant : None  
For Respondents : Ms. Shivani, proxy for  
Mr. Rajeev Kumar, Advocate

CORAM

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

ORDER  
08.04.2024

Vide our detailed order of even date we have allowed the OA 967/2019. 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 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)

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

**OA 967/2018 WITH MA 1632/2019**

**Gp Capt Ajai Kumar Agnihotri (Retd)**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant : Mr. Baljeet Singh, Advocate**  
**For Respondents : Mr. Rajeev Kumar, Advocate**

**CORAM :**

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

**HON'BLE LT. GEN. C.P. MOHANTY, MEMBER (A)**

**ORDER**

**MA 1632/2019**

This is an application filed under Section 22(2) of The Armed Forces Tribunal Act, 2007 seeking condonation of delay of **1793** days in filing the present OA. in view of the judgments of the Hon'ble Supreme Court in the matter of **UoI & Ors Vs. Tarsem Singh 2009(1) AISLJ 371** and in **Ex Sep Chain Singh Vs. Union of India & Ors (Civil Appeal No. 30073/2017)** and the reasons mentioned, the MA 1632/2019 is allowed despite opposition on behalf of the respondents and the delay of **1793** days in filing the OA 967/2018 is thus condoned. The MA is disposed of accordingly.

2. The applicant Gp Capt Ajai Kumar Agnihotri vide the present OA makes the following prayers:-

***"(a) To set aside the impugned letter no. AirHQ/99797/3494/Dis/O/DAV-1(B) dated 14.05.2019 passed by the respondents.***

***(b) To direct the Respondents to grant disability element of @ 50% with effect from the date of retirement along with arrears to the applicant by treating the ID (ii) also as attributable and aggravated by the military service.***

***(c) To direct the respondents to grant the benefit of rounding off of disability element of pension of the applicant to 75% (50% to be rounded off to 75%) with effect from the date of retirement, for life in terms of law settled by Hon'ble Supreme Court of India in Civil Appeal No. 418/2012 titled as UOI & Ors. vs. Ram Avtar vide judgement dated 10.12.2014 as well as in a catena of judgements by this Hon'ble Tribunal.***

***(d) To direct the respondents to pay the due arrears of disability pension with interest @12% p.a. With effect from the date of retirement will all the consequential benefits.***

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

3. The applicant was commissioned in the Indian Air Force on 11.12.1981 and retired from service on 30.06.2014 under the clause on "attaining the age of superannuation" after rendering a total 32 years, 6 months and 19 days of regular service.

4. The applicant's Release Medical Board (RMB) not solely on medical grounds was held on 04.03.2014 which found him fit to be released in composite low medical category A4G4 (P) and assessed



his disability ID (i) Psoriatic Arthritis @ 30% & (ii) CAD STE IWMI SVD Normal LV Function PAMI STENTING DES (Old) @ 30% with composite assessment @ 51% for life and recommended disability ID (i) as "aggravated by service", while disability ID (ii) was held as being neither attributable to nor aggravated by Air Force Service.

5. The claim of the applicant for the disability pension was considered by the competent authority, and the disability ID (i) was held to be aggravated by service, vide Govt of India, MoD letter no. AirHQ/99798/3494/ Dis/O/DAV-1(B) dated 09.09.2014 and the applicant was granted disability pension @ 30% vide Corrigendum PPO No. 08/14/A/Dis/0027 of 2015, while the claim for disability ID (ii) was rejected, aggrieved by which, the applicant preferred a first appeal-cum-representation to the appellate authority for grant of disability pension for disability ID (ii), which was again rejected vide Air HQ, DAV letter no. AirHQ/99798/3494/ Dis/O/DAV-1(B) dated 14.05.2019.

### **CONTENTIONS OF THE PARTIES**

6. The applicant submits that in as much as he was enrolled in the Indian Air Force in a fit medical condition in the absence of any note on the record of any disability or disease that he suffered from having been made in the records of the respondents, the disability



that he suffers from has to be held to be attributable to / aggravated by military service.

7. The applicant further submits that he served the respondents for about 32 years 06 months & 19 days and was promoted to the rank of 'Gp Capt'. Inter alia the applicant submits that he was entrusted with the duties and responsibilities for various assignments by the respondent's organization and during the performance of the same, he contracted the disabilities.

8. The respondents through their counter affidavit submit that as per Rule 5 of the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008, the mere fact that a disease has manifested itself during military service does not *per se* establish attributability to or aggravation by military service, that the medical test at the time of entry is not exhaustive, but its scope is limited to broad physical examination and therefore, it may not detect some dormant diseases. Besides, certain hereditary constitutional and congenital diseases may manifest later in life, irrespective of service conditions.

9. Inter alia the respondents place reliance on Rule 153 of the Pension Regulations for IAF, 1961 (Part-I) which is to the effect:-

***"Unless, otherwise specifically provided a disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by Air Force service and is assessed at 20% or over."***

to submit that disability pension is granted to those who fulfil the following two criterias simultaneously:-

- (i) ***Disability must be either attributable to or aggravated by service.***
- (ii) ***Degree of disablement should be assessed at 20% or more.***

and reiterate that the applicant is not entitled to the grant of the disability element of pension in accordance with the prevailing rules and policies.

