

was discharged from service with interest on the arrears @12% p.a.

(c) The cost of the application.

(d) Any other relief (s) as the Hon'ble Tribunal may deem fit and proper.

(e) In the interim; the operation of the impugned letter dated 22.07.2019 be stayed/suspended and to declare that the pendency of the O.A. shall not be a bar for the respondents to grant disability pension to the applicant.

Brief Facts of the Case

2. The applicant was initially enrolled in the Army Medical Corps on 15.02.1984 and, discharged w.e.f. 30.06.2005 (AN) and granted service pension for life. Thereafter, the applicant was enrolled in DSC on 07.07.2009 and did not opt to count his former service towards DSC service. The applicant was initially placed in a temporary lower medical category P3 (T-24) w.e.f. 16.10.2015 for the disability 'CNS (INV) TRANSIENT ISCHEMIC STROKE (TIA)' and thereafter was placed in permanent lower medical category P2 (P) w.e.f. 16.09.2016 for the same disability. Furthermore the Graded Specialist Medicine, MH Panagarh in his medical opinion dated 13.10.2018 recommended the applicant to continue in LMC P2(P) for Transient Ischemic Stroke. However, the Specialist (Medicine) vide his opinion dated 29.01.2019

recommended the applicant to be released from service as being unfit for duty. Subsequently, DSC Records, vide Letter No. CA-1/1612/CTE/DO/Ser-346/2018 dated 26.10.2018 promulgated the discharge order discharging the applicant w.e.f. 31.07.2019 as he did not meet the eligibility criteria for further extension of service. Furthermore, the RMB report dated 06.02.2019 held his disability CNS (INV) TRANSIENT ISCHEMIC STROKE (TIA) (G 45.9) @ 20% for life with net assessment qualifying for disability pension as NIL for life being neither attributable nor aggravated (NANA) by service. Accordingly, he was discharged from DSC service w.e.f. 31.07.2019 under the provisions of Army Rule 13 (3) item III (i) after rendering 10 year and 25 days of qualifying service for which he was paid service gratuity and death-cum-retirement gratuity. Thereafter, on 22.07.2019 vide letter No. Pen/DP/T-3/4357672H dated 22.07.2019 it was communicated to the applicant that he was not entitled to disability element in terms of Regulation 179 of the PRA 1961, Part-I on account of his disability CNS (INV) TIA being NANA.

3. Thereafter, the applicant wrote letters dated 04.10.2019 and 13.01.2020 addressed to DSC Records, seeking medical allowance on account of his disability. Subsequently, Respondent No. 2 vide letter No.

Pen/DP-Pet/4357672H/SR dated 12.02.2020 in reference to the petition of the applicant dated 06.11.2019 stated that he was not entitled to disability pension as his disability ID CNS (INV) Transient Ischemic Stroke was NANA. The letter further stated that the applicant had not filed any appeal against the order dated 22.07.2019, and that there was a delay of more than 6 months in filing the same, however, if he desired to prefer an appeal, he had to do so immediately. In lieu of this, the applicant submitted an appeal dated 28.02.2020 to the AG's Branch PS-4, which is still pending. Hence this OA.

Arguments by the Counsel for the Applicant

4. The counsel for the applicant placed reliance on Regulation 48(b) & Regulation 179 of Pension Regulations for the Army, 1961, (Part-I) and Regulation 81(b) of Pension Regulations for the Army, 2008, (Part-I) and additionally stated that since no specific reasons were recorded by the Medical Board as to why the medical condition of the applicant was not deemed to be attributable to service, showed lack of proper application of mind by the Medical Board and as such, it was liable to be presumed that the disease arose during the period of military service and the same was to be held as attributable to service.

5. The counsel also placed reliance on Rule 4, 5, 9, 10, 11 & 14 (b) of the Entitlement Rules For Casualty Pensionary Awards, 1982 and vehemently asserted that the applicant, at the time of entry into service, was of sound physical and medical condition and there was nothing on record to show that the applicant was suffering from any disease or disablement prior to joining military service. Also there was no medical opinion to hold that the disease could not have been detected on medical examination prior to acceptance for service. It was further stated that the medical condition of the applicant developed subsequently while in service and the same was deemed to be attributable or aggravated by military service.

