

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

OA 1500/2020 with MA 1755/2020

Ex Sgt Akhilesh Kumar Singh

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Mr. Praveen Kumar, Advocates

For Respondents : Mr. K K Tyagi, Sr CGSC

CORAM

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

HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER

MA 1755/2020

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 875 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of ***Union of India & Ors. Vs Tarsem Singh*** (2008) 8 SCC 648 and in ***Ex Sep Chain Singh Vs. Union of India & Ors.*** (Civil Appeal No. 30073/2017), the delay of 875 days in filing the OA 1500/2020 is thus condoned. The MA is disposed of accordingly.

OA 1500/2020

2. Invoking the jurisdiction of this Tribunal; under Section 14, of the Armed Forces Tribunal Act, 2007, the instant OA has been filed praying for the following reliefs:

(a) Direct respondents to grant disability pension @ 30% and rounding off the same to 50% for life to the applicant with effect from 01 Mar 2018 i.e. the date of discharge from service with interest @ 12% p.a till final payment is made.

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

BRIEF FACTS

3. The applicant was enrolled in the Indian Air Force on 02.02.1995 and discharged from service on 28.02.2018 under the clause "On fulfilling the conditions of his enrolment" after rendering total 23 years and 26 days of regular service. The applicant was admitted to Hospital with complaints of heaviness in chest and underwent CAD PTCA to LAD, LCX on

30.01.2014. He was initially placed in low medical category A4G4 (T-24) for ID: Coronary Artery Disease (CAD) vide AFMSF-15 dated 10.04.2014. During subsequent review he was placed in low medical category A4G2 (P) vide AFMSF-15 dated 05.08.2015. The Release Medical Board (RMB) dated 14.07.2017 found the applicant fit to be released in low medical category A4G2(P), for the disability of Coronary Artery Disease (CAD) (Old) assessed @ 30% for life. However, the net qualifying percentage for the disability was assessed @ nil for life as the disability was adjudged as neither attributable to nor aggravated by military service.

4. On adjudication, AOC AFRO also held the disability was neither attributable to nor aggravated by military service, and reduced the disability percentage @ 20% for life. Accordingly, the applicant's claim for disability pension was rejected vide letter dated 31.01.2018 and the outcome was communicated to the applicant vide letter No. Air HQ /99798 /1 /770973 /02 /18 / DAV (DP/RMB) dated 23.05.2018 with an advice that he may prefer an appeal to the appellate committee with six months from the date of receipt of the letter.

5. The applicant preferred a belated appeal on 18.03.2021, which was rejected on 22.10.2021, stating that the disability suffered by the applicant is neither attributable to nor aggravated by military service. Aggrieved by the rejection of his disability pension claim by the respondents, the applicant has filed the present application.

CONTENTION OF THE PARTIES

6. The learned counsel for the applicant submitted that the applicant joined the IAF on 02.02.1995 and was discharged from the service on 28.02.2018 in the rank of Sergeant after rendering 23 years, and 26 days of long service in the Indian Air Force.

7. The learned counsel for the applicant submitted that at the time of enrolment, he was subjected to a thorough medical examination and on being found mentally and physically fit for service, he was posted to various Air Force units in varied geographical conditions. As there was no note in the service documents that he was suffering from any disease at the time of his enrolment in service, hence, the

disabilities of the applicant detected during the service are attributable to and aggravated by military service. It is urged that the respondents erred in rejecting the claim of disability pension on the ground that the onset of the disease was in peace station.

8. The learned counsel for the applicant submitted that the instant case is squarely covered by the judgments of the Hon'ble Supreme Court in the case of **Dharamvir Singh v. Union of India and others** (2013) 7 SCC 316, and in case of **Union of India & Ors. Vs Rajbir Singh** (2015) 12 SCC 264, whereby it has been held that if no note of any disability or disease was made at the time of individuals acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service. The applicant further placed reliance upon the judgment of the Hon'ble Supreme Court in the case of **Deokinandan Prasad Vs State of Bihar** AIR 1971 SC 1409, wherein it was held that pension is not a bounty payable at the sweet will and pleasure of the Government and that on the other hand,

the right to pension is a valuable Right vesting with a Government servant.

