

COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 1179/2020 With MA 1360/2020

HFO Satish Chandra Mishra (Retd) ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Mr. Manoj Kumar Gupta, Advocate

For Respondents : Mr. R.S Chillar, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

MA 1360/2020

This is an application filed under section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 1539 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 1360/2020 is allowed and the delay of 1539 days in filing the OA 1179/2020 is thus condoned. The MA is disposed of accordingly.

OA 1179/2020

2. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant vide the present OA makes the following prayers:-

“(a) To direct the respondents to grant the disability pension @40% broad banded to 75% for life in view of the Hon’ble Apex Court Judgment in Rajbir Singh (supra) and Dharamvir Singh (Supra) by treating the disabilities as attributable and aggravated to military service.

(b) To direct the respondents to pay the due arrears of disability pension with interest @10% p.a. with effect from the date of retirement with all consequential benefits, or

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

BRIEF FACTS

3. The applicant was enrolled in the Indian Air Force on 28.08.1978 and was discharged from the service on 30.11.2015 under the clause of “On attaining the age of superannuation” after rendering total 37 years and 95 days of regular service. The Release Medical Board dated 13.04.2015 held that the applicant was fit to be discharged from service in low medical category A4G4 (P) and assessed the disabilities of (i) Type-II Diabetes Mellitus @ 20% for life, (ii) Primary Hypertension @ 30% for life (iii) Sensorineural Hearing Loss @15-19% for life, compositely assessed @50% for life. While the third disability, Sensorineural Hearing Loss was conceded to be ‘Aggravated by military service, the other two disabilities viz Diabetes Mellitus Type-II and Primary Hypertension were held to be ‘neither attributable to nor aggravated and, therefore, based on the recommendations of the RMB, the disability pension has been denied to the applicant.

4. The initial claim of the applicant for grant of the disability pension was rejected by the AOC AFRO and the said decision was communicated to the applicant vide letter No. Air HQ/99798/1/649274/01/11/15/DAV (DP/RMB) dated 10.07.2015 with an advice that in case, the applicant is not satisfied with the decision of the respondents, he may prefer an appeal to the Appellate Committee within six months from the date of receipt of the above mentioned letter. The applicant preferred his first appeal dated 01.06.2019 against non-grant of disability pension, which was rejected by the Appellate Committee on First Appeal (ACFA) vide letter dated 24.06.2020. The applicant did not prefer any second appeal, instead he filed the instant OA on 17.08.2020. In the interest of justice, it is considered appropriate to take up the present OA for consideration, in terms of Section 21(2) of the AFT, Act 2007.

CONTENTIONS OF THE PARTIES

5. The learned counsel for the applicant submitted that the prayers made in the present OA are confined to the grant of disability element of pension in relation to the disabilities of (i) Type-II Diabetes Mellitus @ 20% for life, (ii) Primary Hypertension @ 30% for life only and the prayer made for grant of disability element of pension in relation to disability of (iii) Sensorineural Hearing Loss @15-19% for life is not pressed, presently as the matter is *sub judice* and referred to the Larger Bench of the AFT, Principal Bench, New Delhi.

6. Placing reliance on the judgment of the Hon'ble Supreme Court in *Dharamvir Singh v. UOI & Ors [2013 (7) SCC 36]*, the learned counsel for the applicant submitted that no note of any disability was recorded in the service documents of the applicant at the time of the entry into the service, and that he served in the Army at various places in different environmental and service conditions in his prolonged service and thus thereby, any disability during the time of his service has to be deemed to be attributable to or aggravated by military service.

7. It was further submitted on behalf of the applicant that the applicant's first and second disabilities were detected while he working in Nagaland after around 32 years of continues service. He did combat duties and also faced the harshness of extended working hours along with specific task related to his trade and he was also given responsibility of Unit Adjutant to look after all administrative work of the Unit with limited resources in tough terrain of North-East and therefore, causal connection is clearly established between his disability and military service.

8. The learned counsel for the applicant also placed reliance on various judgments of the Hon'ble Supreme Court in *UoI & Ors. vs Manjit Singh* JT 2015 (5) SC 255, in *Rajbir Singh and Others* (2015) 12 SCC 264, in *UoI vs. Angad Singh Titaria* (2015) 12 SCC 257, in CA No. 5605/2010 titled as *Sukhvinder Singh Vs. UoI*, and in Civil Appeal No. 418/2012 titled *UOI vs Ram Avtar* dated 10.12.2014 for grant of

disability pension with broad-banding benefits and also on the judgments of Hon'ble High Court of Punjab and Haryana in *Onkar Singh Bawa Vs. UoI* 2013 (1) PLR 830 and also in the case of *Ex Naik Umed Singh Vs. UoI* in CWP 7277/2013 decided on 14.05.2014.

9. The learned counsel further placed reliance on the decision of the AFT, Principal Bench, New Delhi in the case of OA 1815/2018 titled *Ex WO Sridam Chandra Das vs. UOI & Ors* decided 10.01.2019 wherein similarly situated person was granted relief.

10. *Per contra*, the learned counsel for the Respondents submits that as per Rule 153 of Pension Regulations for IAF, 1961(Part-I), the primary condition for the grant of disability pension are "unless otherwise specifically provided, disability pension may be granted to an individual who is invalided from service on account of disability which is attributable to or aggravated by Air Force is assessed at 20% or over. 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 disabilities '(i) Type-II Diabetes Mellitus @ 20% for life, (ii) Primary Hypertension @ 30% for life as neither attributable to nor aggravated by service as they do not fulfill the above mentioned criteria

and hence the applicant is not entitled for grant of disability pension in accordance with prevailing rules and policies.