6. Moreover, the counsel vehemently asserted that by virtue of letter dated 12.02.2020 sent by Respondent No. 2, the applicant was granted further scope to prefer an appeal to the AG's Branch and the applicant had submitted his appeal dated 28.02.2020 addressed to Respondent No. 4, but the same had not yet been disposed off and therefore, the present O.A. was also maintainable against non-consideration of the said appeal in terms of Section 21(2)(b) of the AFT Act, 2007. Additionally, the counsel explained that the issue of delay became redundant and otiose when the Hon'ble High Court of Meghalaya by order dated

15.04.2021 had allowed the applicant to withdraw his writ petition with liberty to approach the AFT.

7. The counsel explained that the applicant had approached the Hon'ble High Court of Meghalaya at Shillong by filing WP(C) No. 188 of 2020 and the same was withdrawn by order dated 15.04.2021 with liberty to approach the Tribunal and further emphasised that the provision for grant of disability pension was a beneficial provision and should be interpreted liberally in favour of the applicant. The counsel also stated that denial of disability pension to the applicant was arbitrary and illegal and violative of extant rules and the settled position of law including Article 14 and 21 of the Constitution of India.

8. The counsel contended that the written statement filed by the Respondent No. 1 and 2 were liable to be rejected as it was devoid of any verification as mandated under Rule 12(2) of the Armed Forces (Procedure) Rules, 2008.

9. The counsel also vehemently denied that 15 years of qualifying service was mandatory for service element of disability pension or that the applicant was not entitled to service element of disability pension as the Hon'ble Supreme Court in **Union of India & Ors. Vs. Manjeet**

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Singh, [2015 (12) SCC 275] had upheld the grant of disability pension in respect of the claimant with 1 year service.

10. The Counsel further placed reliance on the judgements of the Hon'ble Supreme Court in the following cases:

(i) **Dharamvir Singh** Vs. **Union of India and others** [(2013) 7 SCC 316];

(ii) **Sukhvinder Singh** Vs. **Union of India** [(2014) 14 SCC 364];

(iii) **Union of India & another** Vs. **Rajbir Singh** (Civil Appeal No.2904 of 2011) and;

Arguments by the Counsel for the Respondents

11. The counsel for the respondents vehemently asserted that the applicant's claim for disability element was reviewed and rejected by the adjudicating authority under relevant rules and policies and consequently, the respondents were justified in denying the disability pension. Furthermore, the counsel explained that disability pension comprises two elements: service element and disability element and that the service element of disability pension is equivalent to service pension, requiring a mandatory period of 15 years of qualifying service. But, as the applicant was discharged after completing initial terms of

engagement of 10 years, with a disability held as NANA by military service, he became ineligible for the disability element. Additionally, the counsel submitted that the disability element is a casualty pensionary award granted based on specific eligibility criteria outlined in Pension Regulations and not a statutory entitlement.

12. The counsel further asserted that the DSC personnel were enrolled for an initial fixed term of 10 years as per policy issued by the Government of India, Min of Defence vide Letter No A/00592/DSC-2/813-III/D(GS-IV) dated 5.12.1981 and was extendable based on eligibility criteria such as discipline, medical category, age, and ACR etc. But, the applicant in the instant case was discharged upon completion of terms of engagement, being in a permanent low medical category as recommended by the Release Medical Board. Moreover, DSC does not have the provision to keep low medical category personnel in service by giving him a shelter appointment.

13. The counsel emphasized that the alleged medical fitness at the time of enrolment was irrelevant, as the medical examination test at the time of entry was not exhaustive, but its scope was limited to broad physical examination as stated in Rule 5 of the Entitlement Rules, 2008 and therefore, some dormant diseases could remain undetected.

Moreover, the counsel submitted that certain diseases may manifest later in life, regardless of military service and mere manifestation during service does not establish attributability to or aggravation by military service.

14. The counsel further stated that Rule 53 (a) of Pension Regulation for the Army, 2008 (Part-I) and not Rule 179 of Pension Regulations for the Army, 1961 (Part-I) would be applicable in the instant case and he further submitted that Rule 4 and 14 of Entitlement Rules for the Casualty Pensionary Awards, 1982 were irrelevant to the instant case as the applicant was discharged from DSC service on completion of his terms of engagement and not discharged on medical grounds.

