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

OA131/2022 WITH MA 201/2022

Sqn Ldr MK Sukumaran (Retd.) ... Applicant
Versus
Union of India & Ors. ... Respondents

For Applicant : Mr. A.K. Chaudhary, Advocate
For Respondents : Mr. K.K. Tyagi, Sr. CGSC

CORAM :
HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER

MA 201/2022

Keeping in view the averments made in the application and in the light of the decision in *Union of India and others* Vs. *Tarsem Singh* [(2008) 8 SCC 648), the delay in filing the OA is condoned.

2. MA stands disposed of.

OA 131/2022

3. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 the applicant has filed this application seeking grant of disability pension. The reliefs claimed by the applicant in Para 8 read as under:-

(a) Quash and set aside the impugned order dated 08 Sep 2021 to the extent this order deny the grant of Disability Pension to the applicant.

(b) To direct the respondents to grant the disability pension @ 15-19% rounded off to 20% and broad-banded to 50% as per Para 7.2 of the Govt. of India, Min of Defence Notification bearing No. 1(2)/97/D (Pen-C) dated 31.01.2001.

(c) To direct the respondents to grant the disability pension for life as degree of his disablement has been assessed for 05 years by RMB but may be granted for life in view of judgment of Hon'ble Supreme Court in CA 5970/2019 as disease is permanent in nature.

(d) Direct the respondents to pay to the applicant an interest @10% per annum on the arrears of enhanced disability pension w.e.f. 01.06.2001.

4. The applicant was enrolled as Airman in the Indian Air Force on 15.10.1963 and commissioned on 09.02.1990 and retired from service on 31.05.2001. The applicant submits that for the purpose of disabilities: - (i) IHD @15-19% and (ii) Inguinal Hernia @15-19% each for five years with composite being assessed @ 50% as is evident from the medical records on account of disabilities being treated as neither attributable to nor aggravated by military service (NANA). The applicant approached the respondents for grant of disability pension but the same was rejected vide letter dated 08.09.2021. It is in this perspective that the applicant has preferred the present OA.

5. The applicant pleaded that at the time of enrolment, he was found mentally and physically fit for service in the Air Forces and there is no note in the service documents that he was

suffering from any disease at the time of enrolment in the Indian Air Force. Initially, the applicant suffered from acute myocardial infarction (Inferior Wall) while on annual leave on 10.01.1991. He was managed in private hospital and later transferred to INHS Sanjivani, Cochin on 22.01.1991 and discharged on 08.02.1991 with 08 weeks sick leave. On expiry of sick leave he was reviewed by medical specialist and placed in LMC A4G4 (T-24). During subsequent review he was placed in LMC A4G2 (P) w.e.f. 19.09.1996.

6. As far as for disability No. 2, i.e, Inguinal Hernia is concerned, the applicant reported to SSQ with C/O swelling (L) inguinal region since past 3 months. The applicant was referred to surgical specialist MH Wellington and surgery of Herniaupathy was done on 13.06.2000. After surgery he was recommended 04 weeks sick leave and placed in LMC A4G4-04 weeks. The applicant was reviewed on 29.08.2000 and placed in LMC A4G3 (t-24). During subsequent review he was placed in LMC A4G4(P). He further submitted that claim for the grant of disability percentage was wrongly rejected on the ground of disability percentage being less than 20% and NANA.

7. Rebutting arguments of the learned counsel for the applicant, learned counsel for the respondents submitted that

the disability pension claim of the applicant was rightly rejected because RMB has assessed the degree of disablement between 15-19% which is less than the minimum requirement of 20% for the grant of disability pension and held the same as neither attributable nor aggravated by Air Force service, therefore the disability pension is inadmissible to the applicant.

