

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

74.

OA 1152/2021 with MA 1058/2021

Ex JWO Vijay Shankar Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. V S Kadian, Advocate
For Respondents : Dr. V S Mahndiyan, Advocate with
Ms. Apurva, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER
10.03.2025

The applicant has instituted the present OA 1152/2021 on 08.04.2021 with the following prayers to the effect:-

"(a) Direct respondents to issue PPO for service pension and grant retiral and consequential benefits and arrears along with interest @12% p.a.

(b) Direct respondents to conduct Release Medical Board and assess the disabilities as attributable to/aggravated by military and grant disability element of pension along with benefits of broad banding.

(c) Direct Respondents to pay the due arrears of pension with interest @12% p.a. from the date of discharge 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 along with cost of the application in favour of the applicant and against the respondents."

2. It had been submitted by the applicant vide the OA 1152/2021 that he was enrolled in the Indian Air Force on 24.01.1985 and was discharged from service on 31.01.2020 in

low medical category or on medical grounds and had not been granted service pension even after passage of one year. The counter affidavit filed by the respondents on 09.05.2023 whereby vide Para 1 of the brief facts states to the effect:-

“That the applicant was enrolled in the Indian Air Force on 24.01.1985 and was discharged from service on 31.01.2020 under the clause “On transfer to pension establishment other than request” after rendering a total 35 years and 06 days of regular service.”

3. It is apparent through the said counter affidavit of the respondents that the applicant is in receipt of the service pension. Counsel for the applicant submits that after institution of the present OA, the applicant after a year was given service pension. Prayer Clause (a) to that extent thus stands disposed of and does not require any further action. As regards prayer clause 8(b) which relates to the conducting of Release Medical Board and assessment of the disabilities of the applicant, it is submitted on behalf of the applicant that the said Release Medical Board was also conducted and that the RMB pursuant thereto is annexed as R-1 to the counter affidavit filed by the respondents and that the said RMB was conducted on 23.06.2021.
4. A submission now made on behalf of the applicant is to the effect that in relation to the disabilities of the applicant qua Primary Hypertension (old) and Severe Depressive Episode (Fresh) with their onset in November 1999 and March 2019 the disabilities having been assessed with percentage of disablement @30% for life and 40% for life respectively as stated

in Para 3 at page 8 of the said RMB, the applicant be granted the disability element of pension in relation to which a prayer is made to the effect that in as much as the composite assessment thereof was 60% for life the same be rounded off for 75% for life. On behalf of the respondents it has been submitted however to the effect that the Release Medical Board has given a detailed justification in Part VII in the Opinion of the Medical Board to the effect:-

Part VII
OPINION OF THE MEDICAL BOARD

1. Please endorse diseases/disabilities in chronological order of occurrence.

<i>DISABILITY</i>	<i>ATTRIBUTABLE TO SERVICE (Y/N)</i>	<i>AGGRAVATED BY SERVICE (Y/N)</i>	<i>DETAILED JUSTIFICATION</i>
<i>1. PRIMARY HYPERTENSION (I-10)</i>	<i>NO</i>	<i>NO</i>	<i>The onset of the disability was at peace area New Delhi/Nov 1999. Individual kept serving in peace are after the onset the onset till retirement. There is no causal connection between the disability and the service environment. Hence, conceded NANA by mil service in terms of Para 43 of CH-VI of GMO-2008.</i>
<i>2. SEVERE DEPRESSIVE EPISODE (F32.3)</i>	<i>NO</i>	<i>NO</i>	<i>The onset of the disability was at peace area Gandhi Nagar, HQ SWAC 21 Aug 2019. There is no history of infection and trauma related to service and there is no history of denial of leave or delay in diagnosis/treatment. There is no causal</i>

			<p><i>connection between the disability & service environment. Hence conceded "NANA" by service in terms of Para-54 of CH-VI of GMO-08 (Mil Pen).</i></p>
<p><i>Note:1. A detailed justification regarding the board's recommendations on the entitlement for each disease/disability must be provided sequentially especially in NANA cases as per enclosed Appendix 'A'.</i></p> <p><i>2. In case of multiple disabilities or inadequate space, do not paste over the opinion, an additional sheet should be attached instead, providing a detailed justification, which is authenticated by the President and all members of the Medical Board.</i></p> <p><i>3. In case the medical board differs in opinion from the previous medical board, a detailed justification explaining the reasons to differ should be brought out clearly.</i></p> <p><i>4. A disability cannot simultaneously be both attributable to or aggravated by military service, only one or neither of which will apply.</i></p>			

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Qua which it has thus been submitted to the effect that the said two disabilities are neither attributable nor aggravated by military service.

