

COURT NO. 3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 159 of 2021

In the matter of :

JWO VK Chaudhary (Retd) ... **Applicant**

Versus

Union of India & Ors. ... **Respondents**

For Applicant : Mr. Manoj Kumar Gupta, Advocate

For Respondents : Mr. Neeraj, Sr. CGSC

CORAM:

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

O R D E R

Invoking the jurisdiction of the Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this OA and the reliefs claimed in Para 8 read as under:

- "(a) To direct the respondents to grant the disability pension @50% broad banded to 75% for life in view of the Hon'ble Apex Court judgments in Rajbir Singh (*supra*) and Dharamvir Singh (*Supra*) by treating the disabilities as attributable and aggravated to Military service.*
- (b) To direct the respondents to pay the due arrears of disability pension with interest @10% p.a. with effect from the date of retirement with all the consequential benefits, or*
- (c) To 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, having been found medically and physically fit after thorough medical examination, was enrolled in the Indian Air Force on 10.12.1979 and was discharged from service on 29.02.2020 under the clause “On attaining the age of superannuation, fulfilling the condition of enrolment” after rendering total 40 years and 82 days of regular service. The Release Medical Board held on 21.03.2019, assessed the applicant’s disabilities ‘(i) Grade I Trasitional Meningioma Posterior Fossa (OPTD) @ 30% (ii) Primary Hypertension (old) @ 30% and (iii) Dyslipidemia (Old) @ 1-5% for life, with composite assessment of disabilities @ 50% for life and held the same as ‘neither attributable to nor aggravated by military service’ (NANA). Based on the recommendations of the RMB, the disability pension has been denied to the applicant.

3. AOC AFRO, on adjudication, upheld the recommendations of the RMB and rejected the initial claim of the applicant for disability pension and the said decision was communicated to the applicant vide letter

No. Air HQ/99798/1/637892/02/20/DAV(DP/RMB) dated 14.01.2020 with an advice that he may prefer an appeal to the appellant Committee within six months from the receipt of the abovementioned letter. The applicant preferred his 1st appeal dated 16.03.2020 against the rejection of the disability pension which was rejected vide letter No. AirHQ/99798/5/306/19/786123/DP/AV-III (Appeals) dated 20.02.2020. Aggrieved by the rejection of the first appeal, the applicant has filed the present OA. In the interest of justice, it is considered appropriate to take up the present OA for consideration, in terms of Section 21(2)(b) of the AFT Act, 2007.

CONTENTIONS OF THE PARTIES

4. The learned counsel for the applicant submitted that the applicant, at the time of joining the service, was declared fully fit mentally and physically and no note of disability was made in his medical record at the time of entering the service and any medical disability contracted by him during the course of his service should be treated as being attributable and aggravated by the stress and strain of his service. The learned counsel narrated the stressful and challenging

conditions of service undertaken by the applicant during his service tenure. The learned counsel submitted that the applicant worked as Aircraft Technician Expert in exposed conditions on different system and used to stay on Tarmac/Hanger/Field due to nature of service assigned to him, being highly skilled technician and as his duties required continuous exposure to electromagnetic radiation from avionics and radar equipment, high-frequency vibrations, toxic fumes from aviation fuels, hydraulic fluids and other hazardous chemicals. The applicant was also subjected to prolonged physical and mental stress due to demanding operational schedules, irregular working hours, and high-pressure environments and such service conditions, including sustained exposure to neurotoxin and radiating elements, are directly linked to the development of neurological disorders, including brain tumors.

5. The learned counsel for the applicant submitted that the applicant performed his duties even during the odd weather and hostile environmental conditions and had served in different weather and environmental conditions

and discharged all assigned duties with utmost dedication in a well-disciplined and professional manner.

6. The learned counsel for the applicant contended that the instant matter is squarely covered by the verdict of the Hon'ble Supreme Court such as **Rajbir Singh and Others (2015) 12 SCC 264, and Angad Singh Titaria (2015) 12 SCC 257, UOI & Ors. Vs. Manjit Singh, JT 2015 (5) SC 255, Dharamvir Singh Vs. UoI & Ors. (CA 4949/2013)** and Civil Appeal No. 418/2012 titled **UoI & Ors. v. Ram Avtar** vide judgment dated 10.12.2014. Furthermore, placed reliance on the, CA 5605/2010 titled **Sukvinder Singh vs. UoI & Ors.**, and on the verdicts of the Hon'ble High Court of Punjab & Haryana Court in **Onkar Singh Bawa vs. Union of India** (2013(1) PLR 830) and **Ex Naik Umed Singh vs. UoI** in CWP No. 7277/2013 decided on 14.05.2014, wherein the similarly situated personnel was given relief.

