

COURT NO.1, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA 1705/2023

In the matter of :

Col Mohit Nasa Retd.

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Mohan Kumar, Advocate
For Respondents : Mr. Karan Singh Bhati, Sr. CGSC

CORAM:

HON'BLE MR JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

O R D E R

Invoking the jurisdiction of this Tribunal; under Section 14 of the Armed Forces Tribunal Act, 2007 (AFT Act, 2007 hereinafter), the applicant has filed this application and the reliefs claimed in Para 8 read as under:-

“(a) To quash and set aside the impugned orders dated 26.04.2023 passed by the respondents.

(b) To direct the respondents to grant the disability element of the pension @46.5% (Rounded off) with broad banding benefits @50% with complete arrears and interest till date with all consequential reliefs and benefits forthwith from the time applicant was discharged from service i.e. 28.02.2023.

(c) To grant an interest @18% on delayed payment of the disability pension and

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

BRIEF FACTS

2. The applicant was commissioned in the army on 16.12.1989 and discharged from service on 28.02.2023 (AN) on reaching the age of superannuation. The Release Medical Board dated 31.08.2022 held that the applicant was fit to be released from service in low medical category S1H1H1P2(P)E1 for the disabilities of (i) 'Beta Thalassemia' @10% for life, (ii) Primary Hypertension @30% for life and (iii) Prediabetes (IGT)[R73.03] @15% for life with composite assessment @46.45% for life, while the net qualifying element for disability was recorded as 'NIL for Life' on account of the disability being treated as 'neither attributable to nor aggravated by military service'. However, in the instant OA the applicant is praying for the grant of disability element of pension for the disability of Primary Hypertension (I 10) only.

3. The initial claim of the applicant for grant of the disability pension was rejected by the competent authority and the said decision was

communicated to the applicant vide letter dated 16.11.2022 with an advice that in case, the applicant is not satisfied with the decision of the respondents, he may prefer an appeal to the Appellate Committee for first appeals (ACFA) within six months from the date of issue of the letter. The first appeal dated 16.11.2022 against the rejection of his disability claim was rejected by the Appellate Committee and communicated to the applicant vide letter dated 26.04.2023 considering his all three disabilities as neither attributable to nor aggravated by military service. The applicant thereafter preferred second appeal dated 08.05.2023, which has not been disposed of by the respondents till the filing of the OA. Aggrieved by the rejection of his claim by the respondents, the applicant has filed the present OA on 28.06.2023. In the interest of justice, it is considered appropriate to take up the present OA for consideration, in terms of Section 21(2) of the AFT, Act 2007.

CONTENTIONS OF THE PARTIES

4. The learned counsel for the applicant submitted that the prayers made in the present OA are confined to the

grant of disability element of pension in relation to the disability of (ii) Primary Hypertension @30% for life and the prayer made for grant of disability element of pension in relation to disabilities of (i) 'Beta Thalassemia' @10% for life, and (iii) Prediabetes (IGT)[R73.03] @15% for life, is not pressed.

5. The learned counsel for the applicant submitted that the applicant was commissioned in Army on 16.12.1989 and discharged from service on 28.02.2023 after rendering 32 years and 06 days of service in the army during which he suffered with the said disability.

6. 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 any 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 explained about the stressful and challenging conditions of service undertaken by the applicant during his service tenure. The learned

counsel submitted that the applicant was posted at various stations and had served in different weather and environmental conditions in his career and discharged all assigned duties with utmost dedication in a well-disciplined and professional manner. The learned counsel stressed on his duties performed in the areas of Arunachal Pradesh, Nagaland, Assam etc as he was serving in HQ Chief Engineer Shillong zone and CE Shillong Zone is responsible for all maintenance for all construction of new works in the entire north east i.e. Arunachal Pradesh, Mizoram, Assam, Tripura, Nagaland and Meghalaya which took toll on his health.

