

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

OA 1892/2019 with MA 2752/2019

In the matter of :

Maj Gen Dharam Veer Kalra (Retd) ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Ms. Nandita Lal, Advocate for
Mr. S.S. Pandey, Advocate

For Respondents : Ms. Jyotsna Kaushik, Advocate
Capt Isha Mehrotra, OIC, Legal
Cell

CORAM:

HON'BLE Ms. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

M.A. No. 2752 of 2019

Vide this application, the applicant seeks condonation of 3690 days' delay in filing the OA. In view of the law laid down by the Hon'ble Supreme Court in the case of ***Deokinandan Prasad Vs. State of Bihar [AIR 1971 SC 1409]*** and in ***Union of India & Ors. Vs. Tarsem Singh [2009 (1) AISLJ 371]***, delay in filing the OA is condoned.

2. MA stands disposed of accordingly.

O.A. No. 1892 of 2019

3. Invoking the jurisdiction of this Tribunal; under Section 14 of the Armed Forces Tribunal Act, 2007 (AFT Act), the applicant has filed this application and the reliefs claimed in Para 8 read as under:

(a) Set aside the impugned orders of AG Branch, IHQ of MOD(Army) dated 16.08.2019 and dated 16.03.2009.

(b) Set aside the decision of the Release Medical Board dated 16.12.2008, of holding the Disability of the Applicant as 'Neither Attributable to Nor Aggravated By' Military Service being contrary to the law settled by the Hon'ble Supreme Court.

(c) Direct the Respondents to grant disability pension to the Applicant with disability element @ 30% with benefit of rounding off from 30% to 50% from the date of his retirement and grant him disability pension accordingly for the future.

(d) Direct the respondents to pay the arrears of the disability pension to the Applicant from the date of retirement with interest @ 9% pa.

(e) Issue any other/direction as this Hon'ble Tribunal may deem fit in the facts of the case.

BRIEF FACTS

4. The applicant was commissioned in the Indian Army on 18.01.1973 and granted permanent commission

on 23.12.1973. The applicant superannuated from service on 31.01.2009. The Release Medical Board dated 16.12.2008 held that the applicant was fit to be released from service in low medical category S1H1A1P2E1 (P) for the disability of 'Primary Hypertension' @30% for life, while the net qualifying element for disability was recorded as NIL for life on account of the disability being treated as 'neither attributable to nor aggravated by military service'.

5. The initial claim for the grant of the disability pension of the applicant was rejected by the competent authority vide letter No. 52334/IC-30278/Gen/Sig/MP-6(A)/02/09/AG/ PS-4 (Imp-II) dated 16.03.2009. Against this, the applicant preferred first appeal on 01.04.2019 i.e. after about 10 years, which was also rejected by the competent authority vide letter No. 12681/IC-30278W/T-7/MP-5(b) dated 25.04.2019 being time-barred. Thereafter, the applicant preferred second appeal dated 02.08.2019 along with delay report, which was replied to by the respondents vide letter No. 12681/IC-30278W/T-7/MP-5(B) dated 16.08.2019 rejecting the appeal as being time barred. Aggrieved by the same, the applicant has filed the instant

OA and thus, in the interest of justice, we take up the matter under Section 21(1) of the AFT Act for consideration.

CONTENTIONS OF THE PARTIES

6. The learned counsel for the applicant submitted that at the time of joining the service, the applicant was found mentally and physically fit for service and there is no note in the service documents that he was suffering from any disease at that time and the disability of the applicant was detected during the service, hence the same is attributable to and aggravated by military service, and the respondents erred in rejecting the claim of disability pension stating that the RMB held the disability as neither attributable to nor aggravated by military service as the onset of the disease was in peace station. The learned counsel for the applicant contended that the instant matter is squarely covered by a catena of decisions of the Hon'ble Supreme Court including ***Dharamvir Singh Vs. Union of India & Ors. [2013 (7) SCC 316*** and the claim of the applicant is also supported by relevant rules.

