

COURT No.2  
ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

B..

OA 581/2018

Ex Hav Subhash Chand  
VERSUS  
Union of India and Ors.

..... Applicant

..... Respondents

For Applicant : Mr. S M Dalal, Vinod Kataria, Manoj kr  
Gupta, Advocates  
For Respondents : Dr. Vijendra Singh Mahndiyan, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)  
HON'BLE LT GEN P. M. HARIZ, MEMBER (A)

ORDER  
14.02.2024

Vide our detailed order of even date we have allowed the OA 581/2018. Learned counsel for the respondents makes an oral prayer for grant of leave to appeal in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007 to assail the order before the Hon'ble Supreme Court.

After hearing learned counsel for the respondents and on perusal of order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order to grant leave to appeal. Therefore, the prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)  
MEMBER (J)

(LT GEN P. M. HARIZ)  
MEMBER (A)

AP

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**HON'BLE MS JUSTICE ANU MALHOTRA, MEMBER (J)**

**HON'BLE LT GEN P M HARIZ, MEMBER (A)**

**ORDER**

This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant, a retired Hav of the Army, who is aggrieved by the rejection of his claim for disability pension by the respondents vide order dated 21.11.2017.

2. The applicant, having been found medically and physically fit, was enrolled in the Indian Army (Corps of Signal) on 27.08.1980 and was discharged from service on 31.08.2004. At the time of discharge, the RMB held on 07.04.2004 placed the applicant in permanent low medical category i.e. S1H1A1P2 (P) E1 for the disability "Essential Hypertension"

and assessed it @ 11-14 % for life and opined the same as being 'neither attributable to nor aggravated by military service' (NANA). The initial claim for disability pension of the applicant was rejected vide letter dated 07.02.2005. It is the applicant's case that the applicant applied for certain documents through RTI Act, 2005 vide application dated 12.07.2017 which were replied by the respondents vide letter dated 26.07.2017. Thereafter, the applicant preferred the first appeal on 20.09.2017. However, the applicant was informed by the impugned letter dated 21.11.2017 that no action could be taken on his first appeal dated 20.09.2007 since it had been filed after the stipulated time. Hence, this OA. In the interest of Justice, in terms of Section 21(1) of the AFT Act, 2007, we take up this OA for consideration.

3. The learned counsel for the applicant submitted that the law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of **Dharamvir Singh v. Union of India & Others** reported in (2013) 7 SCC 316. The learned Counsel for the applicant has also relied on **Union of India & Others v. Rajbir Singh** (2015) 12 SCC 264 wherein it was held that -

***"15. The legal position as stated in Dharamvir Singh's case (supra) is, in our opinion, in tune with the Pension Regulations, the Entitlement Rules and the Guidelines issued to the Medical Officers. The essence of the rules, as seen earlier, is that a member of the armed forces is presumed to be in***

***sound physical and mental condition at the time of his entry into service if there is no note or record to the contrary made at the time of such entry. More importantly, in the event of his subsequent discharge from service on medical ground, any deterioration in his health is presumed to be due to military service."***

4. Further, learned counsel for the applicant submitted that as per Rule 5 of the Entitlement Rules for Causality Pensionary Awards, 1982 a member is presumed to have been in sound physical and mental condition upon entering service except to physical disabilities noted or recorded at the time of entrance. Further, Rule 14 (b) of the aforesaid Rule provides that 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.

5. Per contra, learned counsel for the respondents took us through the RMB proceedings and submitted that under the provisions of Rule 179 of Pension Regulations for the Army 1961 (part-1), the condition for grant of disability pension is *"An individual retired/discharge on completion of tenure or on completion of service limits or on completion of terms of engagement or on attaining the age of 50 years (irrespective of their period of engagement), if found suffering from a disability attributable to or aggravated by military service and recorded by Service*

*Medical Authorities, shall be deemed to have been invalidated out of service and shall be granted disability pension from the date of retirement, if the accepted degree of disability is 20 percent or more, and service element if the degree of disability is less than 20 percent"..*

Since the disability of the applicant was assessed at less than 20 percent, the rejection is justified and in order as per the policy in vogue, the counsel prayed that the OA be dismissed.

6. Having heard the rival submissions and perused the records, the question which arises for our consideration is - Whether the disability of the applicant vis 'Essential Hypertension' is attributable to or aggravated by military service which entitles the applicant for disability pension?

