C-NO

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

1. (Supplementary List)

OA 1031/2019
Ex Hav Rajendra Singh ..... Applicant
VERSUS
Union of India and Ors. ..... Respondents

For Applicant : Mr. J P Sharma, Advocate
For Respondents : Mr. Shyam Narayan, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
30.11.2023

Vide our detailed order of even date, we have allowed the OA 1031/2019. 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 our 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, prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

///CHANANA///

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HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

The applicant vide the present OA makes the following prayers:

> *"(a) To quash and set aside the impugned order dated 18.04.2019 as Annexure A-1 Impugned order.*
>
> *(b) Direct respondents to grant disability element of pension to the applicant by treating his disability "TYPE II DIABETES MELLITUS(E-11)" as attributable to or aggravated by military service as it has caused due to stress and strain of service as law already settled by the Hon'ble Supreme Court various cases in Dharamvir Singh Vs Union of India & Ors(2013) 7SCC 316, latest of UOI & Ors Vs Rajbir Singh(CA No.2904 of 2011 decided on 13.02.2015.) And/or*

(c) Direct respondents to grant disability element of Pension @2)% wef 01.01.2018 and further benefit of rounding off @20% to @ 50% w.e.f. 01.01.2018 to for life in terms of GoI, MoD letter dated 31.01.2001 and Civil Appeal No./418/2012 titled UOI & Ors Vs Ram Avtar vide judgment dated 10.12.2014 alongwith 10% annual interest till the payment be made, for which the applicant deserves.

(d) Issue any other appropriate order or direction which this Hon'ble Tribunal may deem fit and proper in facts and circumstances of the case"

2. The applicant was enrolled in the Army Service Corps(AT) of Indian Army on 25.11.1978 and discharged from service w.e.f. 30.11.1995 after rendering 16 years and 03 days of qualifying service. Thereafter, the applicant was re-enrolled in the Defence Security Corps (DSC) on 15.02.1997 and opted not to count his former service towards DSC service. On completion of his initial terms of engagement, the applicant was granted extension of service from time to time and finally upto the age of superannuation of 55 years i.e. on15.12.2015. In addition to this, the applicant was granted two years enhanced service from 16.12.2015 to 15.12.2017 and finally discharged from the services of the Defence Security Corps w.e.f. 31.12.2017 under the provisions of Army Rule 13(3) item III(i) after rendering 20 years and 294 days of qualifying service for which the applicant was granted second service pension for life. The applicant on being placed in Low

Medical Category P2(P) w.e.f. 17.02.2017 for the ID Type-II Diabetes Mellitus was brought before the duly constituted Release Medical Board which though assessed his disability @20% for life but opined the same to be neither attributable to nor aggravated by military service. The applicant's appeal for the grant of the disability element of pension was adjudicated and rejected by the Appellate Committee on First Appeal(ACFA) vide letter No.B/40502/184/2019/AG/PS-4(Imp-II) dated 18.04.2019 with an option to the applicant to prefer a second appeal within six months of the receipt of the communication. The applicant, instead of preferring his second appeal, filed the present OA. In the interest of justice, we consider it appropriate to take up the OA for consideration under Section 21(1) of the Armed Forces Tribunal Act, 2007.

CONTENTIONS OF THE PARTIES

3. The applicant submits that at the time of enrolment on 26.11.1978 in the Indian Army and on re-enrolment in the Defence Security Corps (DSC) on 15.02.1997, he was not suffering from any kind of disease and no note of any disease was made anywhere in his medical records/documents and the said ID occurred during service period in the month of September, 2016 while he was posted at 351 DSC Pl att to 39 Field Amn Depot after completion of 36 years of service.

4. The applicant has placed reliance on the verdict of the Hon'ble Supreme Court in ***Dharamvir Singh*** vs ***UOI & Ors*** (Civil Appeal No. 4949/2013) 2013 AIR SCW 4236, submitting to the effect it has been observed therein that whether the disability is 'attributable to or aggravated by military service' is to be determined under the "Entitlement Rules for Casualty Pensionary Awards 1982" as shown in Appendix-II, the Government of India, Ministry of Defence letter No 1(1)/81/D(Pen-C) dated 20.06.1996 and "General Rules of Guide to Medical Officer (Military Pensions) 2002 of which Para 423 deals with "Attributability to Service" with specific reliance on 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."