7. The learned counsel for the applicant placed reliance on the verdict of the Hon'ble Supreme Court of India including the case of JT 2015 (5) SC 255, CA No. 4949/2013 in case of ***Dharamvir Singh v. Union of India & Ors.*** wherein the claim for disability pension was allowed.

8. *Per contra*, the learned counsel for the respondents controverts the arguments put forth on behalf of the applicant and contended that the applicant is not entitled to the relief claimed for, since the RMB, being an Expert Body,

found the disabilities “Neither Attributable to Nor Aggravated by Military Service” for the reasons that the disability Primary Hypertension (old) is a lifestyle related disorder and onset of disability was in peace station. The learned counsel further submitted that the applicant’s disability does not fulfill the necessary conditions for being eligible to get disability pension in terms of Regulation 37(a) of the Pension Regulations for the Army Part-1 (2008), thus the applicant is not entitled to disability pension and, therefore, the OA deserved to be dismissed.

9. Furthermore, the learned counsel for the respondents placed reliance of the order of Armed Forces Tribunal (PB) New Delhi in OA 1373/2019 titled **Ex Sgt Dhiraj Kumar vs. Union of India & Ors.** while taking the precedent of the order **EX-HRO Gyanendra Singh v. Union of India & Ors.** in OA 1656/2019 wherein the grant of disability pension was denied to the applicant.

ANALYSIS

10. On the careful perusal of the available record and also the submissions made on behalf of the parties, we find that the applicant has suffered from disabilities namely (i) ‘Beta

Thalassemia' @10% for life, (ii) Primary Hypertension @30% for life and (iii) Prediabetes (IGT)[R73.03] @15% for life. However, since the applicant is seeking grant of disability element of pension only in respect of Primary Hypertension assessed @ 30% 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. The disability of the applicant "Primary Hypertension" had its onset was in December 2020 i.e. after more than 31 years of his service in the Army.

10. With regard to the attributability of a disability, the consistent view taken by this Tribunal is based on the law laid down by the Hon'ble Supreme Court in the case of ***Dharamvir Singh v. 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. 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."**

11. 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:

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.”

12. 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.

13. As per 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."

14. In the present case, it is not disputed that the applicant had been posted in peace station at the time of onset of the disability, however, his posting to the Field areas and CI areas like from 22.07.1990 to 09.05.1993 at Kalimpong, at lohitpur from 13.12.1998 to 25.10.2001 and

Narangi from 23.08.2012 to 10.05.2013 cannot be ignored while considering the causal connection of the disability with service as the manifestation of service conditions could induce disability in a person after long and frequent spells of service in field/HAA/Active operating areas as brought out in Para 13 hereinabove in terms of Para 43 of the Chapter VI of the GMO (MP) 2008 itself. Besides, the onset of the disability occurred in 2020 after 31 years of long service during which period he was posted to different stations including field and peace postings having different climatic, social and environmental conditions. Hence, the accumulated stress and strain of such a long service, as a contributing factor for the onset of the disability cannot be overlooked.

15. The Tribunal has also observed in large number of cases that military services in peace stations have their own pressure of rigorous military training and associated stress and strain, physically and mentally, of the service and there is no evidence of stress and strain of service in peace station should not be considered for the purpose of granting disability pension. 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 applicant's medical documents that he was suffering from any disease at the time of joining the service. There is no record to show that the applicant has suffered the disability due to hereditary or unhealthy lifestyle nor is there any family history of the applicant placed on record. We are, therefore, of the considered view that in these circumstances in view of the settled law and provisions on the point of attributability/aggravation, the disability suffered by the applicant has to be held/ to be attributable to and aggravated by the military service.

16. 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).

17. In view of the aforesaid judicial pronouncements and the 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.

CONCLUSION

18. In view of the above, OA 1705 of 2023 is allowed. The respondents are directed to grant the disability element of pension to the applicant for the disability 'Primary Hypertension' @ 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.

19. 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 @ 8%
per annum till the date of payment.

20. There is no order as to costs.

Pronounced in open Court on this 4th day of
February, 2026.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

/NMK