

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

C.

OA 1742/2019

Ex MWO Hony FO Gaukaran Nath Dubey Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. U S Maurya, Advocate
For Respondents : Mr. Avdhesh Kumar Singh, Advocate

CORAM

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

ORDER
03.11.2023

Vide our detailed order of even date; we have allowed the OA 1742/2019. Learned counsel for the respondents makes an oral prayer for grant of leave to appeal in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007 to assail the order before the Hon'ble Supreme Court. After hearing learned counsel for the respondents and on perusal of our order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order to grant leave to appeal. Therefore, prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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ORDER

The applicant vide the present OA makes the following prayers:-

“(a) Impugned communication/order dated 30.08.2017 be set aside passed by the respondents to the extent this order deny the grant of disability element to the applicant as disability was neither attributable to nor aggravated by military service.

(b) To direct the respondents to grant disability element w.e.f. 01.01.2018(date of discharge) as applicant's case is squarely covered on the matter of disease neither attributable to nor aggravated by military service by the Hon'ble Supreme Court in the case of Dharamvir Singh Vs Union of India & Ors(Civil Appeal No.4949 of 2013 judgment dated 02.07.2013), Union of India Vs Rajbir Singh(Civil Appeal No.2904 of 2011) judgment on 13.02.2015 alongwith the 26 connected appeals) (Annexure A-4),

Union of India & Ors Vs Angad Singh Titaria(Civil Appeal No.11208 of 2011 judgment dated 24.02.2015), Union of India & Ors Vs Manjeet Singh(Civil Appeal Nos. 4357-4358 of 2015(arising out of SLP(Civil) Nos. 13732-13733/2014) judgment dated 12.05.2015), Satwinder Singh V Union of India & Ors(Civil Appeal No. 1695 of 2016(arising out of SLP(c) No.22765 of 2011) order dated 11.02.2016), Ex Hav Mani Ram Bharia V Union of India & Ors(Civil Appeal No.4409 of 2011 order dated 11.02.2016) and latest judgment Ex Gnr Laxmanram Poonia(Dead) Through Lrs Vs Union of India & Ors(Civil Appeal No. 2633 of 2017 judgment dated 22.02.2017)

(c) To direct the respondents to grant broad banding of disability element @50%(from 40% to 50%) with 9% interest wef 01.07.2018(date of discharge), as applicant's case is squarely covered on the matter of broadbanding vide para 10 of Govt of India, Ministry of Defence Department of Ex-Servicemen Welfare New Delhi letter No.17(2)/2016-D(Pen/Pol) dated 04.09.2017(Annexure A-6(Colly)

(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.

2. The applicant was enrolled in the Indian Air Force on 20.08.1979 and discharged from the Air Force service on 31.12.2017 under the clause "On attaining the age of superannuation" after rendering 39 years 04 months and 12 days of regular service. The applicant, at the time of entering into the Air Force service, was declared medically fit in medical category AYE vide AFMSF-2A dated 24.07.1978. The applicant was

initially placed in low medical category A4G4(T-24) for the ID(i) Primary Hypertension vide AFMSF-15 dated 07.10.2009 and was also detected to be a case of DM-Type-II during review in September, 2014 and was placed in composite low medical category A4G4(T-24) vide AFMSF-15 dated 16.10.2014 and subsequently, the applicant was placed in composite Low Medical Category A4G2(P) vide AFMS F-3B dated 01.04.2016. The Release Medical Board not solely on medical grounds was held at AFS, Kanpur vide AFMSF-16 dated 28.02.2017 and found the applicant fit to be released in Low Medical Category A4G2(P) for the ID(i) Primary Hypertension and (ii) DM-Type –II but the RMB considered the said disabilities as neither attributable to nor aggravated by military service for the reasons that the onset of the Primary Hypertension was in peace area and remained in peace area only prior to onset of the said disability. There was no close time association with stress and strain of Filed/HAA/CIOPS area in terms of Para 43 Chapter VI of GMO 2008(Military Pension) and the onset of the DM-II Type –II was also in peace area and there was no close time association with stress and strain of Air Force service. Hence, the said disability i.e. DM-II was also considered as neither attributable to nor aggravated by service in terms of Para 26 Chapter VI of GMO(2008((Military Pension). The overall percentage of disablement was assessed @30% for Primary Hypertension and @20% for DM-II and assessed the composite disablement @40% for life. The disabilities qualifying element of pension was assessed as NIL for life.

