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

O.A. No. 986/2020 with MA 1101/2020

In the matter of :

Ex WO Brij Mohan ... **Applicant**

Versus

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

For Applicant : Mr. Praveen Kumar, Advocate

For Respondents : Mr. K K Tyagi, Sr CGSC

CORAM:

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

O R D E R

MA 1101/2020

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 7115 days in filing the present OA. In the absence of any opposition from the respondents and 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 7115 days in filing the OA 986/2020 is thus condoned. The MA is disposed of accordingly.

2. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 read as under :

> ***(a) Quash and set aside the impugned letters dated 10 Feb 2020.***
>
> ***(b) Direct respondents to grant disability pension @ 40% and rounding off the same to 50% for life to the applicant with effect from 01 Nov 2020 i.e. the date of discharge from service with interest @ 12% p.a. till final payment is made.***
>
> ***(c) 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 06.04.1963 and discharged from service on 31.10.2000 under the clause on "On attaining the age of superannuation" after rendering total 37 years and 209 days of regular service. Before his retirement, the applicant was subjected to a Release Medical Board (RMB) held on 04.04.2000. The RMB found the applicant to be fit to be

released in low medical category CEE (P), for the disabilities of (i) IHD (CABG) DONE @ 30% for two years and (ii) Primary Hypertension @ 40% for two years, with the percentage of composite disabilities assessed @ 50%, reduced to 40% for two years. However, the net qualifying percentage for the disability pension was Nil for life as both the disabilities were adjudged as neither attributable to nor aggravated by military service.

4. On adjudication, the PCDA (P), Allahabad, upheld the recommendations of the Release Medical Board and rejected the disability pension claim to the Air Veteran vide letter no Gts/AF Cell/2002/Dis/Fresh/1658 dated 13.02.2003 and DCA letter DCA/PEN/II/DP/1075/02 dated 24.03.2003. The outcome was communicated to the applicant vide letter No. RO/2703/247787/10/00/P&W (DP) dated 02.04.2003 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. It is further submitted that the applicant did not prefer any appeal as advised vide the above mentioned letter dated 02.04.2003. However, his representation dated

03.12.2019 was suitably replied to by DAV (Appeal) through letter no. Air HQ /99798 /5 /721470 /TBS /Appeal/AV-III dated 10.02.2020. Aggrieved by the rejection of the disability pension claim from the respondents, the applicant has filed this OA.

CONTENTIONS OF THE PARTIES

6. The learned counsel for the applicant submitted that the applicant joined the IAF on 06.04.1963 and was discharged from the service on 31.10.2000 in the rank of Warrant Officer (WO) after rendering 37 years, and 209 days of long service in the Indian Air Force. The learned counsel for the applicant further 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.

7. 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.

8. 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.

9. *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 as "Neither Attributable to Nor Aggravated by Military Service" for the reasons stated therein. The counsel further submitted that in February, 1997, the applicant was diagnosed with 'IHD (CABG) DONE' and in May, 1999, the applicant was diagnosed with 'Primary Hypertension' 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

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

11. In the present case, the disabilities Primary Hypertension and IHD (CABG) DONE have been assessed

by the RMB @ 50% but reduced to 40% each for two years respectively. Accordingly, the issue which is to be considered now is whether the disabilities suffered by the applicant are to be held attributable to and aggravated by military service or not?

12. It is an undisputed fact that at the time of joining in the Indian Air Force on 06.04.1963, the applicant was found to be medically and physically fully fit for service. He was discharged from service on 31.10.2000 on attaining the age of superannuation after rendering 37 years and 209 days of regular service. It is further admitted that at the time of discharge, the applicant was placed in low medical category 'CEE (Permt)'.

13. 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.

14. The 'Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 1982', (as applicable in the instant case, in view of discharge of the applicant from service on 31.10.2000), provide vide Paras 8, 9, 13, 14 and 19 thereof as under:

> ***"8. Attributability/aggravation shall be conceded if causal connection between death/disablement and military service is certified by appropriate medical authority.***
>
> ***<u>Onus of proof</u>:***
>
> ***9. The claimant shall not be called upon to prove the conditions of entitlement. He/she will receive the benefit of any reasonable doubt. This***

benefit will be given more liberally to the claimants in field/afloat service cases.

<u>Injuries</u>:

13. In respect of accidents or injuries, the following rules shall be observed:

(a) Injuries sustained when the men is 'on duty', as defined, shall be deemed to have resulted from military service, but in cases of injuries due to serious negligence/misconduct the question of reducing the disability pension will be considered.

(b) In cases of self-inflicted injuries white on duty, attributability shall not be conceded unless it is established that service factors were responsible for such action; in cases where attributability is conceded, the question of grant of disability pension at full or at reduced rate will be considered.