7. The learned counsel further placed specific reliance on the verdict of High Court of Delhi in W.P. (C) 5783/2024 & CM Appl. 23945/2024 titled Union of India through the secretary **Ministry of Defence & Ors. vs. Maj Gen Rajesh Chaba (Retd)** and also on the orders of the AFT (PB) New

Delhi, on OA 1495/2017 titled as **Ex JWO Pushpar Raj Ratenpal vs. Union of India & Ors.** and OA 1591/2019 with MA 2555/2019 titled as **Pratibha Sutar W/o Late MWO Dasarathi Sutar vs. Union of India & Ors.** The learned counsel for the applicant further submitted that the respondents' action in denying the grant of the disability pension is unjustified and unlawful, when the disabilities recorded by the RMB occurred during the military service and was caused due to stress and strain of service. The learned counsel, therefore, prayed that the disability may be held to be attributable to/aggravated by military service and that the disability pension may be granted to the applicant.

8. *Per contra*, the learned counsel for the respondents contended that the applicant is not entitled to the relief claimed, as the Release Medical Board (RMB), being an expert body, had opined that the disabilities were "Neither Attributable to Nor Aggravated by Military Service.

9. The learned counsel argued that the applicant's disabilities failed to satisfy one of the twin conditions stipulated under Regulation 153 of the Pension Regulations for the Air Force, 1961 (Part-I), since all the disabilities were

assessed as neither attributable to nor aggravated by military service. Accordingly, the applicant was not entitled to the grant of disability pension, and the Original Application was liable to be dismissed.

ANALYSIS

10. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, we find that the applicant has suffered from three disabilities viz. '(i) Grade I Trasitional Meningioma Posterior Fossa (OPTD) @ 30% (ii) Primary Hypertension (old) @ 30% and (iii) Dyslipidemia (Old) @ 1-5% for life, with composite assessment of disabilities @ 50% for life'. Accordingly, the issue which is to be considered now is whether the disability suffered by the applicant is to be held attributable to and aggravated by military service or not?

11. In so far as, the disability of 'Dyslidpidemia' is concerned, the same has been assessed below 20% (1-5%) which does not fulfil the mandatory condition as per Regulation 153 of the Pension Regulations for the Air Force, 1961, (Part-I), and hence is not admissible.

12. So far as the disability of the applicant "Grade I Transitional Meningioma Posterior Fossa (OPTD) @ 30%" is concerned, the respondents have produced a document where the duties of the JWO has been mentioned as at the time of occurrence of the said disability, the applicant was in the rank of JWO. The said document is reproduced to the effect:-

JWO AND ABOVE	
<p>5. Same as above for Sgt but takes charge of a section, supervises the work of his tradesman in all lines of servicing and guides them when required in addition:-</p> <p>(a) Holds and operates inventories.</p> <p>(b) Allotment of task to his juniors and carries out cross checks, assesses damage to units and associated equipment, determines the extent and practicability to repair.</p> <p>(c) Ensures the correct technical practices are followed at all times by all tradesman under him during repair, overhaul and testing of all instruments, carries out percentage checks on the work carried out by his juniors.</p> <p>(d) Drafting of SIs, STIs and independently dealing with technical correspondence of minor nature.</p> <p>(e) Organises and manages a section/sub-section.</p>	<p>(a) Logistics procedure</p> <p>(b) All types of instruments and associated equipment, their constructional details, corrected method of repair and overhaul of all instruments in the service.</p> <p>(c) All checks and tests to ensure serviceability of all types of instruments and their associated equipment.</p> <p>(d) Knowledge of SIs, STIs, and policy letters issued from time to time.</p> <p>(e) Elementary knowledge of principle of personnel management, inventory management, service writing, work services, BOO, COI, AF law etc.</p>

13. It is evident from the abovementioned table that the tasks allotted to the applicant were managing equipment, Handling instruments, Inventory management, Technical work, exposure to general machinery, Noise, supervising tradesmen, opening/repairing instruments and any of the tasks which the applicant was allotted during this military service, cannot cause him the said disability and further, the applicant was also never exposed to radiotherapy/ionizing radiation or any other factors medically recognized as a cause of which would have caused him Grade-I Transitional Meningioma Posterior Fossa (OPTD) @ 30%.