8. On a consideration of the submissions made on behalf of either side, we find that the disability (ii) has been assessed to be less than 20%, thus, not warranting our interference. However, with respect to disability (i), we find it pertinent to refer to Chapter VIII of the Guide to Medical Officers, 2002 (as amended in 2008), which provides for assessment in case of IHD, and the same is reproduced herein as under:

> *(b)Disablement for IHD.*
> *(i)No Symptoms and or symptoms brought on only by strenuous activity and or No or mild ischaemia and or normal LV function ...30%*
> *(ii) Symptoms brought on by ordinary activity and or moderate ischaemia and or normal LV function and or mild LV dysfunction ...40 – 50 %*
> *(iii) Symptoms brought on by ordinary activity and or moderate ischaemia, and or moderate LV dysfunction ...50 – 60%*
> *(iv) Symptoms brought on by less than ordinary activity and or moderate to severe ischaemia, and or moderate LV dysfunction, untreated severe triple vessel or left main disease ...60 – 80%*
> *(v) Symptoms at rest and or unstable angina, moderate to severe ischaemia,and or severe LV dysfunction with or without congestive cardiac failure ...80-100%*
> *(vi)Presence of atrial fibrillation or complex ventricular arrhythmias ...Add 20–30 %*

9. A cursory look at the aforesaid Para makes it clear that under no circumstances, even when asymptomatic, the disablement of IHD has to be assessed at minimum @30%. Thus,

we have no hesitation in holding that the disability of IHD has to be assessed @30% in the instant case.

10. Moving on to adjudicate on the issue of attributability and aggravation of the disability (ii) IHD, it is essential to observe that the factum that as laid down by the Hon'ble Supreme Court in ***Dharamvir Singh(Supra)*** , 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 or 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.***

11. In view of the guidelines laid down vide the verdict of the Hon'ble Supreme Court in ***Dharamvir Singh*** Vs ***Union of India & Ors.***(Supra) and the factum that the non-existence of the ID of IHD at the time when the applicant joined military service is not refuted by the respondents, the contention of the respondents that the disability of IHD assessed has been rightly opined by the Release Medical Board and the AFCA at 15-19% as neither being attributable to nor aggravated by military service,- cannot be accepted.

12. It is essential to observe that the verdict of the Hon'ble Supreme Court in ***Rajbir Singh*** (supra) vide Paras 12 to 15 lays down to the effect:-

> *"12. Reference may also be made at this stage to the guidelines set out in Chapter-II of the Guide to Medical Officers (Military Pensions), 2002 which set out the "Entitlement: General Principles", and the approach to be adopted in such cases. Paras 7, 8 and 9 of the said guidelines reads as under:*
>
> *"7. Evidentiary value is attached to the record of a member's condition at the commencement of service, and such record has, therefore, to be accepted unless any different conclusion has been reached due to the inaccuracy of the record in a particular case or otherwise. Accordingly, if the disease leading to member's invalidation out of service or death while in service, was not noted in a medical report at the commencement of service, the inference would be that the disease arose during the period of member's military service. It may be that the inaccuracy or incompleteness of service record on entry in service was due to a non-disclosure of the essential facts by the member e.g. pre-enrolment history of an injury or disease like epilepsy, mental disorder, etc. It may also be that owing to latency or obscurity of the symptoms, a disability escaped detection on enrolment. Such lack of recognition may affect the medical categorisation of the member on enrolment and/or cause him to perform duties harmful to his condition. Again, there may occasionally be direct evidence of the contraction of a disability, otherwise than by service. In all such cases, though the disease cannot be considered to have been caused by service, the question of aggravation by subsequent service conditions will need examination.*
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> *[pic] The following are some of the diseases which ordinarily escape detection on enrolment:*
>
> *(a) Certain congenital abnormalities which are latent and only discoverable on full investigations e.g. Congenital Defect of Spine, Spina bifida, Sacralisation,*
>
> *(b) Certain familial and hereditary diseases e.g. Haemophilia, Congential Syphilis, Haemoglobinopathy.*
>
> *(c) Certain diseases of the heart and blood vessels e.g. Coronary Atherosclerosis, Rheumatic Fever.*
>
> *(d) Diseases which may be undetectable by physical examination on enrolment, unless adequate history is given at the time by the member e.g. Gastric and Duodenal Ulcers, Epilepsy, Mental Disorders, HIV Infections.*
>
> *(e) Relapsing forms of mental disorders which have intervals of normality.*
>
> *(f) Diseases which have periodic attacks e.g. Bronchial Asthma, Epilepsy, Csom, etc.*

8. The question whether the invalidation or death of a member has resulted from service conditions, has to be judged in the light of the record of the member's condition on enrolment as noted in service documents and of all other available evidence both direct and indirect.