7. The learned counsel for the applicant also placed reliance on the verdict of the Hon'ble Supreme Court of

India in the case of **UOI & Ors Vs. Angad Singh Titaria**, (2015) 12 SCC 257 and various orders passed by the Tribunal, such as OA 671/2016 titled **Gp Capt RS Sahrawat Vs. UOI & Ors.**, OA 193/2015 titled **Col Baljinder Singh Basraon Vs. UOI & Ors.** etc. wherein the law laid down by the Apex Court in *Dharamvir Singh (supra)* was followed and the petitions for disability pension were allowed.

8. *Per contra*, the learned counsel for the respondents controverts the arguments put forth on behalf of the applicant and contended that the applicant is not entitled to the relief claimed for, since the RMB, being an Expert Body, found the disability “Neither Attributable to Nor Aggravated by Military Service” for the reasons that the onset of disability was in peace station and the applicant did not serve in field/CI Ops/HAA after onset of ID. The learned counsel further submitted that in February, 2008, the applicant was diagnosed with Primary Hypertension and was managed conservatively. The learned counsel further submitted that the applicant’s disability does not fulfil the necessary conditions for being eligible to get disability

pension in terms of Regulations 37 and 53 of the Pension Regulations for the Army, 1961 (Part-I), thus the applicant is not entitled to disability pension and, therefore, the OA deserved to be dismissed.

ANALYSIS

9. We have heard the learned counsel for the parties and have gone through the records produced before us.

10. In the present case, the disability Primary Hypertension has been assessed by the RMB @ 30% for life. Accordingly, the issue which is to be considered now is whether the disability suffered by the applicant is to be held attributable to and aggravated by military service or not?

11. With regard to the attributability of a disability, the consistent stand taken by this Tribunal is based on the law laid down by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Vs. Union of India and others [(2013) 7 SCC 316]***, which has been followed in subsequent decisions of the Hon'ble Supreme Court and in the number of orders passed by the Tribunal, wherein the Apex Court had considered the question with regard to payment of disability pension and after taking note of the provisions of

the Pension Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers, it was held by the Hon'ble Supreme Court 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. The Apex Court further held that the onus of proof shall be on the respondents to prove that the disease from which the incumbent is suffering is neither attributable to nor aggravated by military service. The relevant para thereof is reproduced hereunder :

“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, 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."

13. 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.

14. As per Para 43 of Chapter VI of the 'Guide to Medical Officers (Military Pension), 2002 amended 2008 (hereinafter referred to as 'GMO (MP) 2008'), the provisions for

determining the aggravation of hypertension by the service conditions have been provided as under:-

"43. Hypertension - 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."

Further, in a judgment dated 20.08.2024 in the case of ***Union of India and others Vs. Ex Gnr Dhiraj Kumar &***

Anr. [CWP-19136-2024 (O&M)], the Hon'ble High Court of Punjab and Haryana upheld the decision of the AFT granting disability pension for Primary Hypertension.

15. In the present case, the applicant, though diagnosed with Primary Hypertension in 2008, continued to discharge military duties and was posted to various locations thereafter. The posting profile of the applicant as submitted by the respondents is as under:-

Give details of service (P- Peace, F-field/Operation/Sea Service				
S. No.	Date		Unit/Fmn	Peace/Field
	From	To		
(a)	18 Jan 1973	24 Jul 1974	MCTE, Mhow	Peace
(b)	25 Jul 1974	22 Oct 1974	4 Corps	Peace
(c)	23 Oct 1974	03 Jun 1977	4 Corps Sig Regt	CA (Assam)
(d)	04 Jun 1977	26 Dec 1978	142 Sig Regt	Peace
(e)	27 Dec 1978	18 Jul 1985	MCTE Mhow	Peace
(f)	19 Jul 1985	14 Sep 1985	2 Sig Gp	Peace
(g)	15 Sep 1985	03 Oct 1985	2 Sig Gp	Fd(OP Rashak)
(h)	04 Oct 1985	27 Jan 1987	2 Sig Gp	Peace
(j)	28 Jan 1987	16 May 1987	2 Sig Gp	CA (OP Trident)
(k)	17 May 1987	23 Jun 1988	2 Sig Gp	peace
(l)	24 Jun 1988	30 Apr 1990	1 Fd Sub Gp	Fd
(m)	01 May 1990	11 Oct 1991	NRSN (Hyderabad)	Peace
(n)	12 Oct 1991	04 Jun 1994	15 Corps Eng Sig Regt	HAUCA (J &K)
(o)	05 Jun 1994	14 Jul 1996	Easter Comd Sig Regt	Peace
(p)	15 Jul 1996	10 Aug 1998	CIDS New Delhi	Peace
(q)	11 Aug 1998	04 Nov 2000	CIDS New Delhi (Study Leave)	Peace
(r)	05 Nov 2000	18 Jun 2002	HQ Central Comd	Peace
(s)	19 Jun 2002	03 Jan 2004	HQ 3 Corps	Fd (OP Orchid)
(t)	04 Jan 2004	04 Dec 2004	NDC-44	Peace
(u)	05 Dec 2004	20 May 2006	HQ 5 Sig GP	Peace
(v)	21 May 2006	19 Aug 2007	HQ western Comd	Peace
(w)	20 Aug 2007	31 Jan 2009	Army HQ (ADG Infor Sys)	Peace