3. On adjudication, AOC AFRO has upheld the recommendations of the RMB and rejected the disability pension claim vide letter no RO/3305/3/Med dated 26.05.2017. The outcome was communicated to the applicant vide letter no Air HQ 99798/1/651785/12/17/DAV (DP/RMB) dated 30.08.2017 with an advice that the applicant may prefer an appeal to the Appellate Committee within six months from the date of receipt of the letter. Aggrieved by the response of the respondents, the applicant has filed the present OA which is pending since its institution on 05.09.2019 and thus in the interest of justice, it is considered appropriate to take up the present OA for consideration, in terms of Section 21(1) of the AFT, Act 2007.

CONTENTIONS OF THE PARTIES

4. Placing reliance on the judgment of the Hon'ble Supreme Court in *Dharamvir Singh v. UOI & Ors [2013 (7) SCC 36]* and the catena of judgments mentioned in the prayer clause, 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 his induction into the service, and that he served in the Air Force at various places in different environmental and service conditions in his prolonged service and thus any disability that arose during his service has to be deemed to be attributable to or aggravated by military service.

5. The learned counsel for the applicant placed reliance on the verdicts of the Hon'ble Supreme Court in Civil Appeal No. 2904 of 2011

titled *Union of India & Ors vs Rajbir Singh* dated 13.02.2015, *D.S. Nakara vs. Union of India* AIR 1983 SC 130, and Civil Appeal No 418/2012 titled *Union of India vs. Ram Avtar* dated 10.12.2014.

6. Per contra, the learned counsel for the respondents submits that under the provisions of Rule 153 of the Pension Regulations for the Indian Air Force, 1961 (Part-I), the primary condition for the grant of disability pension is invalidation out of service on account of a disability which is attributable to or aggravated by Air Force service and is assessed @ 20% or more. 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 as neither attributable to nor aggravated by service which thus does not fulfill the criteria (i) as above and hence the applicant is not entitled for the grant of disability pension in accordance with prevailing rules and policies.

ANALYSIS

7. On the perusal of the material available on record and also the submissions made on behalf of the parties, it is apparent that it is not in dispute that the extent of disabilities of the applicant were assessed to be @30% and @20% for life in respect of Primary Hypertension and

Diabetes Mellitus respectively in terms of Regulation 153 of the Pension Regulations for the Indian Air Force, 1961 (Part-I) the only question that arises is whether disability suffered by the applicant was attributable to or aggravated by military service.

8. It has, already been observed by this Tribunal in a catena of cases that peace stations have their own pressure of rigorous military training and associated stress and strain of the service. It may also be taken into consideration that most of the personnel of the armed forces have to work in the stressful and hostile environment, difficult weather conditions and under strict disciplinary norms.

9. 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.

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.”

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.

10. 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),___

and has not been obliterated.

11. Para 43 of the Guide to Medical Officer (Military Pension), 2008 provides 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.”

12. 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."

13. It is essential to advert to the posting prolife of the applicant which is as under:

PERSONAL STATEMENT

"1.Give details of service(P-Peace, or F-Field/Operational/Sea Service):

S.No	From	To	Place/ship	P/F	S No	From	To	Place/Ship	P / F
01	20.8.78	16.2.79	Bangalore/E & ITI	P	02	17.2.79	6.6.80	Vadodara/7 GTS	P
03	7.6.80	23.8.81	Chandigarh/6 1 Sqn	P	04	24.8.81	30.9.82	Bangalore/E * ITI	P
05	1.10.82	15.8.87	Hyderabad/2 AMTC	P	06	16.8.87	11.2.88	Barackpore/2GW TI	P
07	12.2.88	3.5.91	Naliya/2204 Sqn	MF	08	4.5.91	16.3.97	Amritsar/Pune/2 203 Sqn	P
09	17.3.97	10.4.05	Uttarlai/2217 Sqn	MF	10	11.4.05	5.11.06	Gorakhpur/17 WG	P
11	6.11.06	22.11.11	Pathankot/16 Wg	P	12	23.11.11	27.12.15	Jorhat/10 Wg	P
13	28.12.15	Till date	Kanpur/BRD	P					

