COURT No.3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 3000/2022

MWO (HFL) Rajender Singh (Retd.) ..... Applicant
VERSUS
Union of India and Ors. ..... Respondents

For Applicant : Mr. Manoj Kr Gupta, Advocate
For Respondents : Mr. D K Sabat, Advocate

CORAM

HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

O R D E R

Invoking the jurisdiction of this Tribunal under Section 14, the applicant has filed this application and the reliefs claimed in Para 8 read as under:

> ***"A. To direct the respondents to grant disability element of pension @40% broad banded to 50% for life in terms of judgment of the Hon'ble Supreme Court in Civil Appeal 418/2012 Uol vs Ram Avtar decided on 10 Dec 2014, by treating the disabilities as attributable/ aggravated by the Military service in terms of this Hon'ble Apex Court Order in Uol vs Rajbir Singh &Ors(Supra) relied upon by this Hon'ble AFT in identical Orders, placed at Annexure No.6; and/or***

B. To direct the respondents to pay due arrears of disability pension with interest @10% p.a. with effect from the date of retirement; and/or pass such further order or orders, direction/Directions as this Hon'ble Tribunal may deem fit and proper in accordance with law."

BRIEF FACTS

2. The applicant was enrolled in Indian Air Force on 11.07.1984 and was discharged from service on 31.01.2022 under the clause "On attaining the age of superannuation" after rendering 37 years 06 months and 19 days of regular service. The Release Medical Board dated 27.10.2021 held that the applicant was fit to be discharged from service in composite low medical category A4G2(P) for the disabilities of (I) Primary Hypertension @ 30% for life and (ii) Normocytic Normochromic Anemia @ 15% for life compositely assessed @ 40% for life while the net qualifying element for disability was recorded as NIL for life on account of all the disabilities being treated as neither attributable to nor aggravated by military service.

3. On adjudication, AOC AFRO has upheld the recommendations of RMB and rejected the disability pension claim of the applicant vide letter no. RO/3305/3/Med dated 17.03.2022. The outcome was communicated to the applicant vide letter No. Air HQ /99798 /1 /693169 /01 /22 / DAV (DP/RMB) dated 20.05.2022 with an advice that he may prefer an appeal to the appellate committee with six months from the date of receipt of the letter.

4. The applicant had preferred his first appeal on 14.06.2022 which was under consideration by the respondents. Thereafter, the applicant has filed the present OA. In the interest of justice thus, in terms of Section 21(2) of the AFT Act 2007, it is considered appropriate to take up the present OA for consideration.

CONTENTIONS OF THE PARTIES

5. The learned counsel for the applicant submitted that the applicant was subjected to a thorough medical examination conducted by the medical board at the time of his entry into

service and was found medically fit to join the service in Indian Air Force and was posted to various Air Force units in the course of active service.

6. It was submitted by the learned counsel that in addition to conditions of service, dietary compulsions of military life including frequent changes in weather and social environment at different locations were the main causes of stress and strain on the applicant. The learned counsel for the applicant further submitted that the disabilities of applicant i.e (i) Primary Hypertension detected in May 2017 at Guwahati and (ii) Normocytic Normochromic Anemia detected in August 2017 was due to strain and stress of working in adverse conditions. The learned counsel for applicant submitted that, member of force is presumed to be in sound physical and mental conditions upon entering service and any deterioration in his health at the time of retirement/discharge will be presumed as taken place due to service. It is further contended that provisions governing the disability pensions are beneficial legal provisions and shall be

liberally construed in the welfare of the personnel/applicant. Reliance in this regard is placed on the the law laid down by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Vs Union of India & Others*** (2013) 7 SCC 316, and in the case of ***Union of India and others Vs. Rajbir Singh*** (2015) 12 SCC 264 and catena of other orders of the Armed Forces Tribunal.

7. Per contra, the learned counsel for the respondents submitted that the Primary Hypertension disability is basically a lifestyle related disorder and in the case of the applicant it had its onset in peace station in April, 2017, and there has been no close time association of military service with onset and progression of the disability and hence, the disability is NANA as per para 43 of GMO (Military Pension) 2008.

8. It is further submitted that onset of the disability Normocytic Normochromic Anemia is in peace area and is not linked to any service related causative factors. It is idiopathic in nature, with no delay in diagnosis or treatment.