<u>Disease</u>:

14. In respect of diseases, the following rule will be reserved :-

(a) Cases in which it is established that conditions of Military Service did not determine or contribute to the onset of the disease but influenced the subsequent courses of the disease, will fall for acceptance on the basis of aggravation.

(b) 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 individual's acceptance for military service. 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.

(c) If a disease is accepted 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.

19. <u>Aggravation</u>: If it is established that the disability was not caused by service, attributability shall not be conceded. However, aggravation by service is to be accepted unless any worsening in his condition was not due to his service or worsening did not persist on the date of discharge/claim."

Furthermore, Regulation 423 of the Regulations for the Medical Services of the Armed Forces 1983 which relates to 'Attributability to Service' provides as under:-

"423 . Attributability to service- (a) For the purpose of determining whether the cause of a disability or death is or is not attributable to service, it is immaterial whether the ceruse giving rise to the disability or death occurred in an area declared to be a field service/active service area or under normal peace conditions. lt is, however, essential to establish whether the disability or death bore a casual connection with the service conditions. Ail evidence, 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 carry the high degree of probability. In this connection, it 5will be remembered that proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. lf the evidence is so strong against an individual as to leave only a remote possibility in his favour, 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. lf 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 doubt could be given more liberally to the individual, in cases occurring in field service/active service areas.

(b) The cause of a disability or death resulting from wound or injury, will be regarded as attributable to service if the wound/injury was sustained during the actual performance of 'duty' in armed forces. 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 disability resulted from self-infliction, negligence or misconduct.

(c) The cause of a disability or death result 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 is attributable to or aggravated by service or not will be decided as regards it:; 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 cause 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 attributed to service will, however, be decided by the pension sanctioning authority."

(emphasis supplied),

as applicable at the relevant time has not been obliterated, and is rather succeeded by Regulation 423 of the Regulations for the Medical Services of the Armed Forces 2010.

15. As per amendment to Chapter VI of the 'Guide to Medical Officers (Military Pension), 1980 at para-28, it is provided as under:-

> ***"28. <u>Hypertension</u> – The first consideration should be to determine whether the hypertension is primary (essential) or secondary. If secondary, entitlement considerations should be directed to the underlying disease process (eg Nehphritis), and it is unnecessary to notify hypertension separately. It is better to clearly indicate whether it is a case of essential hypertension, giving the evidence in support.***
>
> ***As in the case of atherosclerosis, entitlement of attributability is never appropriate, but where disablement for essential hypertension***

appears to have caused aggravation must be considered. Each case should be judged on its merits taking into account particularly the physical condition on entry into service, the age, the amount and duration of any stress and whether any other service compulsion has operated."

16. In Annexure I to Chapter VI of the Guide to Medical Officers (Military Pensions), 1980, Myocardial Infarction and other forms of IHD along with other diseases has been classified as the diseases affected by stress and strain of service. However, various factors have been detailed qua the disease IHD in Para 47 of Chapter VI of the Guide to Medical Officers (Military Pensions) 2008, including prolonged stress and strain and physical hardship caused by serving in field and high altitude areas have been given which cause the heart diseases to the army personnel. We find it relevant to refer to Para 47 of the GMO (MP) 2008, which is as under:-

"47. Ischaemic Heart Disease (IHD). IHD is a spectrum of clinical disorders which includes asymptomatic IHD, chronic stable angina, unstable angina, acute myocardial infarction and sudden cardiac death (SCD) occurring as a result of the process of atherosclerosis. Plaque fissuring and rupture is followed by deposition of thrombus on the 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. <u>Prolonged stress and strain</u>

hastens atherosclerosis by triggering of neurohormonal mechanism and autonomic storms. It is now well established that autonomic nervous system disturbances precipitated by emotions, stress and strain, through the agency of catecholamines affect the lipid response, blood pressure, increased platelet aggregation, heart rate and produce ECG abnormality and arrhythmias. The service in field and high altitude areas apart from physical hardship imposes considerable mental stress of solitude and separation from family leaving the individual tense and anxious as quite often separation entails running of separate establishment, financial crisis, disturbance of child education and lack of security for family. Apart from this, compulsory group living restricts his freedom of activity. These factors jointly and severally can become a chronic source of mental stress and strain precipitating an attack of IHD. IHD arising in while serving in Field area/HAA/CI Ops area or during OPS in an indl who was previously in SHAPE-I will be considered as attributable to mil service....."

