

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

OA 98/2017

Wg Cdr Raj Ranjan Patnaik (Retd.)
(deceased) through LR Smt Champa Thakur ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Mr. M K Gaur and Mr. KK Prasad,
Advocate
For Respondents : Mr. Avdhesh Kumar Singh, Advocate

CORAM :

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

ORDER

OA 98/2017

The applicant vide the present OA seeks the following prayers:-

"In the facts and circumstances mentioned in above paras it is therefore most respectfully prayed that the Hon'ble Tribunal may be graciously be pleased to pass an order, quashing and setting aside the impugned order dt. 22.11.2016. (ANNEXURE A/1) and further direct the respondents to grant the disability pension to the applicant in the light of law laid down by by the Hon'ble Supreme Court in the matter of Dharambir Singh Vs UOI & Ors. (ANNEXURE A/5). With rounded off disability pension from 30% to 50% from the date of discharge i.e. w.e.f. 01.11.2005 with interest and cost.

Any other fit and proper relief may also be granted to the applicant."

2. The applicant Wg Cdr RR Patnaik AE(L) (Retd.) (since deceased) was commissioned in the Indian Air Force on 18.08.1986 and took premature retirement from service on 01.11.2005. The RMB held on 21.09.2005 found him to be suffering from the disability of **Essential Hypertension** which was opined by it to be constitutional in nature vide its opinion in Part V though it assessed the percentage of disablement at 30% for life with the net assessment qualifying for grant of the disability pension with a percentage of disablement being at 30% for life. The petitioner's representation dated 16.09.2016 for the grant of disability element of pension was responded to by the respondents vide letter dated 22.11.2016 stating to the effect that the applicant's disability had been opined to be neither attributable to nor aggravated by service by the RMB and that further the MoD letter No. 16(5)/2008/D(Pen/Policy) dated 29.09.2009 extended to the grant of the disability element of pension to Armed Forces Personnel who had retired voluntarily on and after 01.01.2006 with a disability which had been recommended as being attributable to or aggravated by military service and assessed at 20% or more but that the applicant had taken pre-mature retirement prior to 01.01.2006 that is from 01.11.2005 and thus he was not entitled to the grant of the disability element of pension.

3. The present OA thus assails the said communication Air HQ/99797/3754/Dis/O/DAV-1(B) dated 22.11.2016.

4. During the pendency of the present OA, however, the applicant expired on 11.06.2019 and his LRs who brought on record vide order dated 03.09.2019 in MA 2140/2019. The applicant had submitted that the disability of Essential Hypertension had its onset on 27.09.2004 after induction of the applicant in the IAF on 19.08.1985 that is after about 19 years of service in the Indian Air Force with his duties assigned as a Pilot Officer and that the said disability of Essential Hypertension, and that in view of the posting profile of the applicant (since deceased) which is as under :-

PART-I
PERSONAL STATEMENT

1. Give details of service (P-Peace OR F-Field/Operational/Sea Service)									
S. No.	From	To	Place/Ship	P/F	S. No.	From	To	Place/Ship	P/F
(i)	Feb 87	Jul 87	Banglore	P	(ii)	Aug 96	May 98	Agra	P
(iii)	Jul 87	Aug 90	Kasavli	P	(iv)	May 98	Jun 99	Wellington	P
(v)	Sep 90	Feb 93	Gandhi Nagar	P	(vi)	Jun 99	Mar 03	Halwara	P
(vii)	Feb 93	Aug 96	Dinjan	F	(viii)	Apr 03	Till date	Delhi	P

the disability has to be held to have a causal connection with military service.

