

**ARMED FORCES TRIBUNAL, CHANDIGARH REGIONAL
BENCH AT CHANDIMANDIR**

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OA 403 of 2015

Lt Col BS Dhaliwal (Retd)	Petitioner(s)
Vs		
Union of India and others	Respondent(s)

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For the Petitioner (s) :	Brig PS Ghuman (Retd), Advocate
For the Respondent(s) :	Mr. Kamal Kumar Yogi, CGC.

Coram: Justice Prakash Krishna, Judicial Member.
Lt Gen DS Sidhu (Retd), Administrative Member.

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ORDER
27.04.2016

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By means of the present petition, the petitioner, a Commissioned Officer, commissioned on 14th June, 1970 in a perfectly fit physical condition and discharged on completion of terms of service on 30th November, 2002 in the rank of Lt Colonel having served the Army for 32 years, has prayed for grant of disability element of disability pension on the pleas, *inter alia*, that during his service he was also posted in High Altitude area (twice), once in Eastern Sector (1970 to 1972) at Sikkim and second time in Northern Sector (Leh-Drass from 1975 to 1978). He was again posted in the Eastern Sector at Tanga Valley Field Area and due to Army Service he suffered with the disease “**HYPERTENSION**” affected by stress and strain of Military Service. The claim for disability element of disability pension having been denied, the present petition has been filed.

2. In reply, the respondents have come out with the case that the disability suffered by the petitioner is neither attributable to nor aggravated by military service. The petitioner having been retired on completion of tenure can be granted disability element of pension under the provisions of Regulation 48 of Pension Regulations for the Army 1961, provided he fulfils the twin eligibility conditions as stated therein. The assessment made by the Release Medical Board is only recommendatory in nature and is subject to review by the competent Medical authorities as stipulated in Rules 17(a) and 27(c) of the Entitlement Rules to Casualty Pensionary Awards to the Armed Forces Personnel, 1982. The petitioner was brought before the Release Medical board at the time of his retirement from service and it was found that he was suffering with two disabilities (i) **‘PRIMARY HYPERTENSION’** (ii) **‘OBESITY’**. The Medical Board found that none of the disabilities suffered by the petitioner is held either attributable to or aggravated by military service.

3. Heard the learned counsel for the parties and perused the record.

4. With the assistance of the learned counsel for the parties, we have examined the proceedings of the Release Medical Board dated 10th April, 2002. The Medical Board has found the disability **“PRIMARY HYPERTENSION (401)”** in their report to the extent of 30% for life. It has been found that the disability ‘Primary

Hypertension' is aggravated due to stress and strain of service as per AFMSF-15 dated 15th April, 1997.

5. The learned counsel for the petitioner submits that in view of these facts, the petitioner is entitled to get the disability pension as the disease “**HYPERTENSION**” is one of those diseases lying in schedule of the Rules ‘1’ “affected by stress and strain of service” vide Entitlement Rules for Casualty Pensionary Awards, 1982. We were taken to the Annexure III to Appendix II which contains classifications of diseases. Under the Heading “ Diseases affected by stress and strain”, “**HYPERTENSION (BP)**” is one of such diseases. Learned counsel for the petitioner submits that controversy is squarely covered by the judgment of Hon’ble the Apex Court in **Dharamvir Singh Vs. Union of India & others (2013) 7 SCC 316** and also by this Tribunal in **OA 297 of 2011 Sqn. Ldr. S.P.Malik (Retd) Vs. Union of India & others**, decided on **08.03.2011**. Learned counsel for the respondents, on the other hand, submits that the opinion of the Medical Board is final, no interference in the present case is called for.

6. Considering the respective submissions made by learned counsel for the parties and perusing the record, it is not in dispute that the petitioner did not have “**HYPERTENSION**” when he joined the service. After commission in the Army the said disease was onset in the month of April 1997. The disability pension to the petitioner has been denied although in the opinion of the Medical Board carried out at

the time of discharge of the petitioner, the disease “ **PRIMARY HYPERTENSION**” was held attributable due to service. In this factual situation, as found in the case of **Dharamvir Singh** (supra), as per Rules 5 and 9 of ‘Entitlement Rules for Casualty Pensionary Awards, 1982’, the petitioner is entitled for presumption and benefit of presumption in his favour. The relevant paragraphs ‘32 and 33’ from the judgment in **Dharamvir Singh’s** case are reproduced hereunder :

32. In spite of the aforesaid provisions, the Pension Sanctioning Authority failed to notice that the Medical Board had not given any reason in support of its opinion, particularly when there is no note of such disease or disability available in the service record of the appellant at the time of acceptance for military service. Without going through the aforesaid facts the Pension Sanctioning Authority mechanically passed the impugned order of rejection based on the report of the Medical Board. As per Rules 5 and 9 of ‘Entitlement Rules for Casualty Pensionary Awards, 1982’ , the petitioner is entitled for presumption and benefit of presumption in his favour. In absence of any evidence on record to show that the appellant was suffering from “Generalised seizure (Epilepsy)” at the time of acceptance of his service, it will be presumed that the appellant was in sound physical and mental condition at the time of entering the service and deterioration in his health has taken place due to service.”

33. As per Rule 423 (a) of General Rules for the purpose of determining a question whether the cause of a disability or death resulting from disease is or is 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 service/active service area or under normal peace conditions. “Classification of diseases’ have been prescribed at Chapter IV of Annexure I ; under paragraph 4 Post traumatic epilepsy and other mental change resulting from head injuries have been shown as one of the diseases affected by training, marching, prolonged standing etc. Therefore, the presumption would be that the disability of the appellant bore a casual connection with the service condition.”

7. The learned counsel for the respondents could not place any material before us to show its non applicability to the facts and circumstances of the case. We are of the view that the aforesaid contention of the petitioner’s counsel in view of **Dharamvir Singh’s**

case (supra) is well founded. It may be added here that the defence taken by the respondents in their written statement to deny the disability pension is that the petitioner then was posted at a peace station i.e. Mathura. The said circumstance is not, at all, germane to deny the disability pension (vide para 33) reproduced above.

8. The petitioner was discharged on completion of tenure on 30th November, 2002 and he filed a belated appeal raising grievance for non grant of disability element of disability pension. The said appeal has been dismissed by the order dated 22nd June, 2015. Since the appeal was time barred, the actual benefits of the present judgment are restricted to three years preceding the date of filing of the present petition i.e. 13th April, 2015.

9. The respondents are directed to make necessary calculations, and make payment to the petitioner, within a period of three months from the date of receipt of certified copy of this order by learned counsel for the respondents failing which the amount shall carry interest at the rate of 10% per annum from the date of order.

10. The petition stands allowed accordingly.

(Lt Gen DS Sidhu (Retd))

(Justice Prakash Krishna)

27.04.2016

Raghav

Whether the judgment for reference to be put on internet-Yes/No