

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

OA 496/2021

Captain (IN) Chandra Sekhar Panda (Retd)

Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Mr. K R Verma, Advocate
For Respondents : Mr. Niranjana Das, Advocate

CORAM

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

ORDER

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

“(a). Quash the Respondent impugned Orders dated 29.11.2019 and impugned orders dated 03.09.2019 passed by the respondents (Annexure A-1(Colly)).

(b). Direct the Respondents to grant disability element of pension to the applicant w.e.f. 01.03.2018, the date of retirement dully rounded off to 75 % under broad banding with all consequential benefits like arrears on account of disability pension and interest on amount due.

(c)..Direct the Respondents to pay Interest at 12% per annum w.e.f. 01.03 2018, the date

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of retirement of the Applicant to till the actual date of payment.

(d). Impose an exemplary cost on PIFA (Navy) of Rs 05 Lakhs (Five Lakhs) plus the Cost of Interest that would be payable to the Applicant from the date of retirement to till actual date of payment. The Cost of damage as well as interest should be recovered by the Government from the pay & allowances of PIFA(Navy)

(e) Pass any other order that this Hon'ble Tribunal may deem fit in the facts and circumstances of the case."

2. The applicant was commissioned as a Sub Lieutenant in the Navy in the Education branch on 11.02.1985 in a medically fit condition in SHAPE-1 (S1A1). In the year 1998, on 20th June 1998, he was found to be suffering from **Primary Hypertension (ICD NO-I 10.0)**, whilst he was posted at INS UTKROSH Port Blair **in his fifth posting** in a **field area**, the duration of which was from 31.01.1995 to 29.09.1999.

3. The applicant also suffered from **Coronary Artery Disease (ICD NO- I 25.4)**, which had its onset on 11.11.2013, whilst the applicant was posted in his **11th posting** at Balugaon INS Chilka, a peace posting with its duration from 20th March 2014 to 29th March 2016.

4. The applicant also suffered from **IGT (ICD NO – E 11.0)** in October 2017 in his 13th posting, which was his last posting whilst posted in a peace area at Vizag / HQENC.

5. During the course of submissions made on behalf of the applicant, it has been submitted that the applicant does not press the grant of the disability element of pension in relation to the disability of **IGT (ICD NO – E 11.0)**. The OA is thus being considered for the prayers made by the applicant seeking the grant of the disability element of pension in relation to the disability of **Primary Hypertension (ICD NO-I 10.0)** assessed at 40% for life and **Coronary Artery Disease (ICD NO- I 25.4)** assessed at 30% for life, with a composite assessment of 60% for life.

6. *The applicant superannuated in the rank of Capt on 28.02.2018. The RMB dated 03.11.2017 opined the disability of Primary Hypertension (ICD NO-I 10.0) as being aggravated by military service in view of IHQ MOD letter vide MH/1301/policy dated 15.08.2006. The said RMB also opined the disability of Coronary Artery Disease (ICD NO- I 25.4) as being aggravated by military service vide para 47 (b) Chapter VI of the GMO (Military Pensions) 2008.*

7. The said RMB, however, had opined that the disability in relation to **IGT (ICD NO - E 11.0)** was neither attributable nor aggravated by Military Service vide para 26 of Chapter VI of the GMO Military Pensions 2008. The clinical assessment forming part of the said RMB did not put forth any contributory factors attributable to the applicant for the said disabilities. Despite the said RMB dated 03.11.2017 opining the disabilities of **Primary Hypertension (ICD NO-I 10.0)** and **Coronary Artery Disease (ICD NO- I 25.4)** being assessed as aggravated by military service with percentages of composite disablement of 60% for life, the applicant was not granted the benefit of the disability element of pension, in as much as the applicant vide letter no PN/7569/DP/18 dated 29.11.2019 was informed that the Competent Financial authority ((PIFA) (N)) had turned down the case stating that no exceptional stress and strain from military service was visible for the said disabilities.

8. The first appeal filed by the applicant dated 01/10/2019 against the non grant of the disability element of pension was rejected and the applicant was so informed vide letter NO. PN/7569/DP/18 dated 03.09.2020 reiterating that the disabilities that the applicant had been found suffering from

were to be considered as neither attributable to nor aggravated by military service.

9. The applicant filed the instant OA on 09/05/2021. A perusal of the record, however, brought forth on 17.04.2023, the reliance placed by the respondents on Annexure R3 to their counter affidavit dated 04/03/2022 wherein it was stated to the effect:-

“2. After due examination of your Second Appeal for grant of Disability Pension for the IDs (1) Primary Hypertension (ICD No. 1 10.0), (ii) Coronary Artery Disease (ICD No. 125.4) and (iii) IGT (ICD No. E 11.0) in the light of relevant rules and administrative / medical provisions, it has been decided by the Second Appellate Committee on Disability Pension (SACDP) that you are not entitled for Disability Pension.”

10. Vide order dated 17.04.2023, the proceedings of the second Appellate Committee declining the prayer made by the applicant for the grant of disability pension were directed to be placed on record by the respondents. It has been observed that the document that the respondents relied upon in relation to the disposal of the second appeal did not even bear the date of the decision of the Second Appellate Committee.