5. *Inter alia* reliance was placed on behalf of the applicant (since deceased) on the verdict of the Hon'ble Supreme Court in **Dharamvir Singh Vs. Union Of India & Ors** (Civil Appeal No. 4949/2013) in Para 28 thereof 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."*

6. The applicant had further submitted that in as much as the RMB itself vide responses to Para 2 and 3 states to the effect :-

2. Did the disability exist before entering service ? (Y/N/Could be) NO

3. In case the disability existed at the time of entry, is it possible that it could be detected during the routine medical examination carried out at the time of the entry? N/A

that the disability in question did not exist before the applicant was inducted into military service nor it was possible that it could not have been detected during a routine medical examination conducted at the time of entry into service, the said disability which arose after 19 years of service in the Indian Air Force has to be held to be attributable to and aggravated by military service.

7. *Inter alia* the applicant also placed reliance on Annexure 3 to appendix 2 of the classification of the diseases of the Pension Regulations for the Air Force, 1961 to submit to the effect that Hypertension is one of the listed diseases as is considered to be affected by stress and strain. It was further submitted on behalf of the applicant that the contention raised on behalf of the respondents that the applicant had taken pre-mature retirement prior to 01.01.2006 is *per se* negated by the order of this Tribunal in ***Maj (Retd.) Rajesh Kumar Bhardwaj vs. UoI & Ors.*** in OA 336/2011 whereby the cutoff date mentioned in the MoD letter no. 16(5)/2008/D(Pen/Policy) dated 29.09.2009 to the extent of pre and post distinctions of 01.01.2006 for grant of the disability pension for those persons who voluntarily retired prior to 01.01.2006 has already been adjudicated and the said clause (3) of the notification dated 29.09.2009 has been struck off.

8. The letter no. 16(5)/2008/D(Pen/Policy) dated 29.09.2009 reads to the effect :-

"1. The undersigned is directed to refer to Note below Pam 8 and Para 11 of this Ministry's letter No.1(2/97/D(Pen-C) dated 31.1.2001, wherein it has been provided that Armed Forces personnel who retire voluntarily or seek discharge on request, shall not be eligible for any award on account of disability.

2. In pursuance of Government decision on the recommendations of the Sixth Central Pay Commission vide Para 5.1.69 of their Report, President is pleased to decide that Armed Forces personnel who are retained in service despite disability, which is accepted as attributable to or aggravated by Military Service and have foregone lump-sum compensation in lieu of that disability, may be given disability element/war injury element at the time of their retirement discharge whether voluntary or otherwise in Retiring Service Gratuity.

3. The provisions of this letter shall apply to the Armed Forces personnel who are retired/discharged from service on or after 1.1.2006.

4. Pension Regulations for the three Services will be amended in due course.

5. This issues with the concurrence of Ministry of Defence (Fin) vide their U.O.No. 3545/(Fin/Pen) dated 29.9.2009

6. Hindi version will follow."

9. On a consideration of the submissions that have been made on behalf of either side, it is essential to observe that the onset of the disability of Essential Hypertension was on 27.09.2004 in the nineteenth year of service of the applicant (since deceased) in the Indian Air Force in his 8th posting. The RMB placed on record does not indicate any

contributory factors from the side of the applicant (since deceased) on the onset of the disability.

10. Qua the contention that was sought to be raised on behalf of the respondents that the disability the applicant (since deceased) suffered from had its onset whilst he was posted in a peace area and that the disability had no close time association with stress and strain and was constitutional in nature, it is essential to observe that in terms of Rule 9 of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces personnel, 1982 as are applicable in the instant case, in view of the discharge of the applicant from the Indian Air Force on 01.11.2005, in terms of Rule 9 of the said Rules, the onus of proof is not on the claimant that is the employee and rather the onus of proof of the condition of the non-entitlement was on the employer and if claimant has to denied the benefit of any reasonable doubt.

11. Furthermore, it is essential to observe that in terms of the Rule 14(b) of the said Entitlement Rules of 1982, the medical opinion holds that the disease could not have been detected on a medical examination prior to the acceptance of service and that disease would not be deemed to have arisen during service, the Medical Board is required to state the reasons for the same. As observed hereinabove the opinion of the Medical Board merely states that the disability that the applicant (since deceased)

suffered from was constitutional in nature. The same does not suffice to negate the contentions of the applicant that the disability that the applicant suffered from, of Essential Hypertension was due to the rigours of the stress and strain of service in the Indian Air Force and which had its onset after 19 years of service.

