

ARMED FORCES TRIBUNAL
REGIONAL BENCH
GUWAHATI
(Through Video-conferencing)

O.A. NO.38 of 2018

Ex Hav BD Daniel Anal **... Applicant**
Versus
Union of India & Ors. **... Respondent**

For applicant : **Mr. A R Tahbildar, Advocate**
For the Respondents : **Ms. Dipanjali Bora, Advocate**

CORAM:

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN PM HARIZ, MEMBER(A)

ORDER

1. This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, by the applicant who is aggrieved by the impugned communication dated 25.09.2017 vide IHQ of MoD (Army) letter no. B/40502/202/2017/AG/PS-4 (Imp-II) rejecting applicant's claim for disability pension for the disability "PRIMARY HYPERTENSION" and granting of rounding off benefit for the composite disability from 50% to 75% with effect from the date of discharge from service with arrears and interest.

Brief Facts of the Case

2. The applicant was enrolled in the Indian Army as Sepoy on 13.10.1987 after being found physically and mentally fit. In July 2005, the applicant was diagnosed with "NEUROCYSTICERCOSIS" and in March 2006, the applicant was diagnosed with "PRIMARY HYPERTENSION" and he was placed in permanent low medical

category P3(P) by the Release Medical Board held on 10.10.2007 for the disability "NEUROCYSTICERCOSIS" attributable to military service with degree of disability @20% and "PRIMARY HYPERTENSION" not attributable to military service with degree of disability @30% with composite assessment of disability at 50% for life thereby recommending his discharge from service. Thereupon, applicant was discharged from service at his own request on compassionate grounds on completion of 19 years, three months and 18 days in low medical category P3(P) on 31.01.2007. Post retirement, the applicant was granted disability pension for disability "NEUROCYSTICERCOSIS" but was denied disability pension for the disability "PRIMARY HYPERTENSION" by the authority vide PPO dated 09.08.2010 on the ground that the disease disability "PRIMARY HYPERTENSION" is neither attributable to nor aggravated by military service.

3. The applicant preferred an application for grant of disability pension with rounding off benefit on 23.9.2016 but this was rejected by the authorities vide letter dated 07.10.2016. Subsequently, the applicant preferred an OA in AFT(RB) Guwahati, and the AFT (RB) vide order dated 20.03.2017 in OA No 74/2016 granted rounding off benefits in disability "NEUROCYSTICERCOSIS" and also directed respondents to decide the representation dated 29.03.2016 treating it as first appeal by the appellate authorities, within three months of receipt of the order. Appellate authorities rejected the appeal vide their order No B/40502/202/2017/AG/PS-4 (Imp-II) dated 25.09.2017 and advised the applicant to prefer a

second appeal if not satisfied with the above decision. The second appeal was submitted to the authorities on 09.05.2018 which was also rejected by the authorities vide their letter dated 14.12.2018. Hence, this OA.

Arguments by Counsel for the Applicant

4. The learned counsel for the applicant submitted that the applicant's disability was diagnosed for the first time after 16 years from the date of enrolment. He was found to be fit in the medical check-up carried out annually for the initial 16 years of his service, and that therefore the stress and strain of service had influenced the development of the disease. He further added that though a disease could be congenital and genetic disease, and to that extent, even if the disease cannot be attributed to service, its aggravation is certainly attributable to the rigours of military service.

5. Learned counsel then took us through the Entitlement Rules 1982 and the relevant aspects from the Guide to Medical Officers (Military Pension), 2002 and stated that a member of armed forces is presumed to be in sound physical and mental condition upon entering service, if there is no note or entry to the contrary in his records and that in order to deny disability pension, it must be affirmatively proved that the disease had nothing to do with the service. Burden to prove such disconnect lies heavily on the employer.

6. Further, as per Rule 423(a), Chapter VIII of Guide to Medical Officers (Military Pension), 2002, it was 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. He further emphasised that it was however, essential to establish whether the disability or death bore a causal connection with the service conditions or not. That all evidence both direct and circumstantial should be taken into account and benefit of doubt, if any, should be given to the individual. The Counsel vehemently concluded that in the instant case, the service profile of the applicant clearly indicated the varied difficult terrain and sectors in which the applicant had served and thus the disability of hypertension was clearly attributable and aggravated by military service and that the applicant was therefore entitled to disability element also for hypertension.

Arguments by Counsel for the Respondents

7. Per contra, the learned counsel for the respondents submitted that on examination, the Medical board had opined that the disability of the applicant was not attributable to the military service nor had it been aggravated by military service. He further added that since the medical board was an expert body, its opinion is required to be given due weight, value and credence. The learned counsel then took us through the RMB proceedings (AFMSF-16) dated 16.10.2006 wherein at the time of discharge, the individual was placed in Low Medical Category S1H1A1P2(P)EI for the disabilities viz "NEUROCYSTICERCOSIS" which was assessed as being attributable to military service with degree of disability @ 20% and "PRIMARY HYPERTENSION" was assessed as not being attributable to military service with degree of disability @ 30%. The composite assessments for all disability was assessed

@ 50% for life. Disability pension claim in respect of "NEUROCYSTICERCOSIS" was sanctioned for life with effect from 01.02.2007 vide PPO No DE/0340/2010 dated 09.08.2010 which was rounded off from 20% to 50% by The Hon'ble AFT (RB), Guwahati vide Order dated 20.03.2017. Further, as per Hon'ble AFT (RB) Order dated 22.03.2017, the first appeal dated 23.09.2016 was examined by First Appellate Committee and the second disability vis "PRIMARY HYPERTENSION" was rejected as "Neither Attributable to Nor Aggravated by military service" vide their letter No B/40502/282/2017/AG/PS-4 (Imp-II) dated 25.09.2017. The second appeal was submitted to the authorities on 09.05.2018 which was also rejected by the authorities through letter dated 14.12.2018. The Counsel concluded that in the light of its complete consideration and rejection by various authorities, the OA deserves to be dismissed.

