

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

OA 1032/2019

Gp Capt Jayasimharao Vamana Simha (Retd) ... Applicant  
Versus  
Union of India & Ors. ... Respondents  
For Applicant - Mr. Baljeet Singh, Advocate  
For Respondents - Mr. Neeraj, Sr. CGSC

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON  
HON'BLE LT GEN CP MOHANTY, MEMBER (A)

ORDER.

The applicant vide Para 8 of the present OA 1032/2021  
has made the following prayers:-

- “(a) To set aside the impugned order AirHQ/99797/3089/Dis/O/DAV-1(B) dated 09 May 2019 (Annexure A-1).*
- “(b) To direct the respondents to grant disability element of pension @70% with effect from date of retirement for life along with arrears to the applicant by treating all the disabilities as attributable and aggravated by the Air Force service.*
- “(c) To direct the respondents to grant the benefit of rounding off disability element of pension to 75% (70% to be rounded off to 75%) with effect from date of retirement for life.*
- “(d) To direct the respondents to pay due arrears of disability pension with interest @12% p.a. With effect from date of retirement with all consequential benefits.*
- “(e) To pass such further order or orders, direction/directions as this Hon'ble Tribunal may deem fit and proper in accordance with law.*

2. The applicant Gp Capt (TS) Jayasimha Rao Vamana Simha (Retd) was commissioned in the Indian Air Force on 31.12.1977 and superannuated from service on 30.09.2010. The RMB not solely on medical grounds was held at HQ TC (U) vide

AFMSF-16 dated 27.07.2010 and found the applicant fit to be released in low medical category and suffering from the ID- (i) Type-II Diabetes Mellitus @15-19% (ii) Bipolar Affective Psychosis @40% and (iii) Primary Hypertension @30% with the RMB having opined the disabilities as being neither attributable to nor aggravated by military service.

3. The opinion of the Medical Board in Part V thereof was to the effect:

**PART V**

**OPINION OF THE MEDICAL BOARD**  
**(not to be communicated to the individual)**

I. Casual relationship of the Disability with Service conditions or otherwise				
Disability	Attributable to service (Y/N)	Aggravated by service (Y/N)	Not connected with service (Y/N)	Reason/cause/specific condition and period in service
(i) Type II Diabetes Old E.10, Z 09.0	No	No	Yes	A lifestyle related disorder. Onset in Oct 96 in peace station (Jodhpur). Prior to onset individual served in peace station only. No close time association with stress/strain of field/HAA/CIOPS service. No delay in diagnosis and proper treatment. Hence neither attributable nor aggravated by service in terms of para 26 of Chapter VI of Guide to Medical Officer Military Pension 2002.
(ii) Bipolar Affective Psychosis (Old) F31.2, Z 09.0	No	No	Yes	A lifestyle related disorder. Onset in Dec 96 in peace station (Jodhpur). Prior to onset individual served in peace station only. No close time association with stress/strain of field/HAA/CIOPS service. Hence neither attributable nor aggravated by service in terms of para 54 of Chapter VI of Guide to Medical Officer Military Pension 2002.

(iii) Primary Hypertension (Old) I 10.0 Z 09.0	No	No	Yes	A lifestyle related disorder Onset in Sep 03 in peace station (Jodhpur). Prior to onset individual served in peace station only. No close time association with stress/strain of field/HAA/CIOPS service Hence neither attributable nor aggravated by service in terms of para 43 of Chapter VI of Guide to Medical Officer Military Pension 2002.
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4. The percentage of disablement was put forth in the RMB is as under:

6. What is the present degree of disease/disablement as compared with a healthy person of the same age and sex? (Percentage will be expressed as Nil or as follows): 1-5%, 6-10%, 11-14%, 15-19% and thereafter in multiple of ten from 20-100%				
Disability As numbered in question 1 to VI	Percentage of disablement	Composite assessment for all disabilities with duration (Max) 100%	Disability Qualifying for Disability Pension with duration	Net assessment qualifying for disability Pension (Max 100%) with duration
(i) Type II Diabetes Old E.10, Z 09.0	15-19%		Nil	Nil
(ii) Bipolar Affective Psychosis (Old) F31.2, Z 09.0	40%	70% (Seventy percent) Life long	Nil	Nil
(iii) Primary Hypertension (Old) I 10.0 Z 09.0	30%		Nil	Nil