In addition to any documentary evidence relative to the member's condition to entering the service and during service, the member must be carefully and closely questioned on the circumstances which led to the advent of his disease, the duration, the family history, his pre-service history, etc. so that all evidence in support or against the claim is elucidated. Presidents of Medical Boards should make this their personal responsibility and ensure that opinions on attributability, aggravation or otherwise are supported by cogent reasons; the approving authority should also be satisfied that this question has been dealt with in such a way as to leave no reasonable doubt.

9. On the question whether any persisting deterioration has occurred, it is to be remembered that invalidation from service does not necessarily imply that the member's health has deteriorated during service. The disability may have been discovered soon after joining and the member discharged in his own interest in order to prevent deterioration. In such cases, there may even have been a temporary worsening during service, but if the treatment given before discharge was on grounds of expediency to prevent a recurrence, no lasting damage was inflicted by service and there would be no ground for admitting entitlement. Again a member may have been invalided from service because he is found so weak mentally that it is impossible to make him an efficient soldier. This would not mean that his condition has worsened during service, but only that it is worse than was realised on enrolment in the army. To sum up, in each case the question whether any persisting deterioration on the available [pic]evidence which will vary according to the type of the disability, the consensus of medical opinion relating to the particular condition and the clinical history."

13. In Dharamvir Singh's case (supra) this Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words:

"29.1. Disability pension to be granted to an individual who is invalided 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 to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).

29.2. 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 read with Rule 14(b)].

29.3. The 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).

29.4. 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)]. [pic] 29.5. 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 [Rule 14(b)].

29.6. 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 [Rule 14(b)]; and 29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 - "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."

14. Applying the above principles this Court in Dharamvir Singh's case (supra) found that no note of any disease had been recorded at the time of his acceptance into military service. This Court also held that Union of India had failed to bring on record any document to suggest that Dharamvir was under treatment for the disease at the time of his recruitment or that the disease was hereditary in nature. This Court, on that basis, declared Dharamvir to be entitled to claim disability pension in the absence of any note in his service record at the time of his acceptance into military service. This Court observed:

"33. In spite of the aforesaid provisions, the Pension Sanctioning Authority failed to notice that the Medical Board had not given any reason in support of its opinion, particularly when there is no note of such disease or disability available in the service record of the appellant at the time of acceptance for military service. Without going through the aforesaid facts the Pension Sanctioning Authority mechanically passed the impugned order of rejection based on the report of the Medical Board. As per Rules 5 and 9 of the Entitlement Rules for Casualty Pensionary Awards, 1982, the appellant is entitled for presumption and benefit of presumption in his favour. In the absence of any evidence on record to show that the appellant was suffering from "generalised seizure (epilepsy)" at the time of acceptance of his service, it will be presumed that the appellant was in sound physical and mental condition at the time of entering the service and deterioration in his health has taken place due to service."

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)

13. Furthermore, 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 state as under:-

"6. Causal connection:

For award of disability pension/special faraily 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 contacted 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."

14. 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.

15. Thus, the OA 131/2022 is allowed and the applicant is held entitled to the grant of the disability element of pension qua the disability of IHD @30% for life which in terms of the verdict of the Hon'ble Supreme Court of India in Civil Appeal 418/2012 dated 10.12.2014 titled as ***UOI & Ors.*** Vs ***Ram avtar***, is rounded off to 50% for life from the date of discharge. However, the arrears will be restricted to three years from the date of filing of this OA, i.e. 24.12.2021 in view of the law laid down in the case of ***Union of India and others*** Vs ***Tarsem Singh*** [2008 (8)SCC 649].

16. The respondents are directed to calculate, sanction and issue the necessary Corrigendum PPO to the applicant within three months from the date of receipt of the copy of this order and in the event of default, the applicant shall be entitled to the interest @6% per annum on the arrears till the date of payment.

17. No order as to costs.

18. Pending miscellaneous application, if any, stands closed.

Pronounced in the open Court on 30th day of April, 2025.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

Ps