11. Vide order dated 03.05.2023, the original medical records qua the applicant were directed to be produced, which have since been produced by the respondents.

12. The respondents also placed on record the proceedings of the second appeal on 22.09.2023 whereby it was indicated that vide proceedings dated 17.03.2021, the second appeal submitted by the applicant was considered for acceptance for ID 1 and ID 2, though it was to be rejected for ID 3. Despite the same, vide letter NO. PN/7569/DP/18 dated 04.03.2022, the second appeal of the applicant for grant of the disability element of pension was not granted and it was observed to the effect as reproduced in para no 9 hereinabove.

13. The respondents have placed on record the details of all medical proceedings and there is nothing thereon to indicate any contributory factors from the side of the applicant in relation to the disabilities of **Primary Hypertension (ICD NO-I 10.0)** and **Coronary Artery Disease (ICD NO- I 25.4)**.

14. The applicant submits that in terms of the verdict of the Hon'ble Supreme Court in **Dharamvir Singh vs UOI & Ors** (Civil Appeal No. 4949/2013) 2013 AIR SCW 4236 decided on 02.07.2013 and the Government of India, Ministry of Defence

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letter dated 29.06.2017 which incorporates into the same, the guidelines laid down by the Hon'ble Supreme Court in **Dharamvir Singh** (supra) with specific reliance on observations in Para 28 thereof which reads to the effect:-

"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."_-

it has to be presumed that the disabilities that the applicant suffers from which had their onset on 20.06.1998 and 11.11.2013 i.e. **Primary Hypertension (ICD NO-I 10.0)** and **Coronary Artery Disease (ICD NO- I 25.4)** were attributable to and aggravated by military service.

15. The applicant further places reliance on the verdicts of the Hon'ble Supreme Court of India in **UOI & Ors. vs Rajbir Singh** (2015) 12 SCC 264, in **Sukhvinder Singh vs UOI & Ors**, dated 25.06.2014 reported in 2014 STPL (Web) 468 SC and **Union of**

India and others Vs. Angad Singh Titaria, Civil Appeal No. 11208 of 2011, decided on 24.02.2015 to contend to similar effect.

16. The 'Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel 2008, which take effect from 01.01.2008 vide Paras 6, 7, 10, 11 thereof provide 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 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),__

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.

17. Furthermore, Para 423 (a) 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.

(emphasis supplied),__

has not been obliterated.

18. It is essential to observe that para-33 of the verdict of the Hon'ble Supreme Court in **Dharamvir Singh** (supra) is to the effect:-

"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

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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 a casual connection with the service conditions."

(emphasis supplied)

and it is thus apparent that in terms of the verdict of the Hon'ble Supreme Court in **Dharamvir Singh** (supra) as observed by para 33 therein vide para 423 of the Regulations for Medical Services of the Armed Forces Personnel 2010, it is immaterial whether a disability had its onset in a peace area or a CI/ops area or field area or high altitude area and what is required to be established is the causal connection between the onset of the disability and military service.

19. It is essential to advert to para 43 Chapter VI of the GMO (Military Pensions) 2008 which reads as under:-

"43. **Hypertension.** The first consideration should be to determine whether the hypertension is primary or secondary. If secondary, entitlement considerations should be directed to the underlying disease process (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."

(emphasis supplied)

Thus, para 43, Chapter VI of the Guide to Medical Officers (Military Pensions), 2008, itself stipulates that primary hypertension would be considered aggravated if it occurs while serving in Field areas, HAA, CIOPS areas or prolonged afloat service.

20. In the instant case the onset of the disability of **Primary Hypertension (ICD NO-I 10.0)** was on 20.06.1998, whilst the applicant had been posted in the field posting from 31.01.1995 – 29.09.1999 at INS UTKROSH. It is essential to observe that it has been stipulated in Para 43 Chapter VI of the GMO (Military Pensions) 2008 itself to the effect that in certain cases the disease has been reported after long and frequent spells of service in field / HAA active operational area and such cases

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can be explained by variable responses exhibited by different individuals to stressful situations, making it apparent that stressful situations are inter alia causative factors of the onset of the disability of hypertension. **In the instant case, as has been observed hereinabove, the applicant was posted in a field posting prior to the onset of the disability and thus, apparently in terms of Para 43 of Chapter VI of the GMO (Military Pensions) 2008 the applicant's disability of primary hypertension has to be held to be attributable to and aggravated by military service.** This is so, in as much as the aspect of the cumulative stress and strain of the service of the applicant in the Indian Navy from the time of induction i.e. 11.02.1985 till the time of onset of the disability in 20.06.1998 has been totally ignored and the same cannot be overlooked.

21. Para 47, Chapter VI of the Guide to Medical Officers (Military Pensions), 2008, is as under:-

"47. Ischaemic Heart Disease (IHD).

IHD is a spectrum of clinical disorders which includes asymptomatic IHD, chronic stable angina, unstable angina, acute myocardial infarction and sudden cardiac death (SCD) occurring as a result of the process of atherosclerosis. Plaque fissuring and rupture is followed by deposition of thrombus on the

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atheromatous plaque and a variable degree of occlusion of the coronary artery. A total occlusion results in myocardial infarction in the territory of the artery occluded.