5. The only reasons put forth in relation to the disability of Primary Hypertension being neither attributable nor aggravated by military service is stated to be to the effect that the disability had its onset in the peace area whilst the applicant was serving in New Delhi and thereafter also the applicant continued to serve in peace and there is no causal connection between the disability and service environment and the claim has thus been rejected in terms of Para 43, Chapter VI of the Guide to Medical Officers (Military Pensions), 2008.

6. It is essential to observe to the effect that the applicant was enrolled in the Indian Air Force 24.01.1985 and the onset of the said disability of Primary Hypertension is in November 1999.

Undoubtedly, the applicant as per Part II personal statement of the RMB placed on record shows the posting profile of the applicant which is to the effect:-

“Part II
PERSONAL STATEMENT”

1. Give details of service(P=Peace OR F=Field/Operational/Sea Service. (Copy of paramount card and Part-II orders for service in Fd/Mod Fd/CI Ops/HAA/Sea Service/Operational area/Others for the Indl undergoing RMB to be att)											
SL NO.	FRO M	TO	UN IT	PLACE/ SHIP	P/F (HAA/O PS/Sea Service) Mod Fd	SL NO.	FRO M	TO	UNI T	PLA CE/ SHIP	P/F (HAA/ OPS/Sea Service) Mod Fd
(i)	24 Jan 85	06 mar 86	ATI	Belgaum/peace		(ii)	07 Mar 86	22 May 88	10 Wg	Jorhat/ Peace	
(iii)	23 May 88	28 may 89	10 wg ALG	Jorhat/Ops location		(iv)	29 May 89	15 Jan 96	4 BRD	Kanpur/Peace	
(v)	16 Jan 95	05 Oct 97	25 8 SU	Gandhinagar/peace		(vi)	06 Oct 97	12 Nov 98	SWA C (U)	Gandhinagar/peace	
(vii)	13 Nov 98	31 Jul 99	AF RO	New Delhi		(viii)	01 Aug 99	21 Dec 2003	AFR O	New Delhi/peace	
(ix)	22 Dec 2003	28 Oct 2007	7 Tet ra	Pune/Peace		(x)	29 Oct 2007	02 Sep 2012	7Wg	Ambala/Peace	
(xi)	03 Sep 12	28 Aug 16	W TI	Chennai/Peace		(xii)	29 Aug 16	31 Jan 20	SWA C	Gandhinagar/peace	

and the applicant has been posted in peace areas. However, Regulation 423 (a) of the Regulations for the Medical Services of the Armed Forces 2010 which relates to the attributability to service is still in operation and has not been obliterated, and which reads 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.

(emphasis supplied),—

specifically makes no distinction in relation to any peace area or field area in relation to the assessment qua the disabilities that the Armed Forces Personnel suffers from.

7. A catena of orders of this Tribunal also specifies the same have been upheld by the Hon'ble High Court of Delhi.
8. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of *Dharamvir Singh v. Union of India and others* (2013) 7 SCC 316, the Entitlement Rules for Casualty Pensionary Awards, 1982, and observations in para-28 of the said verdict 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."

9. The Entitlement Rules for Casualty Pensionary Awards, to the Armed Forces Personnel 2008, as applicable in the instant case 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.

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 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."

10. Thus, the ratio of the verdicts in *Dharamvir Singh vs UOI & Ors* (Civil Appeal No. 4949/2013) (2013) 7 SCC 316, *Sukhvinder Singh vs UOI & Ors*, dated 25.06.2014 reported in 2014 STPL (Web) 468 SC, *UOI*

& Ors. vs Rajbir Singh (2015) 12 SCC 264 and *UOI & Ors* versus *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.