[Emphasis supplied]

17. In the present case, the applicant served in the Indian Air Force for 37 years and 209 days and the onset of the disabilities IHD, (CABG DONE) occurred in February, 1997 and Primary Hypertension occurred in May, 1999. A perusal of the applicant's posting profile reveals that throughout his service tenure, he was posted both at peace and field stations. It has, already been observed by this Tribunal in a catena of cases that peace and field 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 37 years and 209 days cannot be overlooked and the disabilities i.e. IHD, (CABG DONE) and Primary Hypertension of the applicant has to be held to be attributable to and aggravated by the military service.

18. In so far as the disabilities of the applicant are concerned, it is evident that no Resurvey Medical Board (RSMB) was conducted. There is nothing on record to show that the applicant was ever called for an RSMB by the respondents. Although the disabilities were assessed as being of permanent nature, the assessment was restricted to a period of two years. In this regard, it is relevant to refer Para 6 and 7 of the Govt. of India, Ministry of Defence letter No. 1(2)/97/D(Pen-C) dated 07.02.2001 which is as under :-

> ***"6.<u>Assessment:-</u> The assessment with regard to percentage of disability as recommended by the Invaliding Medical Board/Release Medical Board and as adjudicated by MA(P) in respect of PBOR and MOD in case of Commissioned Officers would be treated as final and for life unless the individual himself requests for review, except in cases of disabilities which are not of a permanent nature. In the event of substantial difference of opinion between the initial award given by the Medical Boards and MA(P), the case will be referred to a Review Medical Board. The***

opinion of the Review Medical Board, which will be constituted by DGAFMS as and when required shall be final.

7. <u>Re-assessment of Disability:-</u> There will be no periodical reviews by the Resurvey Medical Boards for re-assessment of disabilities. In cases of disabilities adjudicated as being of a permanent nature, the decision once arrived at will be final and for life unless the individual himself requests for a in cases of disabilities which are not of a permanent nature. There will be only one review of the percentage by a Reassessment Medical board to be carried out later, within a specified time frame. The percentage of disability assessed/recommended by the Reassessment Medical Board will be final and for life unless the individual himself ass for a review. The review will be carried out by Review Medical constituted by DGAFMS. The percentage of disability assessed by the Review Medical Board will be final."

19. Reliance is rightly placed by the applicant on the judgment of Hon'ble Supreme Court in the case of ***Commander Rakesh Pande Vs. Union of India & Ors.*** [Civil Appeal No. 5970 of 2019] decided on 28.11.2019, wherein the Hon'ble Apex Court while interfering with the decision of the Armed Forces Tribunal granting disability pension for five years to the applicant, granted the disability for life and observed as under:

"Para 7 of the letter dated 07.02.2001 provides that no periodical reviews by the Resurvey Medical Boards shall be held for reassessment of disabilities. In case of disabilities adjudicated as being of permanent nature, the decision once arrived at will be for life

unless the individual himself requests for a review. The appellant is afflicted with diseases which are of permanent nature and he is entitled to disability pension for his life which cannot be restricted for a period of 5 years. The judgment cited by Ms. Praveena Gautam, learned counsel is not relevant and not applicable to the facts of this case. Therefore, the appeal is allowed and the appellant shall be entitled for disability pension @ 50% for life."

[Emphasis supplied]

Thus, a person afflicted with diseases which are permanent in nature is entitled to disability pension for life which cannot be restricted for a period of time and the assessment/ percentage of disability as made by the Medical Board has to be treated for life.

CONCLUSION

20. In view of the aforesaid judicial pronouncements and the parameters referred to hereinabove, the applicant is entitled for disability element of pension in respect of disabilities (i) IHD (CABG) DONE and (ii) Primary Hypertension. Accordingly, we allow this application holding that the applicant is entitled to disability element of pension @ 40% for life rounded off to 50% for life with effect from the date of his 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.

21. 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. The amount of arrears however are directed to commence to run from a period of three years prior to the institution of the present OA, in terms of the verdict of the Hon'ble Supreme Court in ***Union of India & Ors Vs Tarsem Singh*** reported in 2008 8 SCC 648 which shall be paid by the respondents, failing which the applicant will be entitled for interest @ 6% p.a. from the date of receipt of copy of the order by the respondents.

22. There is no order as to costs.

Pronounced in open Court on this 5th day of February, 2026.

(JUSTICE NANDITA DUBEY)
MEMBER (J)

(RASIKA CHAUBE)
MEMBER (A)

/Pooja/

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CORAM

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

ORDER
05.02.2026

Judgment in this matter has been pronounced today vide a separate signed order. At the time of hearing, certain original documents were kept by us for perusal. Since the judgment in the matter has now been pronounced, these documents be returned to the respondents after taking due acknowledgement.

(JUSTICE NANDITA DUBEY)
MEMBER (J)

(RASIKA CHAUBE)
MEMBER (A)

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