5. Reliance has also been placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in ***UOI & Ors. vs Rajbir Singh*** in Civil Appeal no. 2904/2011 dated 13.02.2015 (2015) 12 SCC 264 to contend to the effect that as laid down in ***Dharamvir Singh*** (supra), the respondents having not made any note of any disability at the time of induction of the applicant into service, the disease from which the applicant suffers has to presumed to have arisen due to military service and that the onus of proof lay not on him being an employee but on the

employer, the respondents, to establish that the reasons for the disability were other than the conditions of military service.

6. It has further been sought by the applicant that the disability element of pension @ 20% for life be rounded off to 50% in terms of the verdict of the Hon'ble Supreme Court in ***Union of India*** vs ***Ram Avtar*** decided on 10.12.2014 in Civil Appeal no. 418 of 2012 and also in terms of Letter No. 1(2)/97/D (Pen-C) dated 07.02.2001.

7. On behalf of the respondents, it is submitted that though the Release Medical Board assessed the disability of ID Diabetes Mellitus Type-II @20% for life but recommended the same as neither attributable to nor aggravated by Air Force service. The respondents further submit that the mere fact that a disease has manifested during military service does not *per se* establish attributability to or aggravation by military service and that certain hereditary constitutional and congenital diseases may manifest later in life, irrespective of service conditions and thus the applicant's disability of Type-II Diabetes Mellitus has no causal connection with military service as there is no close relation of disease with stress and strain of service

8. The respondents place reliance on Rule 53(a) of the Pension Regulations for the Army-2008(Part-I) and submit to the effect that in terms thereof 'an individual released/retired/discharged on completion of terms of engagement or on completion of service limits or on attaining the prescribed age irrespective to his period of engagement, if

found suffering from a disability attributable to or aggravated by military service and so recorded by the Release Medical Board, may be granted the disability element of pension in addition to service pension, if the accepted degree of disablement is assessed @20% or more. The respondents submit that in the instant case the duly constituted Release Medical Board comprising of medical specialists had assessed the disability of the applicant as neither attributable to nor aggravated by military service and thus the applicant is not entitled to any disability pension and thus the question of rounding off does not arise. The respondents further submit that non existence of disability prior to entering into service does not establish that the disease was developed in service as certain hereditary constitutional and congenital diseases may manifest later in life irrespective of service conditions. Furthermore, the respondents submit that the Appellate Committee vide their letter B/40502/184/2019/AG/PS-4(Imp-II) dated 18.04.2019 held to the effect:

> *"the ID is a metabolic disorder with a strong genetic preponderance and is therefore not attributable to service. Aggravation is conceded when the onset occurs while serving in Field/CI Ops/HAA, or if the individual is posted to such areas following onset. In the instant case, onset was in a peace station, and the individual continued to serve in the same station till his discharge from service. Hence, the ID is conceded as neither attributable to nor aggravated by military service in terms of Para 26, Chapter VI of GMO 2002, amended 2008 and ER 2008."*

and that the respondents thus submit that in terms of the prevailing rules and the policies, the applicant is not entitled for the grant of disability element of pension and there is no question of rounding off of the pension from 20% for life to 50% for life as prayed by the applicant.

ANALYSIS

Before proceeding further, it is essential to advert to the posting profile of the applicant and to the onset of the disability which is to the effect as per the RMB:-

PART-1

PERSONAL STATEMENT

"

1. Give details of service(P-Peace Or F-Field/Operation/Sea service									
S.No.	From	To	Place/ Ship	PF	S.No.	From	To	Place/ Ship	P/F
(i)	15.2.97	6.5.97	Kannur	P	(ii)	7.5.97	6.5.00	Allahabad	P
(iii)	7.5.00	8.2.02	Puari(HP	F	(iv)	9.2.02	30.4.05	Kanpur	P
(v)	1.5.05	4.5.08	Kolkata	P	(vi)	5.5.08	22.1.10	Kundru	F
(vii)	23.1.10	3.2.13	Agra	P	(vii)	4.2.13	30.8.13	Jhanshi	P
(ix)	31.8.13	3.10.15	Barmer	P	(x)	1.10.15	Till date	Bharatpur	P

"

"2. Give particulars of any diseases, wounds or injuries from which are your suffering.