Consideration

8. Having heard both parties at length, the only issue that is to be adjudicated here is whether the second disability of the applicant vis "PRIMARY HYPERTENSION" is attributable to/ aggravated by military service which entitles the applicant for disability pension, in which case whether the applicant is entitled for rounding off of composite percentage of disability from 50% to 75% ?

9. The Release Medical Board dated 10.10.2006 while releasing the applicant in low medical category opined in Part V thereof to the effect:

Disability	Attributable to service (Y/N)	Aggravated by service (Y/N)	DETAILED JUSTIFICATION
NEUROCYSTICER COSIS	YES	NO	The disability is due to infection contacted during service
PRIMARY HYPERTENSION	NO	NO	Not connected with service.
<p>Note: 1. A disability "not connected with service" would be neither attributable nor aggravated by service.</p> <p>2. Did the disability exist before entering service: Dis 1&2- No</p>			

10. The Principal Bench of the AFT in OA 1825/2018- Col R R Panigrahi Vs Union of India & Ors, the issue as to whether the primary hypertension can be considered as aggravated if it occurs while in service in field area was considered and it has been held to the effect that:

"9. The issue in this case is as to whether "Primary Hypertension can be considered as aggravated if it occurs while serving in field areas. As per amendment to Chapter VI of 'Guide to Medical Officers (Military Pensions), 2008, at Para 43, Primary Hypertension will be considered aggravated if it occurs while serving in Filed Areas, HAA, CIOPS areas or prolong float service. The same reads as under:

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 hyperextension 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 aggravated must be considered. However, in certain cases the disease has been reported after long and frequent spells of services 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."

10. *Thus, in our view, "Primary Hypertension "can be considered as aggravated if it occurs while serving in field areas etc. Admittedly, the applicant was serving in modified filed area as mentioned in Board proceedings (AnnexureA-2), at the time of onset of the disease "Primary Hypertension"*

11. *Even otherwise, in the light of the relevant rules and the judgment of the Hon'ble Supreme Court rendered in Dharamvir Singh's case(supra), which has been followed in subsequent decision of the Hon'ble Supreme Court. In Dharmvir Singh's case, it has, inter alia been held as under:*

I. The question whether a disability is attributable to or aggravated by military service is to be determined under "Entitlement Rules for Casualty Pensionary Awards, 1982"

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

III. If no note of any disability or disease was made at the time of individual's acceptance be deemed to have arisen in the service.

IV. 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.'

11. On a consideration of submissions made on behalf of either side, and the law laid down vide the verdict of the Hon'ble Supreme Court in ***Dharamvir Singh vs Union of India & Ors*** and the verdict of the Principal Bench of the AFT in OA 1825 of 2018- *Col R R Panigrahi Vs Union of India & Ors*, and the factum that the non-existence of the ID of Hypertension at the time when the

applicant joined military service is not refuted by the respondents, the contention of the respondents that the disability of hypertension assessed by the Release Medical Board to be 30% as for life as *not being aggravated nor being attributable to military service* cannot be accepted. Moreover, it cannot be said that there is no stress or strain of service in military stations located in peace areas. Therefore, second disability of the applicant vis "PRIMARY HYPERTENSION" is held attributable to military service.

12. As far as the issue of broad banding of composite disability from 50% to 75% is concerned, at the time of discharge, the individual was placed in Low Medical Category S1 H1 A1 P2 (P) E1 for the disabilities viz "NEUROCYSTICERCOSIS" attributable to military service with degree of disability @ 20% and "PRIMARY HYPERTENSION" not attributable to military service with degree of disability @ 30%" with composite assessments for all disability @ 50% for life vide Release Medical Board Proceedings (AFMSF-16) dated 16.10.2006.

13. The correct calculation of composite disability as per rules will be as follows:

Disability	Assessment	Net assessment	Remarks
Disability 2	30%	30%	The disability with max percentage is to be considered first
Disability 1	20%	14%	
Composite Assessment		44%	Rounded off to 50%

Calculation

Disability 1 = 30% (the disability with max percentage)

Disability 2 (100-30) = $70 * 20/100 = 14\%$

Composite Assessment = $30+14 = 44\%$

The rounding of composite assessment of 44% will be 50%.

14. In the light of AFT (RB) Guwahati order dated 20.03.2017 in OA No 74/2016 which granted rounding off benefits for the disability "NEUROCYSTICERCOSIS from 20% to 50%, no further relief is required to be granted to the applicant, even when the disability of 'Hypertension' is considered as being aggravated by military service.

15. The OA is accordingly dismissed.

Pronounced in open Court on this 23rd day of March, 2023.

**(JUSTICE RAJENDRA MENON)
CHAIRPERSON**

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

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