16. It is not in dispute that at the time of onset of the disability, the applicant was serving in a peace station. However, prior to that, he had been posted in three (3) field postings as follows:-

“

S.No.	Date		Unit/Fmn	Peace/Field
	From	To		
1.	15 sep 1985	03 Oct 1985	2 Sig Gp	Fd (OP Rakshak)
2.	24 Jun 1988	30 Apr 1990	1 Fd Sub Gp	Fd
3.	19 Jun 2002	03 Jan 2004	HQ 3 Corps	Fd (OP Orchid)

”

The applicant was also posted to two CA (in an OP Area) postings and one high altitude area posting in Jammu and Kashmir. These postings were in areas with diverse climatic, social, and environmental conditions, and involved strenuous and stressful duties. That the working condition in these postings being difficult could have contributed to the onset or aggravation of the disability of Primary Hypertension is stipulated even in para 43 of GMO 2008 as in some cases certain diseases has been reported after long and frequent spells of service in field/HAA/Active operating areas.

16. The Tribunal has also observed in large number of cases that military services in peace stations have their own

pressure of rigorous military training and associated stress and strain, physically and mentally, of the service and the contention that there is no evidence of stress and strain of service in peace station should not be considered for the purpose of granting disability pension. 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 applicant's medical documents that he was suffering from any disease at the time of joining the service. There is no record to show that the applicant has suffered the disability due to hereditary or unhealthy lifestyle nor there is any family history placed on record. In view of the settled law we are, therefore, of the considered view that the disability suffered by the applicant has to be held to be attributable to and aggravated by the military service.

17. We are further fortified in our view in view of the verdict dated 27.03.2025 of the Hon'ble High Court of Delhi in W.P. (C) 3545/2025 in **Union of India & Ors. vs. Ex Sub Gawas Anil Madso** and the verdict dated 01.07.2025 of the

Hon'ble High Court of Delhi in W.P. (C) 5783/2024 in **Union of India through the Secretary Ministry Of Defence & Ors. vs. Maj Gen Rajesh Chaba (Retd.) and other connected petitions** and the verdict dated 01.07.2025 of the Hon'ble High Court in W.P. (C) 140/2024 in **Union of India & Ors. Vs. Col Balbir Singh (Retd)** which adhere to the law laid down by the Hon'ble Supreme Court in **Dharam Singh** (Supra).

18. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is held entitled for the disability element of pension in respect of the disability i.e. Primary Hypertension @ 30% for life with rounding off benefit.

CONCLUSION

19. In view of the above, OA 1892 of 2019 is allowed. The respondents are directed to grant the disability element of pension to the applicant for the disability 'Primary Hypertension' @ 30% for life, which be rounded off to 50% for life, with effect from the date of retirement of the applicant 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. However, as the applicant approached the Tribunal after a considerable delay, in view of the law laid down by the Hon'ble Apex Court in *Tarsem Singh's case (supra)*, the arrears of the grant of the disability pension shall be restricted to commence to run from three years prior to the date of filing of this OA i.e. 23.10.2019.

20. 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.

21. There is no order as to costs.

Pronounced in open Court on this 28 day of August, 2025.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

/NMK/