COURT No.3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 1870/2021 with MA 1865/2021

HFL Jasbir Singh Panesar (Retd.) ..... Applicant
VERSUS
Union of India and Ors. ..... Respondents

For Applicant : Mr. Manoj Kumar Gupta, Advocate
For Respondents : Mr. YP Singh, Advocate

CORAM
HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

O R D E R

MA 1865/2021

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 188 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 delay of 188 days in filing the

OA 1870/2021 is thus condoned. The MA is disposed of accordingly.

OA 1870/2021

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) To direct the respondents to grant disability pension @ 30% broad banded to 50% alongwith arrears by treating the disability of PH as attributable and aggravated by the military service and/or***
>
> ***(b) To direct the respondents to pay due arrears of disability pension with interest @ 10% p.a with effect from the date of retirement with all the consequential benefits, and/or***
>
> ***(c) To pass such further order or orders, direction/directions s this Hon'ble Tribunal may deem fit and proper in accordance with law.***

BRIEF FACTS

2. The applicant was enrolled in the Indian Air Force on 03.09.1979 and was discharged from service on 31.07.2017 under the clause "On attaining the age of superannuation" after rendering 37 years and 332 days of regular service. The Release Medical Board dated 07.02.2017 held that the applicant was fit to be discharged from service in composite

low medical category A4G3(P) for the disability of Primary Hypertension (Old) @ 30% for life compositely assessed @ 30% for life however, the net qualifying percentage for the disability was assessed @ nil for life as the disability was adjudged as neither attributable to nor aggravated by military service.

3. On adjudication, AOC AFRO has upheld the recommendations of RMB and rejected the disability pension claim of the applicant vide letter no. RO/3305/3/Med dated 28.02.2017. The outcome was communicated to the air veteran vide letter No. Air HQ /99798 /1 / 666008 / 07 / 17 /DAV(DP/RMB) dated 28.04.2017 with an advice that he may prefer an appeal to the appellate committee with six months from the date of receipt of the letter. Aggrieved by the rejection of his claim for disability pension by the respondents, the applicant had filed the instant OA.

CONTENTIONS OF THE PARTIES

4. The learned counsel for the applicant submitted that the applicant was an "Engine Fitter" by trade and had put in 37 years of long service in the Indian Air Force. He was subjected

to a thorough medical examination conducted by the medical board at the time of his entry into service and was found medically fit to join the service in Indian Air force and was posted to various units in the course of active service. The disability Primary Hypertension(Old) was detected in September, 2016 after 36 years of long military service while he was posted at New Delhi, MIG BIS UP CELL, Air HQ (VB). It is contended that this disability was due to continuous stress and strain of working conditions which included maintaining records of heavy equipment, frequent physical inspections, prolonged working hours, and exposure to dust and harsh working conditions.

5. Inviting our attention to Part-V of the RMB proceedings which are reproduced below :

2. Did the disability exist before entering service (Y/N/Could be)	**No**
5 (a). Was the disability attributable to the individuals own negligence or misconduct ? if yes, it what way?	**No**
(b). If not attributable, was it aggravated by negligence or misconduct? If so, in what way and to what percentage of the total disablement?	**No**

it is argued that the disability of Primary Hypertension was neither pre existing nor could it be attributed to applicant's

own negligence or misconduct, meaning thereby that it occurred due to stress and strain of adverse working condition of service.

6. Learned counsel has further placed reliance on the judgments of the Hon'ble Supreme Court in ***Dharamvir Singh Vs. Union of India and Ors.*** [(2013) 7 SCC 316] and ***Union of India and Ors. Vs. Rajbir Singh*** (2015) 12 SCC 264, to canvas 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.

7. Per contra the stand of learned counsel for the respondents submits that the Primary Hypertension disability is basically a lifestyle related disorder and in the case of the applicant it had its onset in peace station. The learned counsel further submitted that prior to onset of the disability, the applicant has served only in peace stations since 1981

and the onset of the disability occurred in September 2016 and there has been no close time association of military service with onset and progression of the disability and hence, the disability is NANA as per para 43 of GMO (Military Pension) 2008.