9. Reliance was also placed on the decisions rendered by this Tribunal in case of ***Nakhat Bharti Vs UOI & Ors.*** in TA no. 48 of 2009 in WP(C) No. 6324/2007, and in case of ***Krishna Singh Vs Union of India, in*** TA No 208 of 2010 (WP (C) No. 9764/2009), wherein it has been held that the medical authorities are required to specifically record that the disease was present at the time of enrolment and that it could not have been detected during the medical examination prior to acceptance for service. The authorities are also required to record cogent reasons explaining why such disease, if present at the time of enrolment, could not be detected. In the absence of such reasons in the findings of the Medical Board, a presumption is required to be drawn that the disease arose during the course of service. It is, therefore, evident that the disease of the applicant is either attributable to or aggravated by the stress and strain of military service, particularly in view of the fact that no note of

any disease was recorded in the medical documents at the time of enrolment.

10. *Per contra*, the contention of the respondents is that the applicant is not entitled to the relief claimed for, since the RMB, being an Expert Body, found the disability "Neither Attributable to Nor Aggravated by Military Service" for the reasons stated therein. The learned counsel further submitted that in January, 2014, the applicant was diagnosed with Coronary Artery Disease (CAD) while posted in peace area. The learned counsel for the respondents further submitted 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 disability 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 the prevailing rules and policies.

ANALYSIS

11. We have heard the learned counsel for the parties and have gone through the records produced before us.

12. In the present case, the Release Medical Board (RMB) assessed the applicant's disability at 30% for life. However, the Competent Authority, during the process of adjudication, reduced the disability assessment to 20% for life, as neither attributable to nor aggravated by military service.

13. The issue of sanctity of the opinion of a Release Medical Board and its overruling by a higher formation is no more Res Integra. The Hon'ble Supreme Court in the case of **Ex. Sapper Mohinder Singh vs. Union of India & Others**, in Civil Appeal No.164 of 1993, decided on 14.01.1993, has made it clear that without physical medical examination of a patient, a higher formation cannot overrule the opinion of a Medical Board. Thus, in light of

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the observations made by the Hon'ble Apex Court in the case of **Ex Sapper Mohinder Singh vs. Union of India & Others**, we are of the considered opinion that the decision of competent authority over ruling the opinion of RMB held before retirement is void in law. The relevant part of the aforesaid judgment is quoted below:-

“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 O.A. No. 1529 of 2023 Lt Col Abhishek Kumar 6 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, in regard to the percentage of the disability pension, or not. In the present case, it is nowhere stated that the Applicant was subjected to any higher medical Board before the Chief Controller of Defence Accounts (Pension) decided to decline the disability pension to the Applicant. 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 instructions and rules by the Director General of Army Medical Core.”

14. Thus in light of the aforesaid judgment (supra), it is clear that the disability assessed by the RMB cannot be reduced/overruled

by the Competent Authority, hence the decision of the Competent Authority in this regard is void.

15. With regard to the attributability of a disability, the consistent stand taken by this Tribunal is based on the law laid down by the Hon'ble Supreme Court in the case of **Dharamvir Singh Vs. Union of India and others** [(2013) 7 SCC 316], which has been followed in subsequent decisions of the Hon'ble Supreme Court and in the number of orders passed by the Tribunal, wherein the Apex Court had considered the question with regard to payment 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, 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, any deterioration in his health, which may have taken place, shall be presumed to be due to service conditions.

16. 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."

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.

17. Further, as regards the disability ID CAD, in Para 47 of Chapter VI of the GMO (MP) 2008, various factors including prolonged stress and strain and physical hardship caused by serving in field and high altitude areas have been provided which may cause the heart diseases to the army personnel. It would be relevant to reproduce Para 47 of the GMO (MP) 2008, which reads 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 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

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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....."

[Emphasis supplied]

18. The applicant served in the Indian Air Force for 23 years and the onset of the disability 'Coronary Artery Disease (CAD)', occurred in January, 2014. A perusal of the posting profile of the applicant reveals that throughout his service in Indian Air Force, the applicant was posted to peace stations only. 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 and stress and strain of such a

long service of almost 23 years cannot be overlooked and the disability i.e. 'Coronary Artery Disease' of the applicant has to be held to be attributable to and aggravated by the military service.

CONCLUSION

19. In view of the aforesaid judicial pronouncements and the parameters referred to above, we allow this application. The applicant is entitled for disability element of pension in respect of disability 'Coronary Artery Disease (CAD)' @ 30% for life with effect from the date of his superannuation i.e. 09.10.2020, since, there is no delay in filing the present OA post retirement/discharge and further rounded off to 50% for life 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).

20. 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%

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.

21. No order as to costs.

Pronounced in the open Court on this 13th day of January, 2026.

(JUSTICE NANDITA DUBEY)
MEMBER (J)

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(RASIKA CHAUBE)
MEMBER (A)

Pooja