### ***ANALYSIS***

10. Before adjudication, it is pertinent to refer to Part V of the RMB dated 04.03.2014 wherein it was opined to the effect:-

<b><i>Disability</i></b>	<b><i>Attributable to service (Y/N)</i></b>	<b><i>Aggravated by service (Y/N)</i></b>	<b><i>Not connected with service (Y/N)</i></b>	<b><i>Reason / Cause / Specific condition and period in service</i></b>
1.Psoriatic Arthritis (OLD)	NO	Yes	NO	Onset of Disability: 23 Sep 2009 at Belgaum, in peace area. There is no delay in diagnosis. Not attributable. Aggravated by service vide para 30(A) of the chapter VI of Guide to MO (Mil Pen) 2008.

2. CAD STE IWMI SVD Normal LV Function PAMI STENTING DES (Old)	NO	NO	YES	Onset of Disability: 16 Apr 2012 at new Delhi, in peace area. here is no delay in diagnosis. Neither attributable „ nor aggravated by service. No, as per charter of duties dated 08 Mar 2013.
1				

11. The percentage of disablement was put forth in the RMB to the effect:-

<b>“Disability (As numbered in Para I Part IV)</b>	<b>Percentage of disablement with duration</b>	<b>Composite assessment for all disabilities with duration (Max 100%)</b>	<b>Disability Qualifying for Disability Pension with duration</b>	<b>Net Assessment Qualifying for Disability Pension (Max 100%) with duration</b>
1. Psoriatic arthritis (OLD)	30% for life long	30+21= 51% Rounded off to 50% (Fifty percent)	Psoriatic arthritis (OLD) = 30% for life long	30% for life long
2. CAD STE IWMI SVD Normal LV Function PAMI STENTING DES (Old)	30% for life long			

12. 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 vs UOI & Ors** (Civil Appeal No. 4949/2013) 2013 AIR SCW 4236 decided on 02.07.2013), 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 a 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***.

13. It is essential to observe that para-28 of the verdict of the Hon'ble Supreme Court in ***Dharamvir Singh*** (Supra) lays down the guiding canons which are 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***

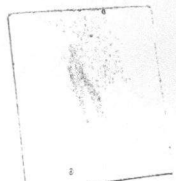
*service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service. [14(b)].*

*(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."*

14. It is essential to observe the verdict of the Hon'ble Supreme Court in ***UOI & Ors. vs Rajbir Singh*** in Civil Appeal no. 2904/2011 dated 13.02.2015 (2015) 12 SCC 264 vide Para 15 lays down to the effect:-

*"15. The legal position as stated in Dharamvir Singh's case (supra) is, in our opinion, in tune with the Pension Regulations, the Entitlement Rules and the Guidelines issued to the Medical Officers. The essence of the rules, as seen earlier, is that a member of the armed forces is presumed to be in sound physical and mental condition at the time of his entry into service if there is no note or record to the contrary made at the time of such entry. More importantly, in the event of his subsequent discharge from service on medical ground, any deterioration in his health is presumed to be due to military service. This necessarily implies that no sooner a member of the force is discharged on medical ground his entitlement to claim disability pension will arise unless of course the employer is in a position to rebut the presumption that the disability which he suffered was neither attributable to nor aggravated by military service. From Rule 14(b) of the Entitlement Rules it is further clear that if the medical opinion were to hold that the disease suffered by the member of the armed forces could not have been detected prior to acceptance for service, the Medical Board must state the reasons for saying so. 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. The burden to establish such a disconnect would lie heavily upon the employer for otherwise the rules raise a presumption that the deterioration in the health of the member of the service is on account of military service or aggravated by it. A soldier cannot be asked to prove that the disease was contracted by him on account of military service or was aggravated by the same. The very fact that he was upon proper physical and other tests found fit to serve in the army should rise as indeed the rules do provide for a presumption that he was disease-free at the time of his entry into service. That presumption continues till it is proved by the employer that the disease was neither attributable to nor aggravated by military service. For the employer to say so, the least that is required is a statement of reasons supporting that view. That we feel is the true essence of the rules which ought to be kept in view all the time while dealing with cases of disability pension."*

*(emphasis supplied)*

15. 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.*

**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. Altitudes etc."*

*(emphasis supplied)*

16. 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 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)*

and 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)

19. It is thus held that the presumption that the disability of the applicant namely CAD STE IWMI SVD Normal LV Function PAMI STENTING DES (Old) @ 30% was attributable to and aggravated to military services has not been rebutted by the respondents. Furthermore it cannot be overlooked that the disability ID (ii) CAD STE IWMI SVD Normal LV Function PAMI STENTING DES (Old) @ 30% had it onset on 16.04.2012 in the 13<sup>th</sup> posting of the applicant after about 22 years of induction into the Indian Air Force, and thus simplicitor reliance by the RMB on the 14 days charter of the duties of the applicant before the onset of the disability does not aid the respondents. Furthermore there are no contributory factors brought forth through the RMB from the side of the applicant to negate the grant of the prayer made by the applicant.

### **CONCLUSION**

20. In the circumstances, the **OA 967/2019** is allowed and the applicant is held entitled to the grant of the disability element of pension qua the disability ID (ii) of the applicant i.e. CAD STE

IWMI SVD Normal LV Function PAMI STENTING DES (Old) @ 30% which coupled with the disability (i) Psoriatic Arthritis @ 30%, results in composite assessment of 51%, in view of which the same is directed to be broad banded to 75% 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 which however in the circumstance of the instant case, shall be confined to commence for a period of three years prior to the institution of the present OA i.e. 30.05.2019, in view of the verdict of the Hon'ble Supreme Court in the case of **Tarsem Singh** (Supra).

21. 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.

22. No order as to costs.

Pronounced in the Open Court on the 8<sup>th</sup> day of April, 2024.

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

  
[JUSTICE ANU MALHOTRA]  
MEMBER (J)

/Ps/