8. It is further argued that under the provisions of Rule 153 of the Pension Regulations for the Indian Air Force, 1961 (Part-I), the primary condition for the grant of disability pension is invalidation out of service on account of a disability which is attributable to or aggravated by Air Force service and is assessed @ 20% or more. In other words, disability pension is granted to those who fulfill the following two criteria simultaneously:-

(i) Disability must be either attributable to or aggravated by service.

(ii) Degree of disablement should be assessed at 20% or more.

The learned counsel further submits that the RMB has assessed the applicant's disability as neither attributable to nor aggravated by service which thus does not fulfill the criteria (i) as above and hence the applicant is not entitled for

the grant of disability pension in accordance with the prevailing rules and policies.

ANALYSIS

9. We have heard learned counsel for the parties and perused the Release Medical Board (RMB) proceedings. It is not in dispute that the extent of disability for Primary Hypertension has been assessed to be 30% for life which is more than the base minimum for grant of disability element of pension and the provisions of the Rules and Regulations of 2008 will be applicable in present case.

10. It is evident from the RMB qua the applicant that the applicant was not overweight and there is nothing on records to show that the weight of the applicant at the time of the onset of the disability is more than the ideal body weight as per medical norms.

11. The consistent view taken by this Tribunal qua the disability of Primary Hypertension is based on the law laid down by the Hon'ble Supreme Court in the case of ***Dharamvir Singh (Supra),*** and the Entitlement Rules for Casualty Pensionary Awards, 2008 (as applicable in the

instant case). In the case of ***Dharamvir Singh (Supra)*** the Hon'ble Supreme Court passed following two questions for consideration:

> ***"(i) Whether a member of Armed Forces can be presumed to have been in sound physical and mental condition upon entering service in absence of disabilities or disease noted or recorded at the time of entrance?***
> ***(ii) Whether the appellant is entitled for disability pension?"***

The issue whether the concerned officer is invalided out of service, or discharged or retire, was not a factor which was included in the issue as framed. The issue only addresses the question whether a disease or disability of which there is no note recorded at the time of entry, if discovered during the military service can be held attributable to or aggravated by the military service, entitling the officer for disability pension. Deciding the issues in affirmative it was observed in Para 28:

> ***"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."

12. The 'Entitlement Rules for Casualty Pensionary Awards, to the Armed Forces Personnel 2008, (as applicable in the instant case, in view of the discharge of the applicant from service on 31.07.2017) 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 ouns 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 white 'on duty', attributability shall not be conceded unless it is established that service factors were responsible for such action.

(b) <u>Disease</u>:

(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. <u>Aggravation</u>:

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."

13. Further as per amendment to Chapter VI of the 'Guide to Medical Officers (Military Pensions) 2008, at para-43, it is provided as under:-

"43. <u>Hypertension</u> – 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."

14. 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.

15. There is no gainsaying that the opinion of the Medical Board which is an expert body has to be given due weight and credence. But the opinion of the Medical Board cannot be read in isolation and has to be read in consonance with the Entitlement Rules, General Rules of Guide to Medical Officer. A mere statement that onset of disease was during a peace posting is clearly insufficient to discharge this onus. In the present case, the applicant is a "Engine Fitter" by trade and the applicant has served in the Indian Air Force for more than

37 years and the onset of the disability of "Primary Hypertension (Old)" occurred in September 2016 after 36 years of service, whilst he was posted in peace station. Even during the peace area postings, the performance of duties of the applicant had always been highly demanding and full of stress and strain. The accumulated stress and strain of such a long service on the applicant cannot be overlooked and hence the disability of the 'Primary Hypertension (Old)' has to be conceded to be attributable and aggravated by military service.

CONCLUSION

16. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is entitled for disability element of pension in respect of disability 'Primary Hypertension (Old)'. Accordingly, we allow this application holding that the applicant is entitled to disability element of pension @ 30% for life rounded off to 50% for life with effect from the date of his 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.

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. The amount of arrears however are directed to commence to run from a period of three years prior to the institution of the present OA, in terms of the verdict of the Hon'ble Supreme Court in ***Union of India & Ors Vs Tarsem Singh*** reported in 2008 8 SCC 648 which shall be paid by the respondents, failing which the applicant 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 this 8th day of July, 2025.

(JUSTICE NANDITA DUBEY)
MEMBER (J)

(RASIKA CHAUBE)
MEMBER (A)

/Pooja/