15. Lastly, the counsel emphasised that since the applicant had not preferred the appeal against rejection of disability element within the stipulated time and as the repeated representations for the grant of disability element cannot be considered due to policy constraints. Therefore, without availing the statutory/departmental remedy available no legal right was vested with the applicant to file the present OA. The counsel in this regard placed reliance on the judgement of the Tribunal in the case of **Col (Retd) Satinder Sing Vaid Vs UOI and Others** (OA No 1569/2018) decided on 05.02.2019.

Consideration

16. We have heard Ld. Counsels for both the sides and perused the material placed on record and we find that the applicant while serving in a field area with 1131 DSC Pl att to 56 Inf DOU, was placed in low medical category P2 (Permanent) w.e.f. 16.09.2016. The latest policy issued on terms and conditions of service for discharge of DSC (GD) personnel issued by Dy Directorate General DSC GS Branch, IHQ of MoD vide letter No. A/00585/LMC/Policy/DSC-1/57 dated 20.11.2018 is reproduced as under:

xxx

xxx

xxx

AMENDMENTS TO THE TERMS AND CONDITIONS OF SERVICE FOR DISCH OF DSC (GD) PERS

1. *Approval of the Competent Authority for amendments to the terms and conditions for disch of JCOs/OR in DSC has been accorded by IHQ of MoD (Army) vide letter No B/10185/DSC/MP-3 dated 03 May 2018, fwd vide this Dte letter No A00585/LMC/Policy/DSC-1/43 dt 28 May 2018. The policy is further reproduced as under:*

(a) **Initial Contractual Period.** All DSC pers will serve in DSC till the period of their contract (10 yrs for OR and 05 yrs for JCOs as the case may be). However, **subsequent extension will be accorded only to pers who are found in SHAPE-I on screening.**

(b) xxx

(c) **Permt LMC Pers.** Permt LMC pers (irrespective of SHAPE factor) in DSC will be disch from service at any time during service in accordance with the provisions of AR-13 (3) Item 1 (ii) (a) (i) and 13 (3) Item III (a) (i) as no sheltered apt is available in DSC.

(d) xxx

2. xxx

3. Guidelines to disch the Indl under clause 1 (b) & (c) are as under:

(a) A Show Cause Notice (SCN) will be served by CO/OC to the Indl(s) on 01 Apr 2019 who are placed in LMC (Permt) prior to that dt and thereafter imdt on any Indl being placed in LMC (Permt).

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(b) On receipt of reply from the Indl, CO/OC will issue reasoned speaking order to the Indl conveying his decision.

4. xxx

5. xxx

6. On receipt of disch order from DSC Records, it will be the responsibility of unit concerned to send the Indl (s) to Military Hospitals with a written request duly mentioning specifically the requirement of conducting only a **Release Medical Board** consequent upon discharge order from DSC Records. Individual will not be upgraded/reviewed under any circumstances as per AO 3/2001. **On approval of the Release Medical Board, the Indl will be discharged as soon as possible after completing his all docu formalities.**

7. This order will be applicable only for DSC (GD) and will be **effective from 01 Apr 2019**. This supersedes all earlier orders issued on the subject.

8. xxx

9. xxx

10. xxx

xxxxx

17. In the instant case, we find that applicant was downgraded to low medical category P2 (permanent) and was discharged from service in accordance with Army Rule 13 (3) Item III (i) i.e upon completion of his terms of initial engagement of service of 10 years. Furthermore, in view of the policy letter quoted above which states that all DSC personnel will serve in DSC till the period of their contract i.e. 10 years for ORs and 5 years for JCOs and subsequent extension will be accorded only to pers who are found in SHAPE-I on screening. Therefore, in the present case the applicant had completed his initial period of contract on 07.07.2019 and the respondents were right in not granting further extension of service to the applicant in accordance with the policy dated 20.11.2018

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due to his low medical category. In DSC, General Duty (GD) personnel are meant for sentry/guard duties and there being no sheltered appointment available for a GD soldier except a sentry/guard duties, low medical category personnel cannot be provided with any other type of duties/sheltered appointment, therefore, respondents had rightly taken the decision to discharge the applicant upon completion of terms of service w.e.f. 31.07.2019 as per policy on the subject.