Illness, wound injury	First Stated Date Place	Rank of Indl.	Where treated	Approximate dates and periods treated
(i) TYPE II DIABETES MELLITUS(E-11)	Sep 2016 Bharatpur(Raj)	Hav	MH Agra	Sep 2016 to till date
3. Did you suffer from any disability before joining the Armed Forces> If so give details and dates NO				
4.Give details of any incidents during your service, which you think caused or made your disability worse NIL				
5. Incase of wound or injury state how they happened and whether or not(a) Medical Board or Court of Inquiry was held(b) Injury Report was submitted...., NA				

"

9. The opinion of the Medical Board and the percentage of disablement is to the effect:

PART V

OPINION OF THE MEDICAL BOARD

"

Causal relationship of the Disability with service conditions or otherwise				
Disability	ATTRIBUTABLE TO SERVICE(Y/N)	Aggravated by service(y/N)	Not connected with service(Y/N)	Reason/cause/Specific condition and period in service
(a) TYPE II DIABETES MELLITUS(E-11)	NO	NO	YES	Metabolic disorder, onset of disability was in peace and there is no close time association with service in Fd Area vide Para 26 of Chapter VI of GMO-2008

What is present degree of disablement as compared with a healthy person of the same age and sex? (Percentage will be expressed as NIL or as follows(105%, 6-10%, 11-14% and thereafter in multiple of ten from 20 to 100%				
Disability(as numbered in Para 1 of Part IV	Percentage of disablement with duration	Composite assessment for all disabilities with duration (Max 100%) with duration	Disability qualifying for disability pension with duration	Net assessment qualifying for disability pension(Max 100%) with duration
a) TYPE II DIABETES MELLITUS (E-11)	20% for life	20% for life	Nil for life for disability Type II Diabetes Mellitus(E-11)	Nil for life

"

10. On a consideration of the submissions addressed on behalf of either side and the verdicts relied upon as well as the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel 2008 as in force w.e.f. 01.01.2008 the contentions raised on behalf of the respondents do not aid them in repelling the presumption raised in favour of the applicant in relation to the aspect of attributability or

aggravation of the medical disability having arisen or being aggravated due to the course of military service.

11. The verdicts of the Hon'ble Supreme Court in ***Dharamvir Singh vs Union of India & Ors*** decided on 02.07.2013 in Civil Appeal no. 4949 of 2013 and ***Union Of India & Anr*** vs ***Rajbir Singh*** decided on 13 February, 2015 Civil Appeal No. 2904 of 2011, stipulate specifically that a member of the Armed Forces is presumed to be in sound, physical and mental condition upon entering service if there is no note or record at the time of entrance and in the event of subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service. It is also laid down thereby vide the said verdicts of the Hon'ble Supreme Court that the onus of proof is not on the claimant (employee) and that the corollary is that the onus of proof for the condition for non-entitlement is on the employer and that a claimant has a right to derive benefit for any reasonable doubt and he is entitled for the pensionary benefits more liberally.

12. It is also essential to observe that the prayer for grant of the disability element of pension for the disability of 'Diabetes Mellitus' in C.A. 7368/2011 in the case of ***Ex. Power Satyaveer Singh*** has been upheld by the Hon'ble Supreme Court vide the verdict in ***UOI & Anr versus Rajbir Singh*** (Civil Appeal 2904/2011) dated 13.02.2015.

