

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

O.A. No. 719 of 2020

In the matter of :

Ex L/Nk Narayan Singh ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Mr. Virender Singh Kadian, Advocate

For Respondents : Mr. Neeraj, Sr. CGSC with
Mr. Rudra Paliwal, Advocate

CORAM:

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

ORDER

OA No. 719/2020

1. 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) Direct the respondents to treat the disabilities as attributable to or aggravated by military service and grant him disability pension along with broad banding/rounding off. and/or**
- (b) Direct respondents to pay the due arrears of disability element of pension with interest @12% p.a. from the date of retirement with all the consequential benefits.**

- (c) ***Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost of the application in favour of the applicant and against the respondents."***

BRIEF FACTS

2. The applicant, having been found medically and physically fit after thorough medical examination, was enrolled in the Indian Army on 01.03.2002 and was discharged from service on 30.11.2017 under the provisions of Army Rule 13 (3) I (ii) (a) (i) i.e. on medical grounds after rendering 15 years and 08 months of service and is in receipt of service pension. The Release Medical Board (RMB) held on 31.10.2017 assessed the applicant's disabilities '(a) Primary Hypertension (I 10.0) @ 30% for life (b) Dyslipidemia (E 78.5) @ 1-5% for life and (c) Migraine without Aura (G 43.0) @ 6-10% for life, with composite assessment of disablement @ 40% for life and held the said disabilities as 'neither attributable to nor aggravated by military service' (NANA). Based on the recommendations of the RMB, the disability pension was denied to the applicant.

3. The initial claim for disability pension of the applicant was rejected and the said decision was communicated to the applicant vide letter No. AAD/15777741W/DP/Pen dated

16.03.2018, vide which the applicant was informed about his non-entitlement to the disability element of disability pension, with instructions to prefer a First Appeal before the Appellate Committee for First Appeal (ACFA) within six months, if aggrieved by the decision. Thereafter, the applicant approached AAD Records vide letter No. AAD/15777741W/DP/Pen Gp dated 04.04.2020, seeking grant of the disability element of pension with effect from 01.12.2017 and the same was replied by the AAD Records stating that he has not submitted first appeal against rejection of disability pension till date. The applicant then filed the present OA on 15.06.2020. 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 prayers made in the present OA are confined to the grant of disability element of pension in relation to the disability of (i) Primary Hypertension @ 30% for life only and the prayer made for grant of disability element of pension in relation to

other disabilities viz 'Dyslipidemia' and 'Migraine Without Aura' are not pressed.

5. 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 therefore, any medical disability contracted by him during the course of his service should be treated as being attributable and/or 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 further submitted that the applicant was posted at various peace as well as field stations in different parts of the country and had served in tough and different weather and environmental conditions in his career and discharged all assigned duties with utmost dedication in a well-disciplined and professional manner.

6. The learned counsel for the applicant further contended that the instant matter is squarely covered by a catena of judgments of the Hon'ble Supreme Court such as ***Dharamvir Singh v. Union of India & Ors.*** (Civil Appeal

No. 4949 of 2013) [2013 (7) SCC 316], 2013 (12) JT 44],
Union of India and Anr. v. Rajbir Singh, Civil Appeal No. 2904/2011 [(2015) (2) SCALE 371], 2015 (2) JT 392, 2015 (3) SLR 318 vide judgment dated 13.02.2015, CA 5605/2010 titled **Sukhvinder Singh v. Union of India** (2014 STPL (web) 468 SC) decided on 25.06.2014 and Civil Appeal No. 418/2012 titled **UoI & Ors. v. Ram Avtar** vide judgment dated 10.12.2014.