ANALYSIS

11. In view of the disability of 'Sensorineural Hearing Loss @15-19% for life' not being pressed presently by the applicant, we adjudicate only for the disabilities of '(i) Type-II Diabetes Mellitus @ 20% for life, (ii) Primary Hypertension @ 30% for life'.

12. We find that the disabilities of the applicant '(i) Type-II Diabetes Mellitus, and (ii) Primary Hypertension were assessed @ 20% for life and @ 30% for life respectively which percentage of disablement is more than the bare minimum for the grant of disability pension in terms of Rule 153 of Pension Regulations for IAF, 1961(Part-I), the only question that arise is whether the same were attributable to or aggravated by military service.

13. The 'Entitlement Rules for Casualty Pensionary Awards, to the Armed Forces Personnel 2008, 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."

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) LAFY – 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.

14. Furthermore, Para 26, Chapter VI of the Guide to Medical Officers (Military Pensions), 2008 reads as under:-

"26. Diabetes Mellitus

This is a metabolic disease characterised by hyperglycemia due to absolute/relative deficiency of insulin and associated with long term complications called microangiopathy (retinopathy, nephropathy and neuropathy) and macroangiopathy.

There are two types of Primary diabetes, Type 1 and Type 2. Type 1 diabetes results from severe and acute destruction of Beta cells of pancreas by autoimmunity brought about by various infections including viruses and other environmental toxins in the background of genetic susceptibility. Type 2 diabetes is not HLA-linked and autoimmune destruction does not play a role.

Secondary diabetes can be due to drugs or due to trauma to pancreas or brain surgery or otherwise. Rarely, it can be due to diseases of pituitary, thyroid and adrenal gland. Diabetes arises in close time relationship to service out of infection, trauma, and post surgery and post drug therapy be considered attributable.

Type 1 Diabetes results from acute beta cell destruction by immunological injury resulting from the interaction of certain acute viral infections and genetic beta cell susceptibility. If such a relationship from clinical presentation is forthcoming, then Type 1 Diabetes mellitus should be made attributable to service. Type 2 diabetes is considered a life style disease. Stress and strain, improper diet non-compliance to therapeutic measures because of service reasons, sedentary life style are the known factors

which can precipitate diabetes or cause uncontrolled diabetic state.

Type 2 Diabetes Mellitus will be conceded aggravated if onset occurs while serving in Field, CIOPS, HAA and prolonged afloat service and having been diagnosed as Type 2 diabetes mellitus who are required serve in these areas.

Diabetes secondary to chronic pancreatitis due to alcohol dependence and gestational diabetes should not be considered attributable to service.”

15. Para 43, Chapter VI of the Guide to Medical Officers (Military Pensions), 2008 reads as under:-

“43. Hypertension.

The first consideration should be to determine whether the hypertension is primary 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.

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.”

16. The applicant has served in the Indian Air Force for 37 years and 95 days of regular service, and both the disabilities of the applicant occurred in October, 2010 after more than 32 years of long service, whilst he was posted at Jorhat. The accumulated stress and strain of such a long service on the applicant cannot be overlooked. In the present case, the applicant had been posted to different stations located in the different parts of the country having diverse climatic, social and environmental conditions and performed strenuous and stressful duties. Moreover, it has already been observed by this Tribunal in large number of cases that the armed forces services, whether peace areas or field/HAA areas, have their own pressure of rigorous military training and associated stress and strain, physically and mentally, of the service. It may also be taken into consideration that the most of the personnel of the armed forces, during their service, work in the stressful and hostile environment, difficult weather conditions and under strict disciplinary norms. Moreover, there is no note made in the medical documents of the applicant that he was suffering from any disease at the time of joining the service. There is also no record to show that the applicant has suffered both the disabilities due to hereditary or unhealthy life style or there is any family history. Therefore, we are of the considered view that the benefit of doubt in these circumstances be given to the applicant in view of the settled law on the point of attributability/aggravation and thus we hold the aforesaid disabilities suffered by the applicant as

attributable to and aggravated by the military service. Thus, the applicant is entitled to the grant of disability element of pension in respect of both the disabilities i.e. (i) Type-II Diabetes Mellitus @ 20% for life, (ii) Primary Hypertension @ 30% for life.

17. In view of the above consideration, we hold that the applicant is entitled to the disability pension in respect of the disabilities of Diabetes Mellitus Type II, assessed @ 20%, and also in respect of Primary Hypertension assessed @ 30%. Accordingly, as per MoD letter No. 16036 /RMB /IMB /DGAFMS/MA(pens) dated 14.12.2009, the composite disablement of both the disabilities is now being calculated as under:-

Disability 'Type II Diabetes Mellitus Type-II (old)' = 20%

Disability (ii) Primary Hypertension (old) : $(100-20) = 80 \times 30/100 = 24\%$

Composite Assessment of all three disabilities = $20+24 = 44\%$

CONCLUSION

18. In view of the above, the OA is allowed. We hold that the applicant is entitled to the disability element of pension with respect to the disabilities of (i) Type-II Diabetes Mellitus @ 20% for life, (ii) Primary Hypertension @ 30% for life., with composite assessment of both the disabilities @ 44% for life which is to be further rounded off to 50% for life 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.

19. 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 will be entitled for interest @ 6% per annum from the date of receipt of copy of the order by the respondents. However, as the applicant has approached the Tribunal after a considerable delay, in view of the law laid down in *Union of India & Ors. Vs. Tarsem Singh [2009 (1) AISLJ 371]*, arrears of invalid pension will be restricted to three years prior to the date of filing of OA i.e. 18.08.2020.

20. There is no order as to costs.

Pronounced in the open Court on this 14 day of February, 2025.



(JUSTICE RAJENDRA MENON)
CHAIRPERSON



(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

/mmk