13. It is essential to observe that in OA 1532/2016 titled ***Cdr Rakesh Pande*** vs ***UOI & Ors.***, vide order dated 06.02.2019 of the AFT (PB), New

Delhi, the prayer made therein for the grant of disability element of pension in relation to the medical disability of 'NIDDM' and 'hyperlipidemia' assessed at 20% for NIDDM and 6-10% of hyperlipidemia, composite 20% for a period of 5 years in view of the verdict of the Hon'ble Supreme Court in ***Dharamvir Singh*** vs ***UOI & Ors*** (Civil Appeal No. 4949/2013) and in ***UOI & Ors. vs Rajbir Singh*** (2015) 12 SCC 264, was upheld for a period of 5 years, which vide judgment of the Hon'ble Supreme Court in Civil Appeal no. 5970/2019 titled as ***Commander Rakesh Pande vs UOI & Ors.,*** dated 28.11.2019, was upheld for life, it being a disability of a permanent nature.

14. In the case of OA 1532/2016 titled as ***Cdr Rakesh Pande*** vs ***UOI & Ors.***, the observations in relation to the grant of the disability element of pension as depicted in paras 8, 9, 10, 11 and 12 thereof were upheld by the Hon'ble Supreme Court in ***Commander Rakesh Pande*** (supra). The observations in paras 8, 9, 10, 11 and 12 of the decision of the AFT (PB), New Delhi in OA 1532/2016 were to the effect:-

> *"8. On the merits of the case, the respondents submit that the medical disability NIDDM is considered as a metabolic disorder resulting from a diversity of aetiologies, both genetic and environmental, acting jointly. It is characterized by hyperglycemia and often associated with obesity and improper diet. Diabetes Mellitus Type 2, as per Para 26 of Amended Guide to Medical Officers (Medical Pensions) 2008 can be conceded as aggravated while serving in field, CI operations, high altitude areas and prolonged afloat service. However, the same is not relevant in the applicant's case as he was serving in shore*

duties in New Delhi, Mumbai and Goa prior to onset of the disease. As regards the disability Hyperlipidaemia, respondents submit that associated high cholesterol levels are also a result of metabolic disorder caused due to genetic causes or dietary indiscretion and there can be no service causes that can be considered responsible for predisposition and onset of the disability. Thus, respondents contend that the RMB was just and correct in assessing that the disability was neither attributable nor aggravated by military service.

9. Further, the respondents aver that the RMB had granted the medical disability only for five years and the same period has expired on 30.04.2006. The applicant made no effort whatsoever to present himself before a Resurvey Medical Board after expiry of the medical disability period. Respondents contend that the contents of Govt. of India (MoD) Circular dated 07.02.2001 can, in no way, be taken to imply that the applicant's disability period would automatically be extended 'for life' even without reference to the medical authorities for reassessment of medical disability on conclusion of the said period.

Consideration :

10. Having given careful consideration to the arguments on both sides, we find that the basic issue before us is whether the applicant, a naval officer who contracted NIDDM and Hyperlipidaemia after about 17 years of service, and was assessed @ 20% composite for these two diseases for a period of 5 years by the RMB three years later, on his taking premature retirement, can be granted disability element of pension despite the fact that (a) the applicant has approached the respondents and the Tribunal about 15 years after his premature retirement from service, and (b) the RMB assessed his disabilities (composite @ 20% for five years) as neither attributable nor aggravated (NANA) by military service.

11. In the first instance, we have considered the delay of about 15 years by the applicant in forwarding his representation against non-grant of disability element of pension and filing his OA thereafter. We have examined the averments in M.A. No. 566 of 2019 explaining the delay and, in the interests of justice, condoned the delay, relying upon the judgment dated 13.08.2008 of the Hon ble Supreme Court in the matter of Union of India Vs. Tarsem Singh (2009) (1) AISIJ 371.

12. With regard to the merits of the OA, we find that the applicant's case is squarely covered by the judgments in the case of Dharamvir Singh (supra) and Rajbir Singh (supra), whereby the Hon'ble Apex Court had observed to the effect that, unless cogent reasons are given to the contrary by the medical authorities, attributability or aggravation will be conceded in cases where military personnel contract medical disabilities during the course of the service based on the grounds that military personnel are put through thorough medical examination at the time of their entry into service, and are not enrolled or commissioned unless they are found fully fit medically."

(emphasis supplied)

15. As per the amendment to Chapter VI of 'Guide to Medical Officers(Military Pensions), 2008, Para 26 thereof Type 2 Diabetes Mellitus is to be conceded as aggravated if the onset occurs while serving in Field/ CIOPS/HAA/prolonged afloat service and having been diagnosed as ' Type II Diabetes Mellitus' who are required to serve in these areas.