Illness, wound, injury	First Started Date/Place	Rank of individual	Where treated	Approximate dates and periods treated
(i) PRIMARY HYPERTENSION	17 Sep 09 Pathankot	WO	MH Pathankot	17 Sep 09 to till date
(ii) TYPE II DIABETES MELLITUS(OLD)	16 Oct 14 Jorhat	MWO	5 AFH, Jorhat	16 Oct 14 to till date
3. Did you suffer from any disability before joining the Armed Forces? Is so give details and dates. NO				
4. Give details of any incidents during your service, which you think caused or made your disability worse NO				
5. In case of would or injury, state how they happened and whether or not (a) Medical Board or Court of Inquiry was held (b) Injury report was submitted NO, N/A				

"

The onset of the disability of Primary Hypertension was reported in the RMB dated 28.02.2017 on 17.09.2009. The onset of the disability of Type II "Diabetes Mellitus"(Old) was on 16.10.2014.

14. 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.

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(b) Injuries:

In respect of accidents or injuries, the following rules shall be observed:

- iii) 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).*

- iv) *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.*

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(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.

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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. It is also essential to observe that vide the verdict of the Hon'ble Supreme Court in Civil Appeal no. 5970/2019 titled as *Commander Rakesh Pande vs UOI & Ors.*, dated on 28.11.2019, wherein the applicant thereof was suffering from Non-Insulin Dependent Diabetes Mellitus(NIDDM) and Hyperlipidaemia, the grant of disability pension for life @ 20% broad banded to 50% for life was upheld by the Hon'ble Supreme Court.

16. The disability of Diabetes Mellitus Type-II in respect of Ex-HFL Kshetra Mohan Sen even though had its origin in peace area but the disability was due to the stress and strain of service which occurred during active service in adverse conditions which has not been effectively refuted by the respondents.

17. The applicant during his tenure of more than 39 years of service in the Indian Air Force had 13 postings out of which 02 postings were in modified field areas. The onset of the disability of Primary Hypertension was after 31 years of military service and the onset of the Diabetes Mellitus-II was after 36 years of service. Para 43 of the GMO(MP) 2008, which the respondents rely upon through the RMB proceedings itself stipulates that in certain cases the disease of hypertension has been reported after long and frequent spells of service in field/HAA active operational areas, and that such cases can be explained by variable responses exhibited by different individuals to stress and strain. Apparently, in the facts and circumstances of the instant case, the probability of the onset of the disabilities of Primary Hypertension and Type II Diabetes Mellitus(Old) being due to the stress and strain of long military service cannot be overlooked. It is thus, held that the disabilities of Primary Hypertension and Diabetes Mellitus Type II(Old) that the applicant suffers from have to be held both attributable to and aggravated by military service.

18. The Hon'ble Supreme Court in its order dated 10.12.2014 in *Union of India v. Ram Avtar, Civil Appeal No. 418 of 2012* and connected cases, has observed that individuals similarly placed as the applicant are entitled to rounding off the disability element of pension. We also find that the Government of India vide its Letter No. F.No.3(11)2010-D (Pen/Legal) Pt V, Ministry of Defence dated 18th

April 2016 has issued instructions for implementation of the Hon'ble Supreme Court order dated 10.12.2014 (supra).

CONCLUSION

19. Thus, in view of our analysis, the OA 1742/2019 is allowed and the Respondents are directed to *grant the benefit of disability element of pension @40% for life* for the disabilities of PRIMARY HYPERTENSION assessed @30% for life and the DIABETES MELLITUS TYPE- II assessed @20% for life compositely @40% which is rounded off to 50% for life in view of judgment of the Hon'ble Apex Court in *Union of India versus Ram Avtar (supra)* from the date of discharge i.e 31.12.2017. The arrears shall be disbursed to the applicant within three months of receipt of this order failing which it shall earn interest @ 6% p.a. till the actual date of payment.

20. No order as to costs.

Pronounced in the open Court on 3rd day of November, 2023.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/Chanana/