Prolonged stress and strain hastens atherosclerosis by triggering of neurohormonal mechanism and autonomic storms. It is now well established that autonomic nervous system disturbances precipitated by emotions, stress and strain, through the agency of catecholamines affect the lipid response, blood pressure, increased platelet aggregation, heart rate and produce ECG abnormality and arrhythmias.

The service in field and high altitude areas apart from physical hardship imposes considerable mental stress of solitude and separation from family leaving the individual tense and anxious as quite often separation entails running of separate establishment, financial crisis, disturbance of child education and lack of security for family. Apart from this, compulsory group living restricts his freedom of activity. These factors jointly and severally can become a chronic source of mental stress and strain precipitating an attack of IHD. IHD arising in while serving in Field area/HAA/CI Ops area or during OPS in an indl who was previously in SHAPE-I will be considered as attributable to mil service.

Entitlement in Ischemic heart disease will be decided as follows:-

(a) Attributability will be conceded where: A myocardial infarction arises during service in close time relationship to a service compulsion involving severe trauma or exceptional mental, emotional or physical strain, provided that the interval between the incident and the development of symptoms is approximately 24 to 48 hours. IHD arising in while serving in Field area/HAA/CI Ops area or during OPS in an indl who was previously in SHAPE-I will be

considered as attributable to mil service. Attributability will also be conceded when the underlying disease is either embolus or thrombus arising out of trauma in case of boxers and surgery, infectious diseases. E.g. Infective endocarditis, exposure to HAA, extreme heat.

(b) Aggravation will be conceded in cases in which there is evidence of:-

IHD occurring in a setting of hypertension, diabetes and vasculitis, entitlement can be judged on its own merits and only aggravation will be conceded in these cases. Also aggravation may be conceded in persons having been diagnosed as IHD are required to perform duties in high altitude areas, field areas, counter insurgency areas, ships and submarines due to service compulsions.

There would be cases where neither immediate nor prolonged exceptional stress and strain of service is evident. In such cases the disease may be assumed to be the result of biological factors, heredity and way of life such as indulging in risk factors e.g. smoking. Neither attributability nor aggravation can be conceded in such cases."

(emphasis supplied)

Thus, in terms of para 47 (b) Chapter VI of the Guide to Medical Officers (Military Pensions), 2008, IHD occurring in a setting of hypertension is to be judged on its own merits and can be considered to be aggravated by military service, as the initial presumption of entitlement in favour of the applicant has not been rebutted by the respondents.

22. We are fortified in our view by the verdict of the Hon'ble High Court of Delhi in WP (C) 3545/2025 in **Union of India & Ors vs Ex Sub Gawas Anil Madso** dated 27.03.2025 which is to similar effect.

23. The verdict of the Hon'ble Supreme Court in **Ex Sapper Mohinder Singh vs Union of India** in Civil Appeal no. 104 / 1993 decided on 14.01.1993 lays down to the effect:-

"From the above narrated facts and the stand taken by the parties before us, the controversy that falls for determination by us is in a very narrow compass viz. Whether the Chief Controller of Defence Accounts (Pension) has any jurisdiction to sit over the opinion of the experts (Medical Board) while dealing with the case of grant of disability pension, or not. In the present case, it is nowhere stated that the petitioner was subjected to any higher Medical Board before the Chief Controller of Defence Accounts (Pension) decided to decline the disability pension to the petitioner. We are unable to see as to how the accounts branch dealing with the pension can sit over the judgment of the experts in the Medical line without making any reference to a detailed or higher Medical Board which can be constituted under the relevant instruction and rules by the Director General of Army Medical Corps."

Thus, the PIFA (N) having own turned down the medical opinion vide the RMB dated 03.11.2017 as detailed in para 7 hereinabove is wholly untenable and unacceptable.

24. Furthermore, Para 10(b)(iii) of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008, provides to the effect:-

"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."

25. There is nothing on the record to indicate that there was any record of any disability that the applicant suffered from recorded at the time of joining the Indian Navy and there are no cogent reasons put forth by the respondents to dislodge the presumption of attributability and consequent aggravation of the disabilities of the applicant due to military service.

CONCLUSION

26. In the circumstances, the **OA 496/2021** is allowed and the applicant is thus held entitled to the grant of the disability element of pension qua the disabilities of the applicant i.e. **Primary Hypertension (ICD NO-I 10.0)** assessed at 40% for life and **Coronary Artery Disease (ICD NO- I 25.4)** assessed at 30% for life, with a composite assessment of 60% for life, which is directed to be broad banded to 75% for life in terms of the verdict of the Hon'ble Supreme Court in **UoI vs Ram Avtar** (Civil

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Appeal no. 418/2012) dated 10.12.2014 with effect from the date of his discharge and the respondents are 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 interest @ 8% p.a. on the arrears due from the date of this order.

27. No order as to costs.

Pronounced in the Open Court on 30 day of May, 2025.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

AP