7. The learned counsel further placed reliance on the order of this Tribunal in OA No. 1132/2017 titled **Lt Col Sunil Pankaj Sharma (Retd) vs. UoI & Ors**, in OA No. 46/2016 titled **Ex MWO Amar Nath Pandey vs. UoI & Ors.** and in OA No. 1439/2016 titled **Ex Sgt Girish Kumar vs. UoI & Ors.** and submitted that the respondents' action in denying him the disability pension is unjustified and unlawful, when the disability recorded by the RMB occurred during the military service and thus was caused due to stress and strain of service. The learned counsel, therefore, prayed that the disability in question may be held to be attributable to and/or aggravated by military service and that the disability pension may be granted to the applicant.

08. *Per contra*, the learned counsel for the respondents contended that the applicant is not entitled to the relief claimed since the RMB, being an Expert Body, found the disability as being "Neither Attributable to Nor Aggravated by Military Service". During the course of submissions, while submitting the weight chart of the applicant, the counsel for the respondents contended that the applicant was overweight and the disability of the applicant was contracted as a consequence of his being overweight. The learned counsel submitted that since the applicant's disability do not fulfill one of the twin conditions in terms of Regulation 173 of the Pension Regulations for the Army, 1961, (Part-I) as the same was assessed as neither attributable to nor aggravated by military service, the applicant is not entitled to the grant of the disability element of pension. The learned counsel also contended that the applicant has filed the present OA prematurely as he has not exhausted all the statutory remedies available as per the Armed Forces Tribunal Act and the learned counsel thus prayed that OA deserves to be dismissed.

ANALYSIS

09. We have heard the learned counsel for the parties and have perused the record produced before us.

10. In view of the disabilities of the applicant namely 'Dyslipidemia' and 'Migraine Without Aura' not being pressed by the applicant, we adjudicate only for the disability of 'Primary Hypertension', which has been assessed by the RMB @ 30% for life. Hence, the issue for consideration in this case is whether the disability of 'Primary Hypertension' of the applicant can be held to be 'attributable to and/or aggravated by military service' or not.

11. 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. 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."

12. 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:*

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.”

13. Furthermore, Regulation 423 of the Regulations for the Medical Services of the Armed Forces 2010 which relates to 'Attributability to Service' provides as under:-

“423. (a). For the purpose of determining whether the cause of a disability or death resulting from disease is or not attributable to Service. It is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a Field Area/Active Service area or under normal peace conditions. It is however, essential to establish whether the disability or death bore a causal connection with the service conditions. All evidences both direct and circumstantial will be taken into account and benefit of reasonable doubt, if any, will be given to the individual. The evidence to be accepted as reasonable doubt for the purpose of these instructions should be of a degree of cogency, which though not reaching certainty, nevertheless carries a high degree of probability. In this connection, it will be remembered that proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. If the evidence is so strong against an individual as to leave only a remote possibility in his/her favor, which can be dismissed with the sentence “of course it is possible but not in the least probable” the case is proved beyond reasonable doubt. If on the other hand, the evidence be so evenly balanced as to render impracticable a determinate conclusion one way or the other, then the case would be one in which the benefit of the doubt could be given more liberally to the individual, in case occurring in Field Service/Active Service areas.

(b). Decision regarding attributability of a disability or death resulting from wound or injury will be taken by the authority next to the Commanding officer which in no case shall be lower than a Brigadier/Sub Area Commander or equivalent. In case of injuries which were self-inflicted or due to an individual's own serious negligence or misconduct, the Board will also comment how far the disablement resulted from self-infliction, negligence or misconduct.

(c). The cause of a disability or death resulting from a disease will be regarded as attributable to Service when it is established that the disease arose during Service and the conditions and circumstances of duty in the Armed Forces determined and contributed to the onset of the disease. Cases, in which it is established that Service conditions did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, will be regarded as aggravated by the service. A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in Service if no note of it was made at the time of the individual's acceptance for Service in the Armed Forces. However, if medical opinion holds, for reasons to be stated that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.