16. In relation to these submissions, it is essential to observe that as per Para 26, Chapter VI of the Guide to Medical Officers (Military

Pensions), 2008 in relation to the disability of Diabetes Mellitus it has been stated to the effect:-

"26. Diabetes Mellitus

This is a metabolic disease characterised by hyperglycemia due to absolute/relative deficiency of insulin and associated with long term complications called microangiopathy (retinopathy, nephropathy and neuropathy) and macroangiopathy.

There are two types of Primary diabetes, Type 1 and Type 2. Type 1 diabetes results from severe and acute destruction of Beta cells of pancreas by autoimmunity brought about by various infections including viruses and other environmental toxins in the background of genetic susceptibility. Type 2 diabetes is not HLA-linked and autoimmune destruction does not play a role.

Secondary diabetes can be due to drugs or due to trauma to pancreas or brain surgery or otherwise. Rarely, it can be due to diseases of pituitary, thyroid and adrenal gland. Diabetes arises in close time relationship to service out of infection, trauma, and post surgery and post drug therapy be considered attributable.

Type 1 Diabetes results from acute beta cell destruction by immunological injury resulting from the interaction of certain acute viral infections and genetic beta cell susceptibility. If such a relationship from clinical presentation is forthcoming, then Type 1 Diabetes mellitus should be made attributable to service. ***Type 2 diabetes is considered a life style disease. Stress and strain, improper diet non-compliance to therapeutic measures because of service reasons, sedentary life style are the known factors which can precipitate diabetes or cause uncontrolled diabetic state.***

Type 2 Diabetes Mellitus will be conceded aggravated if onset occurs while serving in Field, CIOPS, HAA and prolonged afloat service and having

been diagnosed as Type 2 diabetes mellitus who are required serve in these areas.

Diabetes secondary to chronic pancreatitis due to alcohol dependence and gestational diabetes should not be considered attributable to service."

17. It is essential to observe that the verdict of the Hon'ble Supreme Court in ***Rajbir Singh*** (supra) vide Paras 12 to 15 is to the effect:-

"12. Reference may also be made at this stage to the guidelines set out in Chapter-II of the Guide to Medical Officers (Military Pensions), 2002 which set out the "Entitlement: General Principles", and the approach to be adopted in such cases. Paras 7, 8 and 9 of the said guidelines reads as under:

"7. Evidentiary value is attached to the record of a member's condition at the commencement of service, and such record has, therefore, to be accepted unless any different conclusion has been reached due to the inaccuracy of the record in a particular case or otherwise. Accordingly, if the disease leading to member's invalidation out of service or death while in service, was not noted in a medical report at the commencement of service, the inference would be that the disease arose during the period of member's military service. It may be that the inaccuracy or incompleteness of service record on entry in service was due to a non-disclosure of the essential facts by the member e.g. pre-enrolment history of an injury or disease like epilepsy, mental disorder, etc. It may also be that owing to latency or obscurity of the symptoms, a disability escaped detection on enrolment. Such lack of recognition may affect the medical categorisation of the member on enrolment and/or cause him to perform duties harmful to his condition. Again, there may occasionally be direct evidence of the contraction of a disability, otherwise than by service. In all such cases, though the disease cannot be considered to have been caused by service, the

question of aggravation by subsequent service conditions will need examination.

[pic] The following are some of the diseases which ordinarily escape detection on enrolment:

(a) Certain congenital abnormalities which are latent and only discoverable on full investigations e.g. Congenital Defect of Spine, Spina bifida, Sacralisation,

(b) Certain familial and hereditary diseases e.g. Haemophilia, Congential Syphilis, Haemoglobinopathy.

(c) Certain diseases of the heart and blood vessels e.g. Coronary Atherosclerosis, Rheumatic Fever.

(d) Diseases which may be undetectable by physical examination on enrolment, unless adequate history is given at the time by the member e.g. Gastric and Duodenal Ulcers, Epilepsy, Mental Disorders, HIV Infections.

(e) Relapsing forms of mental disorders which have intervals of normality.

