

Dharamvir Singh Vs Union of India placed herein as Annexure A - 7 as also a plethora of Judgments of the Hon'ble Armed Forces Tribunal in Re Subedar SS Joseph Versus Union of India in OA No 492/2014 dated 27 April 2015 in Re Subedar G Arivazhagan Versus Union of India in OA No 251/2012 dated 27 April 2015 as also in Re CHM Dharamvir Singh Versus Union of India in OA No 521/2014 dated 10 Aug 2015 placed herein as Annexure A - 8 (Colly) where the ratio decidendi has been followed in totality to meet the ends of equity, justice and fair play;

B. Issue directions to the Respondents to grant 30% of Disability Pension for life to the Applicant as declared by the Release Medical Board Proceedings duly broad banded to 50% in terms of Government of India Policy letter on the subject to meet the ends of equity, justice and fair play;

C. Pass such other and further orders/directions to the Respondents by way of an adequate exemplary compensation in the attendant genuine circumstances of the case, to meet the ends of equity, justice and fair play."

2. The facts of the case in brief are that the applicant, having been found medically and physically fit after thorough

medical examination, was commissioned in the Indian Army on 22.12.1979 and retired from service on attaining the age of superannuation on 31.07.2016 in permanent low medical category S1H1A1P2(P)E1. The Release Medical Board (RMB) held on 29.03.2016 assessed the applicant's disability '**CAD STE AWMI**' @ **30% for life** and the same has been considered as 'aggravated by the military service'.

3. The first appeal for grant of disability element of pension was rejected by the respondents vide its letter dated 27.10.2016. The applicant thereafter preferred second appeal dated 22.11.2016 for grant of disability element of pension which was rejected by the respondents vide its letter dated 13.09.2017. Aggrieved by this, the applicant has filed the instant OA and in the interest of justice, we take up the present OA for adjudication.

CONTENTIONS OF THE PARTIES

4. The learned counsel for the applicant submitted that the applicant at the time of enrolment was fully fit medically and physically and no note was made in his medical documents to the effect that he was suffering from any disease at that time, and thus the onset of the disability

occurred due to stress and strain of the military service. The learned counsel submitted that the disability in question had occurred on 25.08.2014 while being posted as Managing Director of CSD at Mumbai. The learned counsel for the applicant also contended that that the deterioration of health is to be presumed to be due to service conditions if no note of any disease, congenital or otherwise, has been made at the time of individual's acceptance of military service. The learned counsel, in view of the assessment of the RMB which held the ID of the applicant as aggravated, has therefore prayed that the applicant ought to be granted the relief of disability pension with the benefit of rounding off the percentage of disability element of pension in view of the judgment of the hon'ble Supreme Court in ***Union of India v. Ram Avtar (citation)***.

5. The learned counsel relied upon the judgments of the Hon'ble Supreme Court including the case of ***Dharamvir Singh Vs. Union of India & Ors. [2013 (7) SCC 316]*** and in ***Union of India & Anr. Vs. Rajbir Singh [2015 (2) SCALE 371]***, wherein the Apex Court had considered the question with regard to grant 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 and Para 423 of the Regulations for the Medical Services of the Armed Forces, 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 being in low medical category, 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.

6. *Per contra*, the learned counsel for the respondents submitted that the assessment made by the board is only recommendatory in nature as per Rule 17 (b) of the Entitlement Rules to Casualty Pensionary Awards to the Armed Forces Personnel and is subject to review by the competent medical authorities.

ANALYSIS

7. We have heard the learned counsel for the parties and have gone through the records produced before us. As the disability suffered by the applicant has been assessed as aggravated at @ 30%, the issue which needs to be considered is as to whether the applicant should be granted the relief of disability pension or not.

8. It is an undisputed fact that at the time of joining the Indian Army on 22.12.1979, the applicant was found medically and physically fully fit and the onset of the present disability was on 25.08.2014 which shows that the disability was suffered by the applicant during service after a long spell of about 35 years of military service.

9. Upon perusal of the medical records, it has been observed that the RMB has held the ID of the applicant as aggravated by the military service as the applicant was posted in field area 01 year prior to the onset of the disease. It has also been observed vide Part V, Para 5 (b) of the RMB that the ID of the applicant was not aggravated by the applicant's own negligence or misconduct which implies itself

that the assessment of aggravation of the disability at @ 30% of the applicant is due to military service condition.