The learned counsel for the respondents contended that the applicant is not entitled to the relief claimed since the Release Medical Board, being Expert Body, after thorough examination of the applicant, found the disability as "Neither Attributable to Nor Aggravated by Military Service" on the ground that the said disability of the applicant is not connected with service. The learned counsel further submitted that the applicant's disability is assessed at less than 20% does not fulfill the necessary twin conditions for being eligible to get disability pension in terms of Rule 153 of Pension Regulations for IAF, 1961 (Part-1). Thus the applicant is not entitled to disability pension and, therefore, the OA deserved to be dismissed. It is argued that case of ***Dharamvir Singh (Supra)*** is with regard to invalidation whereas the applicant was discharge on attaining age of superannuation, hence not applicable to the facts of present case.

ANALYSIS

9. Heard learned counsel for the parties and perused the record as well as the Release Medical Board (RMB) proceedings produced before us. It is not in dispute that the extent of disability for Primary Hypertension has been assessed to be 30% for life which is more than the base minimum for grant of disability element of pension.

10. In so far as the disability of Normocytic Normochromic Anemia is concerned, the said disability is assessed @15% which is below 20% and does not fulfill the twin criteria as per Rule 153 Pension Regulations for IAF, 1961 (Part-I) and hence is not admissible.

11. The consistent view taken by this Tribunal qua the disability of primary hypertension is based on the law laid down by the Hon'ble Supreme Court in the case of ***Dharamvir Singh (Supra)***, ***Rajbir Singh (Supra)*** and ***Sukhvinder Singh Vs. Union Of India & Ors***, dated 25.06.2014 reported in 2014 STPL (Web) 468 SC, the

Entitlement Rules for Casualty Pensionary Awards, 2008 (as applicable in the instant case).

In the instant case of ***Dharamvir Singh (Supra)*** the Hon'ble Supreme Court framed the following two issues for consideration:

> ***"(i) Whether a member of Armed Forces can be presumed to have been in sound physical and mental condition upon entering service in absence of disabilities or disease noted or recorded at the time of entrance?***
> ***(ii) Whether the appellant is entitled for disability pension?"***

The issue whether the concerned officer is invalided out of service, or discharged or retire, was not a factor which was included in the issue as framed. The issue only addresses the question whether a disease or disability of which there is no note recorded at the time of entry, if discovered during the military service can be held attributable to or aggravated by the military service, entitling the officer for disability pension. While deciding the issues in affirmative, it was observed in Para 28:

"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."

Further as per amendment to Chapter VI of the 'Guide to Medical Officers (Military Pensions) 2008, at para-43, it is provided as under:-

"43. <u>Hypertension</u> – 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. The 'Entitlement Rules for Casualty Pensionary Awards, (as applicable in the instant case, in view of the discharge of the applicant from service on 31.01.2022) 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 ouns 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 white '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 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."

From conjoint reading of the aforestated rules it is evident that the disability must arise during the period of the military service and the disability has been caused by conditions of employment in military service. Primary onus is on the authority and will shift on the claimant only if the claim is preferred after 15 years of discharge/release invalidment.

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. There is no gainsaying that the opinion of the Medical Board which is an expert body has to be given due weight and credence. But the opinion of the Medical Board cannot be read in isolation and has to be read in consonance with the Entitlement Rules, General Rules of Guide to Medical Officer. A mere statement that onset of disease was during a peace posting is clearly insufficient to discharge this onus. In the

present case, the applicant has served in the Indian Air Force for more than 37 years and 06 months and the onset of the disability of "Primary Hypertension" occurred in May 2017 after 32 years of service, whilst he was posted in peace station.

15. 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.

16. In view of his service profile, the accumulated stress and strain of long service on the applicant cannot be ruled out, thus establishing the causal connection between the disease and condition of service. The Release Medical Board (RMB) however, without looking into the service profile of the applicant took note of the fact that the onset of disability of Primary Hypertension was discovered while the applicant was posted in a peace area and observed that the same cannot be

said to be attributable to or aggravated by service conditions. This opinion in itself is not sufficient to deny the disability pension claimed by the applicant.

CONCLUSION

17. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is entitled for disability element of pension in respect of disability 'Primary Hypertension'. Accordingly, we allow this application holding that the applicant is entitled to disability element of pension @ 30% for life rounded off to 50% for life with effect from the date of his superannuation i.e. 31.01.2022, 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.

18. The respondents are thus directed to calculate, sanction and issue the necessary PPO to the applicant within a period of three months from the date of receipt of copy of this order, *failing which*, the applicant will be entitled for interest @ 6%

per annum from the date of receipt of copy of the order by the respondents.

Pronounced in the open Court on this 8th of July, 2025.

(JUSTICE NANDITA DUBEY)
MEMBER (J)

(RASIKA CHAUBE)
MEMBER (A)

/Pooja/