(f) Diseases which have periodic attacks e.g. Bronchial Asthma, Epilepsy, Csom, etc.

8. The question whether the invalidation or death of a member has resulted from service conditions, has to be judged in the light of the record of the member's condition on enrolment as noted in service documents and of all other available evidence both direct and indirect.

In addition to any documentary evidence relative to the member's condition to entering the service and during service, the member must be carefully and closely questioned on the circumstances which led to the advent of his disease, the duration, the family history, his pre-service history, etc. so that all evidence in support or against the claim is elucidated. Presidents of Medical Boards should make this their personal responsibility and ensure that opinions on

attributability, aggravation or otherwise are supported by cogent reasons; the approving authority should also be satisfied that this question has been dealt with in such a way as to leave no reasonable doubt.

9. On the question whether any persisting deterioration has occurred, it is to be remembered that invalidation from service does not necessarily imply that the member's health has deteriorated during service. The disability may have been discovered soon after joining and the member discharged in his own interest in order to prevent deterioration. In such cases, there may even have been a temporary worsening during service, but if the treatment given before discharge was on grounds of expediency to prevent a recurrence, no lasting damage was inflicted by service and there would be no ground for admitting entitlement. Again a member may have been invalided from service because he is found so weak mentally that it is impossible to make him an efficient soldier. This would not mean that his condition has worsened during service, but only that it is worse than was realised on enrolment in the army. To sum up, in each case the question whether any persisting deterioration on the available [pic]evidence which will vary according to the type of the disability, the consensus of medical opinion relating to the particular condition and the clinical history."

13. In Dharamvir Singh's case (supra) this Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words:

"29.1. Disability pension to be granted to an individual who is invalided 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 to or aggravated by military service to be determined under the Entitlement Rules for Casualty

Pensionary Awards, 1982 of Appendix II (Regulation 173).

29.2. 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 read with Rule 14(b)].

29.3. The 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).

29.4. 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)]. [pic] 29.5. 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 [Rule 14(b)].

29.6. 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 [Rule 14(b)]; and 29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 - "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."

14. Applying the above principles this Court in Dharamvir Singh's case (supra) found that no note of any disease had been recorded at the time of his acceptance into military service. This Court also held that Union of India had failed to bring

on record any document to suggest that Dharamvir was under treatment for the disease at the time of his recruitment or that the disease was hereditary in nature. This Court, on that basis, declared Dharamvir to be entitled to claim disability pension in the absence of any note in his service record at the time of his acceptance into military service. This Court observed:

"33. 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 the Entitlement Rules for Casualty Pensionary Awards, 1982, the appellant is entitled for presumption and benefit of presumption in his favour. In the 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."*

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. This necessarily implies that no sooner a member of the force is discharged on medical ground his

entitlement to claim disability pension will arise unless of course the employer is in a position to rebut the presumption that the disability which he suffered was neither attributable to nor aggravated by military service. From Rule 14(b) of the Entitlement Rules it is further clear that if the medical opinion were to hold that the disease suffered by the member of the armed forces could not have been detected prior to acceptance for service, the Medical Board must state the reasons for saying so. Last but not the least is the fact that the provision for payment of disability pension is a beneficial provision which ought to be interpreted liberally so as to benefit those who have been sent home with a disability at times even before they completed their tenure in the armed forces. ***There may indeed be cases, where the disease was wholly unrelated to military service, but, in order that denial of disability pension can be justified on that ground, it must be affirmatively proved that the disease had nothing to do with such service. The burden to establish such a disconnect would lie heavily upon the employer for otherwise the rules raise a presumption that the deterioration in the health of the member of the service is on account of military service or aggravated by it. A soldier cannot be asked to prove that the disease was contracted by him on account of military service or was aggravated by the same. The very fact that he was upon proper physical and other tests found fit to serve in the army should rise as indeed the rules do provide for a presumption that he was disease-free at the time of his entry into service. That presumption continues till it is proved by the employer that the disease was neither attributable to nor aggravated by military service. For the employer to say so, the least that is required is a statement of reasons supporting that view. That we feel is the true essence of the rules which ought to be kept in view all the time while dealing with cases of disability pension."***

(emphasis supplied)

It is thus held that the presumption that the disability of Diabetes Mellitus was attributable to and aggravated to military services has not been rebutted by the respondents.

