

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

C.

OA 1132/2019 with MA 1840/2019

Ex Sgt Vijay Kumar

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Ms. Pallavi Awasthi, Advocate

For Respondents : Mr. K K Tyagi, Advocate

CORAM

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

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

ORDER  
13.12.2023

Vide our detailed order of even date we have allowed the OA 1132/2019. 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 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)

C  
(REAR ADMIRAL DHIREN VIG)  
MEMBER (A)

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ORDER

MA 1840/2019

This is an application filed under section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 2541 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of **UoI & Ors Vs Tarsem Singh 2009(1)AISLJ 371** and in **Ex Sep Chain Singh Vs Union of India & Ors (Civil Appeal No. 30073/2017** and the reasons mentioned in the application, the MA 1840/2019 is allowed and the delay of 2541 days in filing the OA 1132/2019 is thus condoned. The MA is disposed of accordingly.

**OA 1132/2019**

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant vide the present OA makes the following prayers:-

*“(a) To set aside the order letter Air HQ/410002/48/11/SGT/PA-III dated 23.01.2012 passed by the respondents.*

*(b) To direct the respondents to grant the disability pension @20% for life alongwith arrears to the applicant by treating his disability as attributable and aggravated by the military service.*

*(c) To direct the respondents to grant the benefit of rounding of disability of the applicant to @50% for life in terms of law settled by Hon’ble Supreme Court of India in Civil Appeal No 418/2012 titled as UoI & Ors. Vs. Ram Avtar vide judgment dated 10.12.2014 as well as in a catena of judgments by this Hon’ble Tribunal.*

*(d) To direct the respondents to pay the due arrears of disability pension with interest @18% p.a. with effect from the date of retirement with all the consequential benefits.*

*(e) To such further order or orders, direction/directions as this Hon’ble Tribunal may deem fit and proper in accordance with law.”*

**BRIEF FACTS**

2. The applicant was enrolled in the Indian Air Force on 03.08.1989 and discharged from the Air Force service on 31.01.2011 under the clause “At his own request” after rendering 21 years and 182 days of regular service. The Release Medical Board dated 31.01.2011 held that the applicant was fit to be released from service in low medical category A4G2 (P) for the

disability of Diabetes Mellitus Type-II @ 20% for life while the qualifying element for disability was recorded as NIL for life on account of the disability being treated as neither attributable to nor aggravated by military service.

3. On adjudication, the AOC AFRO has upheld the recommendations of the RMB and rejected the disability pension claim vide letter no RO/3305/3A/Med Cat (D) dated 25.04.2011. The outcome was communicated to the Air Veteran vide letter no Air HQ /2703/1/729866/P&W(DP/RMB) dated 06.05.2011 with an advice that the applicant may prefer an appeal to the Appellate Committee within six months from the date of receipt of the letter. The applicant made first appeal dated 12.07.2011 to the respondents which was rejected vide letter No. Air HQ/41002/48/11/SGT/PA-III dated 23.01.2012 and being aggrieved by the rejection of first appeal by the respondents, the applicant filed a second appeal dated 21.03.2012 which was replied to vide letter No. Air HQ/99798/5/2Appl/81/SGT/DP/DAV (Appeals) dated 16.01.2014 which was apparently not communicated to the applicant, till institution of the OA 1132/2019 on 08.07.2019. The same however is found placed on the original record produced by the respondents giving the grounds for rejecting the second appeal to the effect:-

*"In the absence of history of diabetes` developing post pancreatitis/drugs/ surgery/ trauma, ID is considered as a metabolic disorder with no service related causative factors hence, not attributable to service. Onset of ID was while individual was posted to peace station. After onset of the disease, individual continued to serve in peace station till his release from service. As there is no close time association of ID with service in Field/HAA/CI Ops area and at the time of release blood sugar was controlled with medication and there was no evidence of target organ damage i.e. worsening of the disease, ID is considered as not aggravated by service in terms of Para 26, Chap VI, GMO 2002 and amendment 2008",*

Aggrieved by the response of the respondents, the applicant has thus filed the present OA. In the interest of justice thus, it is considered appropriate to take up the present OA for consideration, in terms of Section 21(1) of the AFT, Act 2007.

#### **CONTENTIONS OF THE PARTIES**

4. Placing reliance on the judgment of the Hon'ble Supreme Court in *Dharamvir Singh v. UOI & Ors [2013 (7) SCC 36]*, the learned counsel for the applicant submitted that no note of any disability was recorded in the service documents of the applicant at the time of the entry into the service, and that he served in the Air Force at various places in different environmental and service conditions in his prolonged service, thereby, any disability at the time of his service is deemed to be attributable to or aggravated by military service.

5. The learned counsel for the applicant placed reliance on the verdicts of the Hon'ble Supreme Court in Civil Appeal No. 5605/2010 titled *Sukhvinder Singh vs UOI* (2014 STPL(web) 468 SC) dated 25.06.2014 and Civil Appeal No 2904/2011 titled *Union of India vs. Rajbir Singh* dated 13.02.2015.

6. Reliance was also placed on behalf of the applicant on the order of this Tribunal in OA No. 728/2017 in case of *Air Cmdr MDN Prasad Vs UOI & Ors.* dated 13.07.2018, OA No. 1492/2017 in case of *Ex JWO Mukhtyar Singh Vs Union of India* dated 13.07.2018, to contend that similarly situated personnel were given relief therein.

7. Per contra, the learned counsel for the respondents submits that under the provisions of Rule 153 of the Pension Regulations for the Indian Air Force, 1961 (Part-I), the primary condition for the grant of disability pension is invalidation out of service on account of a disability which is attributable to or aggravated by Air Force service and is assessed @ 20% or more. In other words, disability pension is granted to those who fulfill the following two criteria simultaneously:-

- (i) Disability must be either attributable to or aggravated by service.