7. In so far as the disability of 'Essential Hypertension' is concerned, the RMB has assessed the disability @ 11-14% for life whereas the 'Guide to Medical Officers (Military Pension), 2002, states that it cannot be assessed less than 30% for life. 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 v. Union of India and others** (2013) 7 SCC 316, the Entitlement Rules for Casualty Pensionary Awards, 1982, and observations in para-28 of the said verdict to the effect:-

**"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."*

8. Further as per Chapter VI of the 'Guide to Medical Officers (Military Pension), 2002 at para-43, it is provided as under:-

*"43. Hypertension – 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 (e.g. nephritis), 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 arisen or become worse in service, the question whether service compulsions 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.***

***Hypertension generally arising in close time relationship to service in field area, active operation area, war like situation both in peace and field area, counter-insurgency areas and high altitude areas are acceptable as aggravated when exceptional stress and strain of service is in evidence. 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. Aggravation can be considered taking into account the duration of service in active operational areas and sector profile."***

9. It has, already been observed by this Tribunal in a catena of cases that peace 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.



10. Since the applicant was discharged from service on 31.08.2004, Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 1982 are applicable. The relevant Paras of Entitlement Rules, 1982 read as under:-

***5. The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions:-***

***Prior to and during service***

***(a) A member is 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.***

***(b) In the event of his subsequently being discharged from service on medical grounds any deterioration in his health which has taken place is due to service.***

***6. Disablement or death shall be accepted as due to military service provided it is certified by appropriate medical authority that:-***

***(a) The disablement is due to a wound, injury or disease which-***

***(i) is attributable to military service, or***

*(ii) existed before or arose during military service and has been and remains aggravated thereby. This will also Include the precipitating/hastening of the onset of a disability*

*(b) The death was due to or hastened by-*

*(i) a wound, injury or disease which was attributable to military service ; or*

*(ii) the aggravation by military service of a wound, injury or disease which existed before or arose during military service.*

*7. Where there is no note in contemporary official records of a material fact on which the claim is based, other reliable corroborative evidence of that fact may be accepted.*

*8. Attributability/aggravation shall be conceded if causal connection between death/disablement and military service is certified by appropriate medical authority.*

**Onus of proof**

*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.*

### **Post Discharge Claims**

***10. Cases in which a disease did not actually lead to the member's discharge from service but arose within 10 years thereafter, may be recognized as attributable to service if it can be established medically that the disability is a delayed manifestation of a pathological process set in motion by service conditions obtaining prior to discharge and that if the disability had been manifest at the time of discharge the individual would have been invalided out of service on this account.***

### **Diseases**

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

***(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 the acceptance on the best 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 of the 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.***

***15. The onset and progress of some diseases are affected by environmental factors related to service conditions, dietic compulsions, exposure to noise, physical and mental stress and strain. Disease due to infection arising in service, will merit on entitlement of attributability. Nevertheless, attention must be given to the possibility of pre-service history of such conditions which, if approved, could rule out entitlement of attributability, but would require consideration regarding aggravation. For clinical description of common diseases reference shall be made to the Guide to Medical Officers (Military Pensions) 1980, as amended from time to time. The classification of diseases affected by environmental factors in services is given in Annexure-III to these rules.***

***19. Aggravation: 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."***

11. The applicant served in the Indian Army for 24 years and the onset of the disability of "Essential Hypertension" was in March 2002, i.e. after 22 years of long service, whilst posted in a field area as per his posting profile. Even prior to the onset of the disability in March 2002, the applicant had been posted thrice in field areas. In terms of para-43 of Chapter VI of the 'Guide to Medical Officers (Military Pension), 2002 it is stipulated that in certain cases the onset of the disability has been reported after long and frequent spells of service in Field / HAA / Active operational areas and that the applicant was posted in field areas thrice before the onset of the disability contracted in March 2002. The accumulated stress and strain of such a long military service on the applicant cannot be overlooked.

12. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is entitled for disability element of pension in respect of disability 'Essential Hypertension'. Accordingly, we allow this application holding that the applicant is entitled to disability element of pension @ 30% 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.

13. In view of the above, the OA is allowed. The disability of the applicant is held as aggravated by military service. The applicant is entitled to get disability pension @30% for life to be rounded off to 50% from 01.06.2007. However, in view of the law laid down in **Union of India and Ors.** Vs. **Tarsem Singh** [2009 (1) AISLJ 371], arrears will be restricted to three years prior to the date of filing of this OA, i.e., 16.03.2018.

14. The respondents are thus directed to calculate, sanction and issue the necessary corrigendum PPO to the applicant within three months from the date of receipt of a certified copy of this order, failing which the respondents shall be liable to pay interest @ 6% per annum till the date of actual payment.

Pronounced in the open Court on this day of 14 February, 2024.

**[LT GEN P.M. HARIZ]**  
**MEMBER (A)**

**[JUSTICE ANU MALHOTRA]**  
**MEMBER (J)**

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