18. The verdicts of the Hon'ble Supreme Court in ***Dharamvir Singh*** (supra) dated 02.07.2013, ***Rajbir Singh*** (supra) dated 13.02.2015, ***Sukhvinder Singh*** vs ***UOI & Ors***, dated 25.06.2014 reported in 2014 STPL (Web) 468 SC and ***UOI & Ors*** versus ***Manjeet Singh*** dated 12.05.2015 Civil Appeal no. 4357-4358 of 2015, stipulate and lay down categorically to the effect that the recording of reasons by the medical board as mandated by the regulations, rules and guiding principles cannot be overlooked and that though the verdict relied upon on behalf of the respondents underline the primacy of the opinion of the medical board on the issue, it however does not relieve the medical board of its statutory obligations to record reasons as required and that necessarily the decision turned on their own facts.

19. Significantly, the observations in Paragraphs 22, 23 & 24 of the Hon'ble Supreme Court in ***Manjeet Singh*** (supra) are to the effect:-

> ***"22. Be that as it may, adverting inter alia to Rule 14(b) of the Rules, we are of the unhesitant opinion that reasons, that the diseases could not be detected on medical examination prior to acceptance in service, ought to have been obligatorily recorded by the Medical Board sans whereof, the respondent would be entitled to the benefit of the statutory inference that the same had been contracted during service or have been aggravated thereby. There is no reason forthcoming in the proceedings of the Medical***

Board, as to why his disabilities eventually adjudged to be constitutional or genetic in nature had escaped the notice of the authorities concerned at the time of his acceptance for Army service. On a comprehensive consideration of the Regulation, Rules and the General Principles as applicable, the service profile of the respondent and the proceedings of the Medical Board, we are constrained to hold that he had been wrongly denied the benefit of disability pension. His tenure albeit short, during which he had to be frequently hospitalized does not irrefutably rule out the possibility, in absence of any reason recorded by the Medical Board that the disability even assumed to be constitutional or genetic, had not been induced or aggravated by the arduous military conditions. The requirement of recording reasons is not contingent on the duration of the Army service of the member thereof and is instead of peremptory nature, failing which the decision to board him out would be vitiated by an inexcusable infraction of the relevant statutory provisions. Having regard to the letter and spirit of the Regulation, Rules and the General Principles, the prevailing presumption in favour of a member of the Army service boarded out on account of disability and the onus cast on the authorities to displace the same, we are of the unhesitant opinion that the denial of disability pension to the respondent in the facts and circumstances of the case, have been repugnant to the relevant statutory provisions and thus cannot be sustained in law. The determination made by the High Court of Jammu and Kashmir at Jammu is thus upheld on its own merit.

23. The authorities cited at the Bar though underline the primacy of the opinion of the Medical Board on the issue, however, do not relieve it of its statutory obligation to record reasons as required. Necessarily, the decisions turn on their own facts. With the provisions involved being common in view of the uniformity in the exposition thereof, a dilation of the adjudications is considered inessential.

> *24. Though noticeably, the decision rendered in LPA(SW) 212/2006; Union of India and Others vs. Ravinder Kumar, as referred to in the impugned judgment, was reversed by this Court in Civil Appeal No.1837/2009, we are of the respectful view that the same cannot be construed to be a ruling relating to the essentiality of recording of reasons by the Medical Board as mandated by the Regulations, Rules and the Guiding Principles. This decision thus is of no determinative relevance vis-a-vis the issues involved in the present appeal."*

Significantly, it has been observed vide Para 25 in ***Manjeet Singh*** (supra) by the Hon'ble Supreme Court that the last in the line of the rulings qua the dissensus has been pronounced in a batch of Civil Appeals led by Civil Appeal No. 2904 of 2011; ***Union of India & Others*** vs. ***Rajbir Singh*** in which the Hon'ble Supreme Court on an exhaustive and insightful exposition of the statutory provisions had observed with reference as well to the enunciations in ***Dharamvir Singh*** vs. ***Union of India*** 2013(7) SCC 316, that the provision for payment of disability pension is a beneficial one and ought to be interpreted liberally so as to benefit those who have been boarded out from service, even if they have not completed their tenure and that it had been held therein that a soldier cannot be asked to prove that the disease was contracted by him on account of Military service or had been aggravated by the same and the presumption continues in his favour till it is proved by the employer that the disease is neither attributable to nor aggravated by Military service and that to discharge this burden, a statement of reasons supporting the view of the employer is the essence of the rules which

would continue to be the guiding canon in dealing with cases of disability pension which was emphatically stated.