5. The initial disability claim of the applicant was rejected by the Competent Authority on the ground that the disability was held as neither attributable nor aggravated by service by the Release Medical Board (RMB), and the same was informed to the

applicant vide Dte letter No AirHQ/24270/3089/PP&R-3(ii) dated 22.12.2010. Thereafter, the applicant filed a representation for grant of disability pension vide his letter dated 27.04.2019, which was replied by the DAV letter No. AirHQ/99797/3089/Dis/O/ DAV-1(B) dated 09.05.2019. Aggrieved by the aforesaid rejection, the applicant has approached this tribunal.

### CONTENTIONS RAISED

6. The applicant submits that at the time he was inducted into the Indian Air Force, he was medically fit and after having undergone a thorough medical examination at the Training Centre, he was posted to various places during his service. Inter alia, the applicant places reliance on the verdict of the Hon'ble Supreme Court in Dharamvir Singh Vs UOI & Ors [(Civil Appeal No 4949/2013) 2013 AIR SCW 4236].

7. The respondents through the counter affidavit dated 20.03.2023 filed on their behalf submit to the effect that as per Rule 153 of the Pension Regulations for IAF, 1961 (Part-I), the primary conditions for the grant of disability pension are "*Unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by Air Force Service and is assessed at 20% or over.*"

8. 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.*

9. The respondents further place reliance on Para-5 of 'Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008, and submit that the mere fact that a disease has manifested during military service does not per se establish attributability to or aggravation by military service.

10. The respondents also submit that the applicant was found to be overweight during the annual medical board examination held on 14.03.1996 and was advised to reduce 10 kg weight and maintain WHR by diet control and regular exercise. However, the applicant continued to remain overweight till his Release Medical Board dated 27.07.2010, when his actual body weight was 76 kgs as against Ideal Body Weight of 59 kgs.

11. The respondents further place reliance on Para-5 of 'Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008, and submit that the mere fact that a disease has manifested during military service does not per se establish attributability to or aggravation by military service.

## ANALYSIS

12. On a consideration of the submissions made on behalf of either side, it is essential to observe that the Release Medical Board dated 27.07.2010, the disabilities of the applicant - (i) Type-II Diabetes Mellitus @15-19% (ii) Bipolar Affective Psychosis @40% and (iii) Primary Hypertension @30% were held to be neither attributable nor aggravated by service.

13. On a consideration of the submissions made on behalf of either side, it has to be observed that as laid down by the Hon'ble Supreme Court in Ex Cfn Narsingh Yadav (Civil Appeal No. 7672/2019) vide observations in Para 18 thereof, each case has to be examined whether the duties assigned to the individual may have led to stress and strain leading to the disability.

14. Before addressing the rival submissions, we find it pertinent to note that the applicant is constantly overweight ranging between 11 kgs to 17 kgs constantly from 14.03.1996 to 27.07.2010 with his actual weight ranging between 65 to 76 kgs as against the Ideal weight of 56.5 to 59 kgs. We have further analysed the subsequent Re-categorisation Medical Boards and we find the same trend, with the applicant not reducing the weight even after slew of directions advised by the medical experts including brisk walking, jogging and reducing

the weight. We observe that the weight has not been reduced, thereby, clearly showcasing that onset of disability - Primary Hypertension and DM-II is the result of the applicant being alarmingly overweight, and therefore, the argument that the applicant suffered the disability due to stress and strain of the service is wholly unfounded on the simple reasoning that the organization cannot be held liable for the own actions of the applicant.

15. We cannot shy away from the fact, that the disabilities - PHT and DM-II is due to interplay of metabolic and lifestyle factors and failure in maintaining the ideal body weight which can be managed by regular exercise and restricting diet, and the fact that the applicant is alarmingly overweight signifies that the applicant has remained obese over a period of time, thereby, himself inviting the disabilities, and in such a case, it would be grossly unjustified for us to ignore the aforesaid facts.