14. In support of the abovementioned fact, it is essential to advert to the scientific literature available in the public domain such as the article titled “*Meningioma*” published by *Johns Hopkins Medicine* (<https://www.hopkinsmedicine.org/health/conditions-and-diseases/meningioma>), produced on behalf of the respondents, which provides the risk factors of Meningioma.

The same is reproduced to the effect:-

“Meningioma is about three times more common in women than in men. The tumors are most common in older patients, with the highest rate in people in their 70s and 80s.

The cause of meningioma is not completely understood, but there are some risk factors:

Receiving radiation therapy

Having neurofibromatosis type 2, a rare, inherited (genetic) nervous system disorder. People with neurofibromatosis type 2 often get benign tumors of the nerves throughout the body.”

15. As far as the disability of “Primary Hypertension” is concerned, we may refer to Para 43 of Chapter VI of the ‘Guide to Medical Officers (Military Pension), 2002 amended 2008 (hereinafter referred to as ‘(GMO (MP) 2008)’, the provisions for determining the aggravation of hypertension by the service conditions have been provided 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.”

16. 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 in permanent 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. The relevant para thereof is reproduced hereunder:-

"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."

17. 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.

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 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.”

18. 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 :

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.

19. The applicant has served in the Indian Air Force for 40 years and 82 days of regular service, and his disability of Primary Hypertension occurred in November, 2016 after more than 36 years of long service, whilst he was posted at Udhampur. The accumulated stress and strain of such a long service on the applicant cannot be overlooked. In the present case, the applicant had been posted to different stations located in the different parts of the country having diverse climatic, social and environmental conditions and performed strenuous and stressful duties. Moreover, it has already been observed by this Tribunal in large number of cases that the armed forces services, whether peace areas or field/HAA areas, have their own pressure of rigorous military training and associated stress and strain, physically and mentally, of the service. It may also be taken into consideration that the

most of the personnel of the armed forces, during their service, work in the stressful and hostile environment, difficult weather conditions and under strict disciplinary norms. Moreover, there is no note made in the medical documents of the applicant that he was suffering from any disease at the time of joining the service. There is also no record to show that the applicant has suffered the disability of 'Primary Hypertension' due to hereditary or unhealthy life style or there is any family history. Therefore, we are of the considered view that the benefit of doubt in these circumstances be given to the applicant in view of the settled law on the point of attributability/aggravation and thus we hold the aforesaid disability suffered by the applicant to be attributable to and aggravated by the military service. Thus, in view of the aforesaid parameters referred to above, the applicant is held entitled to grant of the disability element of pension in respect of the disability i.e. Primary Hypertension @ 30% for life with rounding off benefit.

20. We are further fortified in our view in view of the verdict dated 27.03.2025 of the Hon'ble High Court of Delhi in W.P. (C) 3545/2025 in **Union of India & Ors. vs. Ex Sub**

Gawas Anil Madso and the verdict dated 01.07.2025 of the Hon'ble High Court of Delhi in W.P. (C) 5783/2024 in **Union of India through the Secretary Ministry Of Defence & Ors. vs. Maj Gen Rajesh Chaba (Retd.) and other connected petitions** and the verdict dated 01.07.2025 of the Hon'ble High Court in W.P. (C) 140/2024 in **Union of India & Ors. Vs. Col Balbir Singh (Retd)** which adhere to the law laid down by the Hon'ble Supreme Court in **Dharam Singh** (Supra).

CONCLUSION

21. In view of the above, OA 159 of 2021 is partly allowed. The respondents are directed to grant the disability element of pension to the applicant for the disability of Primary Hypertension (Old) @ 30% for life, which be rounded off to 50% for life, with effect from the date of discharge 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.

22. Accordingly, the respondents are directed to calculate, sanction and issue necessary PPO to the applicant within three months from the date of receipt of copy of this order,

failing which, the applicant shall be entitled to interest @ 6%
per annum till the date of payment.

23. There is no order as to costs.

Pronounced in open Court on this 16th day of January,
2026.

(JUSTICE NANDITA DUBEY)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

/NMK/