10. The Hon'ble Supreme Court in the case of **Ministry of Defence v. A.V. Damodaran** [(2009) 9 SCC 140] has held that the opinion of the medical board has to be given due primacy and credence being the opinion of the expert medical body. It was held thus:

"17. I have heard the learned counsel for the parties. I am of the considered view that the Medical Board is an expert body and its opinion is entitled to be given due weight, value and credence. In the instant case, the Medical Board has clearly opined that the disability of late Shri A.V.Damodaran was neither attributable nor aggravated by the military service. In my considered view, both the learned Single Judge and the Division Bench of the High Court have not considered this case in perspective and in the light of the judgments of this Court. The legal representatives of A.V.Damodaran are not entitled to the disability pension.

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34. The aforesaid provisions came to be interpreted by the various decisions rendered by this Court in which it has been consistently held that the opinion given by the doctors or the Medical Board shall be given weightage and primacy in the matter for ascertainment as to

whether or not the injuries/illness sustained was due to or was aggravated by the military service which contributed to invalidation from the military service."

11. Additionally, the law on the primacy of the opinion of a medical board has been well settled by the Hon'ble Supreme Court. While pronouncing judgment in the case of **India & Another Vs. Ex Rin Ravinder Kumar /Civil Appeal No. 1837/2009]**, the Hon'ble Apex Court vide its order dated 23.05.2012 had stated that opinion of Medical Board should not be over-ruled judiciously unless there is a very strong medical evident to do so. Relevant part of the above judgment reads as under:

"Opinion of the Medical Board should be given primacy in deciding cases of disability pension and the court should not grant such pension brushing aside the opinion of Medical Authorities, record the specific finding to the effect that the disability was neither attributable to nor aggravated by military service, the court should not ignore a finding for the reason that Medical Board is specialized authority composed of expert medical doctors and it is the final authority to give opinion regarding attributability and aggravation of the disability due to military service and the conditions of service resulting in disablement of the individual."

12. Again in 2019 in the case of **Ex Cfn Narsingh Yadav v. Union of India & Ors.**, Civil Appeal No. 7672 of 2019, the Hon'ble Supreme Court has held that: -

"21. Though, the opinion of the Medical Board is subject to judicial review but the courts are not possessed of expertise to dispute such report unless there is strong medical evidence on record to dispute the opinion of the Medical Board."

13. Moreover, Para 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 evidence 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 favour, 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.

14. The Hon'ble Supreme Court in Dharamvir Singh (supra) vide para 33 has categorically made reference to Para 423 of the Regulations for the Medical Services of the Armed Forces 2010 to bring forth that the arising of the disability in a peace area or a field area is by itself irrelevant to assess the aspect of attributability of the disability due to military service which reads as follows: -

"33. As per Rule 423(a) of General Rules for the purpose of determining a question whether the cause of a disability or death resulting from disease is or is 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 service/active service area or under normal peace conditions.

"Classification of diseases" have been prescribed at Chapter IV of Annexure I; under paragraph 4 post traumatic epilepsy and other mental changes resulting from head injuries have been shown as one of the diseases affected by training, marching, prolonged standing etc. Therefore, the presumption would be that the disability of the appellant bore casual connection with the service conditions."

15. The applicant has served in the Indian Army for more than 36 years and the onset of the disability took place in the year 2014, i.e., after 34 years of long service whilst he was posted at peace station (Mumbai). During this service the applicant has many posted to both peace and field postings and the accumulated stress and strain of such a long service cannot be overlooked. The disability of the applicant therefore has to be conceded as attributable to the military service.

CONCLUSION

16. In view of the above observation, parameters and consideration, the ID of the applicant '**CAD STE AWWMI**' is held to be attributable to and aggravated by the military service. The applicant is thus held entitled for the grant of relief of disability element of pension for the disability of the

'CAD STE AWMI' at @ 30% which is further directed to be rounded off to 50% for life in view of the judgment of the Hon'ble Supreme Court in the matter of **Union of India v. Ram Avatar** with effect from date of his discharge i.e., 31.07.2016.

17. In light of the above, OA 1928 of 2017 is allowed. The respondents are thus directed to issue the corrigendum PPO with directions to the respondents to pay the arrears within a period of three months from the date of receipt of a copy of this order, failing which, the respondents would be liable to pay the interest @ 6% p.a. on the arrears due from the date of this order.

18. There is no order as to costs.

Pronounced in open Court on this ¹⁴ day of January 2025.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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