11. In relation the disability of Severe Depressive Episode (fresh) (ICD F-32), on a perusal of Para 54 of the Chapter VI of the GMO (MP), 2008, which reads to the effect:-

“54. Mental & Behavioural (Psychiatric) Disorders.
Psychiatric illness results from a complex interplay of endogenous (genetic/biological) and exogenous (environmental, psychosocial as well as physical) factors. This is true for the entire spectrum of psychiatric disorders (Psychosis & Neurosis) including substance abuse disorders. The relative contribution of each, of course, varies from one diagnostic category to another and from case to case.

The concept of attributability or aggravation due to the stress and strain of military service can be, therefore, evaluated independent of the diagnosis and will be determined by the specific circumstances of each case.

(a) Attributability will be conceded where the psychiatric disorder occurs when the individual is serving in or involved in:-

(i) Combat area including counterinsurgency operational area

(ii) HAA service.

(iii) Deployment at extremely isolated posts

(iv) Diving or submarine accidents, lost at sea.

(v) Service on sea.

(vi) MT accidents involving loss of life or Flying accidents (both as flier and passenger) in a service aircraft or aircraft accident involving loss of life in the station.

(vii) Catastrophic disasters particularly while aiding civil authorities like earthquake, cyclone, tsunami, fires, volcanic eruptions (where one has to handle work in proximity of dead or decomposing bodies).

(b) Attributability will also be conceded when the psychiatric disorder arises within one year of serious/multiple injuries (e.g. amputation of upper/lower limb, paraplegia, quadriplegia, severe head injury resulting in hemiplegia of gross neurocognitive deficit which are themselves considered attributable to military

service. This includes Post Traumatic Stress Disorder (PTSD).

(c) Aggravation will be considered in Psychiatric disorders arising within 3 months of denial of leave due to exigencies of service in the face of:

(i) Death of parent when the individual is the only Child/son.

(ii) Death of spouse or children.

(iii) Heinous crimes (e.g. murder, rape or dacoity) against members of the immediate family.

(iv) Reprisals or the threat of reprisals against members of the immediate family by militants/terrorists owing to the fact of the individual being a member of the Armed Forces.

(v) Natural disasters such as cyclones/earthquakes involving the safety of the immediate family.

(vi) Marriage of children or sister when the individual is the only brother thereof and specially if their father is deceased.

(d) Aggravation will also be conceded when after being diagnosed as a patient of psychiatric disorder with specific restrictions of employability the individual serves in such service environment which worsened his disease because of the stress and strain involved like service in combat area including counterinsurgency operations, HAA, service on board ships, flying duties.

(e) *Attributability* may be granted to any psychiatric disorder occurring in recruits and results in invalidment from service only when clearly identifiable severe stressors including sexual abuse or physical abuse are present as causative factor/factors for the illness."

despite the contention raised on behalf of the applicant taking into account the medical case sheet of the applicant which *inter alia* reads to the effect:-

"Investigations revealed hyperglycemia and deranged thyroid function tests, besides the cranial findings. The same have been evaluated and opined upon.

Mental status examination revealed an ill-kempt, dishevelled, unshaven passively cooperative individual with psychomotor retardation and poor eye contact. He spoke in a low volume, was dysprosodious. The speech had increased latency and decreased spontaneity. His affect was depressed with a reduced range of reactivity, though congruent to thought content. He had depressive cognitions of helplessness and hopelessness. He had poverty of content of

thought. He had no definite delusions or perceptual disturbances. There were however no suicidal ideation. The judgment and insight were coloured by his morbid mood state. He has deranged biodrives.

He was managed with SSRLs along with SGAMs, initially parenterally, then orally, along with a short course of benzodiazepines, mood stabilizers in therapeutic dosages, along with supportive psychotherapy, coping skills training, and educated about the course and prognosis of the ailment, as well as the need to continue medications.

He has responded to therapy. Repeated mental status examinations and ward observation as an inpatient have revealed progressively improving mood, behaviour and social interaction,”

the said disability of the applicant does not reflect to be one either attributable to or aggravated by military service. The prayer made in relation thereto is thus not accepted.

12. In view thereof, the contentions raised on behalf of the respondents in relation to the non-grant of the disability element of pension to the applicant qua the disability of Primary Hypertension cannot be accepted. The applicant is held entitled to the grant of disability element of disability pension qua the disability of primary hypertension @30% for life which is directed to be rounded off to 50% for life 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.

13. 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.

14. The OA is disposed of accordingly.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(MS. RASIKA CHAUBE)
MEMBER (A)

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