16. It is relevant to point out that the association of obesity and hypertension has been recognized since the beginning of the twentieth century when blood pressure was first measured in populations, and this relationship between body weight and blood pressure was demonstrated prospectively in several studies in the 1960s. Appreciation of the clinical significance of obesity-related hypertension and diabetes has grown.

substantially over this same time period, to the point where obesity is recognized as a major cause of high blood pressure, and the combination of obesity and hypertension and diabetes is recognized as a preeminent cause of cardiovascular risk.

17. Epidemiological data unequivocally support the link between body weight and blood pressure, thus indicating greater body weight as one of the major risk factors for high blood pressure. Likewise, higher BMI is also associated with increased risk for development of hypertension and diabetes over time. Hypertension is a complex phenotype that arises from numerous genetic, behavioral and even social origins, and obesity is one of the most prevalent risk factors for its development.

18. Regardless of its etiology, however, hypertension is a highly prevalent and highly significant risk factor for the development of all manifestations of cardiovascular disease, including coronary heart disease, stroke, heart failure, aortic and peripheral arterial disease, and valvular heart disease. The importance of lifestyle management in the treatment of patients with obesity-related hypertension cannot be misunderstood. Adoption of a healthy lifestyle facilitates weight loss, increases responsiveness to antihypertensive medications and produces independent beneficial effects on cardiovascular risk factors.

19. Applying the above parameters to the case at hand, we are of the view with respect to disabilities - PHT and DM-II, there is no denial from the fact that if the claimant is himself not responsible enough to control the factors which are well within his voluntary control, he cannot be allowed to garner benefit of such beneficial schemes and provisions.

20. With respect to the second disability (ii) - Bipolar Affective Psychosis, we find it is essential to observe that the facts of the instant case are pari materia to the facts in the case of OA 2341/2019 titled Ex L COM (TEL) Satish Kumar Vs. UOI & Ors. [Date of Decision: 12.09.2023] wherein it was observed as under:

*16. Furthermore, 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 to the effect:-*

*"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 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."

(emphasis supplied)  
has not been obliterated.

Thus, the ratio of the verdicts in *Dharamvir Singh Vs. Union Of India & Ors* (Civil Appeal No. 4949/2013); (2013 7 SCC 316, *Sukhvinder Singh Vs. Union Of India & Ors*, dated 25.06.2014 reported in 2014 STPL (Web) 468 SC, *UOI & Ors. Vs. Rajbir Singh* (2015) 12 SCC 264 and *UOI & Ors. Vs. 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."

21. We note that the applicant was diagnosed with disability (ii) - Bipolar Affective Psychosis after 17 years of being in service, unlike the facts of the case of *Ex Cfn Narsingh Yadav* (supra). In view of the aforesaid analysis, we find that with nothing thus on the record to indicate that the applicant

suffered from any disease prior to enrolment, it has to be held that the disability of the applicant i.e. "Bipolar Affective Psychosis" in the instant case, was caused due to the stress and strain of Air Force service. Further, in view of the judgment of the Hon'ble Supreme Court in Union of India and others Vs. Ram Avtar in C.A No. 418 of 2012 dated 10.12.2014, the applicant is entitled to get the disability element of pension broad banded to 50%, based on the Government notification dated 31.01.2001.

22. Thus, the OA 1032/2019 is allowed and the applicant is held entitled to the grant of the disability element of pension qua the disability of Bipolar Affective Psychosis @ 40% 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. Ramavtar (supra), is rounded off to 50% for life from the date of discharge. However, in keeping with the law laid down in the case of Union of India and others Vs. Tarsem Singh [2008 (8)SCC 649] the arrears shall be restricted to three years from the date of filing of OA. (Date of filing of OA:- 05.07.2019)

23. 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

24. No order as to costs.

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

Pronounced in the open Court on the <sup>SM</sup> 6 day of January 2025.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

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

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