18. In light of the above facts the pertinent issues which arose for our consideration in this particular case are as follows :-

(a) Whether sufficient grounds exist to overrule the findings of the expert medical body i.e the RMB and grant Disability element of Pension to the applicant suffering disability of 'CNS (INV) TRNASIENT ISCHEMIC STROKE (TIA)' @20% ?.

19. In the instant case the applicant suffers from the disability of 'CNS (INV) TRNASIENT ISCHEMIC STROKE (TIA)' @20% which has been classified as NANA. The said disability is mentioned in Chapter VI of the 'Guide to Medical Officers (Military Pension), 2008 at para-14, and its nature is explained as under:

*14. **Cerebrovascular Accident (Stroke).** Stroke or cerebrovascular accident is a disease of acute onset leading to neurological deficit such as hemiplegia caused by intravascular events. Cerebral infarction following thrombosis and embolism accounts for a large number of cases whereas*

cerebral hemorrhage is the cause only in a few cases. Atherosclerotic thrombosis is of gradual onset and any permanent neurologic deficit is preceded by TIAs (Transient Ischaemic Attacks).

TIAs result mostly from embolism of thrombus or platelet material from an extra cerebral artery (Internal carotid) and some times due to stenosis of a major artery, altering hemodynamics in the event of change of posture and exertion.

Mural thrombus from the heart in IHD and SBE and ulcerated plaques of atherosclerotic arteries are the principal source of embolism.

Among other causes, physical trauma (heat) and mechanical trauma and arteritis associated with infection like TB, connective tissue disorder (PAN, SLE) can give rise to stroke. Service in HAA can precipitate stroke by virtue of hypercoagulable state.

About half of the strokes caused by cerebral hemorrhage are due to subarachnoid hemorrhage from rupture of a berry aneurysm (Circle of Willis) and less commonly due to arteriovenous malformation. Remaining cases of hemorrhage in cerebral substance are due to rupture of small perforating arteries/arterioles weakened by hypertension or atheromatous degenerations.

The majority cases exhibit greater degree of hemiparesis, dysphasia (if dominant hemisphere is involved), hemianaesthesia and hemianopia. In some cases ataxia, cranial nerve palsy, nystagmus may be the presentation depending on the territory of brain involved.

It will be appropriate to award attributability if there is sufficient evidence of infection underlying the disease and physical and mechanical trauma related to service.

Aggravation can be conceded when atherosclerosis is the underlying cause and exceptional stress and strain of service is in evidence irrespective of his service in peace or field.

It nearly takes 6 months for complete recovery. However, cases showing no sign of improvement up to two years are unlikely to improve further and should be labelled as permanent.

20. Since the Applicant was discharged from service on 31.07.2019, Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008, issued as Appendix to Ministry of Defence Letter No.1(3)/2002/D(Pen/Pol) dated 18.1.2010, are applicable in the present case. The relevant paras of latest Entitlement Rules, 2008 reads as under:

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"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:*

(a) *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) *XXX*

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."

21. 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). XXX "

22. The applicant had served in the Indian Army for 21 years and in the DSC for 10 years, the onset of the disability of 'CNS (INV) TRNASIENT ISCHEMIC STROKE (TIA)' was in September 2015, whilst posted in a field area as per his posting profile and prior to the onset of the disability the applicant had been posted thrice in peace areas. 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. In terms of para-14 of Chapter VI of the 'Guide to Medical Officers (Military Pension), 2008 it is stipulated that it will be appropriate to award attributability if there is sufficient evidence of infection underlying the disease and physical and

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mechanical trauma related to service and aggravation can be conceded when atherosclerosis is the underlying cause and exceptional stress and strain of service is in evidence irrespective of his service in peace or field. The accumulated stress and strain of such a long military service on the applicant cannot be overlooked.

23. 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. 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 'CNS (INV) TRANSIENT ISCHEMIC STROKE (TIA)'. Accordingly, we allow this application holding that the applicant is entitled to disability element of pension @ 20% 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.

24. In view of the above, the OA is allowed. The disability of the applicant is held as attributable to military service. The applicant is

entitled to disability element @20% for life to be rounded off to 50% from 31.07.2019.

25. 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.

26. No order as to costs.

27. Pending miscellaneous application(s), if any, stands closed.

Pronounced in open Court on this ^{28th} day of May, 2024.

**(JUSTICE RAJENDRA MENON)
CHAIRPERSON**

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

/Ashok/