(d). The question, whether a disability or death resulting from disease is attributable to or aggravated by service or not, will be decided as regards its medical aspects by a Medical Board or by the medical officer who signs the Death Certificate. The Medical Board/Medical Officer will specify reasons for their/his opinion. The opinion of the Medical Board/Medical Officer, in so far as it relates to the actual causes of the disability or death and the circumstances in which it originated will be regarded as final. The question whether the cause and the attendant circumstances can be accepted as attributable to/aggravated by service for the purpose of pensionary benefits will, however, be decided by the pension sanctioning authority.

(e). To assist the medical officer who signs the Death certificate or the Medical Board in the case of an invalid, the CO unit will furnish a report on :

AFMSF - 16 (Version - 2002) in all cases

(ii) IAFY - 2006 in all cases of injuries.

(f). In cases where award of disability pension or reassessment of disabilities is concerned, a Medical Board is always necessary and the certificate of a single medical officer will not be accepted except in case of stations where it is not possible or feasible to assemble a regular Medical Board for such purposes. The certificate of a single medical officer in the latter case will be furnished on a Medical Board form and countersigned by the Col (Med) Div/MG (Med)

Area/Corps/Comd (Army) and equivalent in Navy and Air Force.”

(emphasis supplied)

has not been obliterated.

14. For determining the attributability or aggravation of the disabilities, we would like to refer to the Para 43 for Hypertension contained in Chapter VI of the Guide to Medical Officers (Military Pension), 2002 amended 2008 (hereinafter referred to as '(GMO (MP) 2008)', which is reproduced hereunder:-

“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.”

(emphasis supplied)

It is clearly mentioned in the aforesaid Para of GMO that

‘Primary Hypertension will be considered aggravated if it

occurs while serving in Field Areas, HAA, CIOPS areas or prolonged afloat service' and in the present case, the applicant was diagnosed with the disability of 'Primary Hypertension' in Sep 2013 when the applicant was posted at Udhampur (J&K), i.e., a Field station. Hence, the disability of the applicant viz 'Primary Hypertension' is held aggravated to Military Service as per provision of Para 43 of Chapter VI of GMO 2002 amended 2008.

15. We may now consider the contention raised by the learned counsel for the respondents to the effect that the applicant's disability namely 'Primary Hypertension' was caused due to the applicant being overweight by 11 kg (however, shown as 5 kg) as mentioned in the Part-II medical examination sheet attached with RMB proceedings, except this, the applicant has nowhere shown as overweight and the respondents have also not averred about this fact in their counter affidavit. In this regard, we may refer the order of the Hon'ble High Court of Delhi in WP(C) 5783/2024 in the case of ***Union of India through the Secretary Ministry of Defence & Ors. vs. Maj Gen Rajesh Chaba (Retd.)*** wherein para 21 & 22 states to as under:-

“23. A plain reading of the above makes it evident that merely suffering from Obesity, by itself, does not ipso facto render the other disabilities such as Primary Hypertension, Diabetes Mellitus, and Coronary Artery Disease in the Force personnel attributable to Obesity. Moreover, the RMB has also not made any observation W.P.(C) 5783/2024 & other connected matters Page 14 of 32 regarding the effect of Obesity on the other medical conditions of the respondent.

24. In the present cases, from a perusal of the RMB proceedings, it is evident that the opinion of the RMB also does not mention that the respondent's condition of Obesity was the cause or basis for the development of his disability. The RMB has merely pointed out that the respondent was suffering from Simple Obesity. The learned Tribunal did not treat the Simple Obesity as a disability, since the respondent did not press for disability pension for the same.”

16. In view of the aforesaid judicial pronouncements and the parameters/consideration referred to above, the applicant is held entitled for grant of disability element of pension in respect of the disability of Primary Hypertension @ 30% for life, along with benefit of broad banding.

CONCLUSION

17. In view of the above, OA 719 of 2020 is allowed. The respondents are directed to grant the disability element of pension to the applicant for the disability of Primary Hypertension, assessed @ 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.

18. 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.

19. There is no order as to costs.

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

**[JUSTICE NANDITA DUBEY]
MEMBER (J)**

**[REAR ADMIRAL DHIREN VIG]
MEMBER (A)**

/AE/