(ii) Degree of disablement should be assessed at 20% or more.

The learned counsel further submits that the RMB has assessed the applicant's disability as neither attributable to nor aggravated by service which thus does not fulfill the criteria (i) as above and hence the applicant is not entitled for the grant of disability pension in accordance with prevailing rules and policies.

8. The learned counsel for the respondents also placed reliance on the order passed by the Armed Forces Tribunal, Regional Bench, Chennai in case of *Ex Sub M Vijayakannan Vs. Union of India & Ors*, OA 121 of 2021 dated 11.09.2023, wherein the claim of disability pension for the disability of Diabetes Mellitus Type II was disallowed.

### ***ANALYSIS***

9. On the careful perusal of the material available on record and also the submissions made on behalf of the parties, we are of the view that it is not in dispute that the extent of the disability of the applicant was assessed to be 20% which is the bare minimum for grant of disability pension in terms of Regulation 153 of the Pension Regulations for the Indian Air Force, 1961 (Part-I). The only question that arises is whether the disability suffered by the applicant was attributable to or aggravated by military service.

10. The issue of attributability of the disease is no longer *res integra* in view of the verdict of the Hon'ble Apex Court in *Dharamvir Singh v. Union of India (supra)*, wherein it is clearly spelt out that any disease contracted during service is presumed to be attributable to military service, if there is no record of any ailment at the time of commission into the Military Service.

11. Applying the above parameters to the case at hand, we are of the view that the applicant has been discharged from service in low medical category on account of medical disease/disability, - the disability must be presumed to have arisen in the course of service which must, in the absence of any reason recorded by the Medical Board, be presumed to have been attributable to or aggravated by air force service. Furthermore, Regulation 423(a) 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.*

*(emphasis supplied),\_\_*

has not been obliterated.

12. Furthermore, Para 26, Chapter VI of the Guide to Medical Officers (Military Pensions), 2008 reads as under:-

*"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."*

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

*"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) 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 contracted prior to enrolment or during leave, the incubation period of the disease will be taken into consideration on the basis of clinical courses 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 Altitude etc."*

Thus, the ratio of the verdicts in *Dharamvir Singh vs UOI & Ors*

(Civil Appeal No. 4949/2013) (2013) 7 SCC 316, *Sukhvinder*

*Singh vs UOI & Ors*, dated 25.06.2014 reported in 2014 STPL (Web) 468 SC, *UOI & Ors. vs Rajbir Singh* (2015) 12 SCC 264 and *UOI & Ors* versus *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.

14. It is also essential to observe that vide the verdict of the Hon'ble Supreme Court in Civil Appeal no. 5970/2019 titled as *Commander Rakesh Pande vs UOI & Ors.*, dated on 28.11.2019, wherein the applicant thereof was suffering from **Non-Insulin Dependent Diabetes Mellitus (NIDDM) and Hyperlipidaemia**, the grant of disability pension for life @ 20% broad banded to 50% for life was upheld by the Hon'ble Supreme Court.

15. As regards the reliance placed by the respondents on the order dated 11.09.2023 of the AFT (RB) Chennai in OA No. 121/2021 in the case of Ex Sub M Vijayakannan Vs. Union of India & Ors., it is essential to observe that vide Para 16 thereof it was observed to the effect:-

*"16. The Tribunal finds that not even an iota of evidence linking Military Service as a cause of attributability has been brought to the fore in this OA which gives us no leeway in considering a lenient view while deciding this case",*

and the said observation is on the facts of that case which are wholly distinguishable from the facts of the instant case and

reliance thereon is wholly misplaced. The onset of the disability of Diabetes Mellitus Type II in the instant case was in June 2010, after a period of about 21 years of enrolment of the applicant in the Indian Air Force on 03.08.1989, in his sixth posting. It is essential to mention that the disability of Diabetes Mellitus Type-2 in respect of Ex Sgt Vijay Kumar even though had its origin in peace area but the disability was due to the stress and strain of service which occurred during active service in adverse conditions which has not been refuted by the respondents. Moreover, there is nothing that the respondents have placed on record to bring forth any contributory factors from the side of the applicant for causation of the said disability.

16. Regarding broad-banding benefits, we find that the Hon'ble Supreme Court in its order dated 10.12.2014 in *Union of India v. Ram Avtar, Civil Appeal No. 418 of 2012* and connected cases, has observed that individuals similarly placed as the applicant are entitled to rounding off the disability element of pension. We also find that the Government of India vide its Letter No. F.No.3(11)2010-D (Pen/Legal) Pt V, Ministry of Defence dated 18th April 2016 has issued instructions for implementation of the Hon'ble Supreme Court order dated 10.12.2014 (supra).

## CONCLUSION

17. Therefore, in view of our analysis, the OA is allowed and the Respondents are directed to ***grant the benefit of disability element of pension @20% for life*** for the disability of DIABETES MELLITUS Type II, rounded off to 50% for life in view of judgment of the Hon'ble Apex Court in ***Union of India versus Ram Avtar (supra)*** from the date of discharge i.e 31.01.2011 .The arrears shall be disbursed to the applicant within three months of receipt of this order failing which it shall earn interest @ 6% p.a. till the actual date of payment. However, in as much as the instant OA has been filed with delay, the arrears in view of the verdict of ***UOI & Ors Vs Tarsem Singh*** (supra) has to commence from the period of three years prior to institution of the present OA, instituted on 08.07.2019.

18. No order as to costs.

Pronounced in the open Court on 13 day of December, 2023.

[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)

[JUSTICE ANU MALHOTRA]  
MEMBER (J)

Pooja