12. It is also essential to advert the Regulations of the Medical Services for the Armed Forces Personnel 1983 and to Para 423(a) which deals with the attributability to service which reads as under :-

"423(a) For the purpose of determining whether the cause of a disability or death 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. 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 cases occurring in field service/active service areas."

13. It is essential to observe that it has been laid down by the Hon'ble Supreme Court in *Dharamvir Singh vs. Union of India & Ors.* (Supra) vide observations in Para 33 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.",

which thus, stipulates that it is immaterial whether the cause giving rise to the disability or death occurred in a area declared to be a field/active service area or under normal peace conditions.

14. Thus, in the instant case, the disability of the applicant (since deceased) of Essential Hypertension which fulfils the requisite criteria and of the percentage of the disablement being about 20% in the instant case with disablement for life, in the circumstances of the instant case has

to be held to be attributable to military service in view of Para 43 of the GMO (MPs) 2002 which reads as under :-

"43. Hypertension:-

The first consideration should be to determine whether the hypertension is primary (essential) or secondary. If secondary, entitlement considerations should be directed to the underlying disease process (e.g. Nephritis), and it is unnecessary to notify hypertension separately. It is better to clearly indicate whether it is a case of essential hypertension, giving the evidence in support.

As in the case of arteriosclerosis, 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. Each case should be judged on its merits taking into account particularly the physical condition on entry into service, the age, the amount and duration of any stress and whether any other service compulsion has operated.

Hypertension generally arising in close time relationship to service in field area, active operational area, war like situation both in peace and field area, counter-insurgency areas and high altitude areas are acceptable as aggravated when exceptional stress and strain of service is in evidence. 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. Aggravation can be considered taking into account the duration of service in active operational areas and sector profile."

which itself provides that the stress and strain of service is one of the precipitative causative factors from the onset of the disability.

15. In relation to the contentions raised on behalf of the respondents that the applicant had taken premature retirement prior to 01.01.2006 and thus even if the disability of the applicant be held to be attributable to military service, the applicant was not entitled to the grant of the disability element of pension in terms of the Govt. of India, Ministry of Defence letter No. 16(5)/2008/D(Pen/Policy) dated 29.09.2009, it is essential to note as has already been observed hereinabove that the said cutoff date on being 01.01.2006 for application of the letter dated 29.09.2009 for the grant of the disability of pension to those personnel of the Armed Forces who have sought voluntarily retirement/discharge on or before 01.01.2006 has already been struck off vide the order of this Tribunal in *Maj (Retd.) Rajesh Kumar Bhardwaj* (Supra).

CONCLUSION

16. Thus, in the instant case, the applicant (since deceased), now represented by his legal representative his wife Smt Champa Thakur is held entitled to the grant of the disability element of pension in relation to the disability of Essential Hypertension assessed with a percentage of disablement at 30% which in terms of the Hon'ble Supreme Court in *Union of India & Ors. vs. Ram Avtar* in Civil Appeal No. 98/2017 is broad banded to 50% till the date of demise i.e. 11.06.2019. However, in as much as the OA had been instituted on 17.01.2017, the arrears of the

grant of the disability element of pension shall commence to run from a period of three years prior to institution of the present OA. In view of the date of discharge of the applicant in the instant case being 01.11.2005 from the date after demise of the Wg Cdr Raj Ranjan Patnaik (Retd.) his legal representative his wife Smt Champa Thakur is held entitled to the grant of the Ordinary Family Pension as per rules.

17. The respondents are thus directed to calculate, sanction and issue the necessary PPO to the applicant within a period of three months from the date of receipt of copy of this order and the amount of arrears shall be paid by the respondents, failing which the applicant (since deceased) represented by his legal heir will be entitled for interest @6% p.a. from the date of receipt of copy of the order by the respondents.

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

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

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/yogita/