20. Furthermore, the 'Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel 2008, which take effect from 01.01.2008 vide Paras 6, 7, 10, 11 thereof provide as under:-

> *"6. Causal connection:*
>
> *For award of disability pension/special faraily 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) Disease:

(i) For acceptance of a disease as attributable to military service, the following two conditions must be satisfied simultaneously:-

(a) that the disease has arisen during the period of military service, and
(b) that the disease has been caused by the conditions of employment in military service.

(ii) Disease due to infection arising in service other than that transmitted through sexual contact shall merit an entitlement of attributability and where the disease may have been contacted prior to enrolment or during leave, the incubation period of the disease will be taken into consideration on the basis of clinical course as determined by the competent medical authority.

(iii) If nothing at all is known about the cause of disease and the presumption of the entitlement in favour of the claimant is not rebutted, attributability 'should be conceded on the basis of the clinical picture and current scientific medical application.

(iv) When the diagnosis and/or treatment of a disease was faulty, unsatisfactory or delayed due to exigencies of service, disability caused due to any adverse effects arising as a complication shall be conceded as attributable.

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. Altitudes etc."

(emphasis supplied),

Thus, the ratio of the verdicts in ***Dharamvir Singh Vs. Union Of India &Ors*** (Civil Appeal No. 4949/2013); (2013 7 SCC 316, ***Sukhvinder Singh Vs. Union Of India &Ors***, dated 25.06.2014 reported in 2014 STPL (Web) 468 SC, ***UOI &Ors. Vs. Rajbir Singh*** (2015) 12 SCC 264 and ***UOI & Ors. Vs. Manjeet Singh*** dated 12.05.2015, Civil Appeal no. 4357-4358 of 2015, as laid down by the Hon'ble Supreme Court are the fulcrum of these rules as well.

21. Furthermore, Para 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). In cases where award of disability pension or reassessment of disabilities is concerned, a Medical Board is always necessary and the certificate of a single medical officer will not be accepted except in case of stations where it is not possible or feasible to assemble a regular Medical Board for such purposes. The certificate of a single medical officer in the latter case will be furnished on a Medical Board form and countersigned by the Col (Med) Div/MG (Med) Area/Corps/Comd (Army) and equivalent in Navy and Air Force."

(emphasis supplied),

has not been obliterated.

22. It is thus for the respondents themselves to consider the aspect of conducting appropriate medical tests at the time of entry and induction of personnel into Armed Forces, the necessity of which is not required to be spelled out by us, and has been categorically highlighted vide para

22 of the verdict of the Hon'ble Supreme Court in ***Manjeet Singh*** (supra). There is no history that is recorded to show that the said disability was hereditary or constitutional in nature.

CONCLUSION

23. Under the circumstances, the **OA 1031/2019** is allowed and the applicant is to be held entitled to the grant of the disability element of pension qua the disability of 'Diabetes Mellitus Type II' @ 20% for life which is directed to be broad banded to 50% for life in terms of the verdict of the Hon'ble Supreme Court in ***Union of India*** vs ***Ram Avtar*** decided on 10.12.2014 in Civil Appeal No. 418 of 2012 with effect from the date of his discharge i.e. **31.12.2017** from the Indian Army(DSC) and the respondents are directed to issue the corrigendum PPO with directions to pay the arrears within a period of three months from the date of receipt of a copy of this order, *failing which*, the respondents would be liable to pay interest @6% p.a. on the arrears due from the date of this order.

24. No order as to costs.

Pronounced in the Open Court on 30 day of November , 2023.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/CHANANA/