

**COURT NO. 2**  
**ARMED FORCES TRIBUNAL**  
**PRINCIPAL BENCH: NEW DELHI**

**OA 1264/2019**

**Gp Capt K Manoharan (Retd.)**

**... Applicant**

**Versus**

**Union of India &Ors.**

**... Respondents**

**For Applicant : Mr. Ajai Bhalla, Advocate**  
**For Respondents : Mr. Satya Ranjan Swain, Advocate**

**CORAM :**

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

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

**ORDER**

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) The impugned letter dt 11 July 2019 be set aside and respondents be directed to grant 50% of disability element of pension to the Applicant and broad band the same to 75% as per Board band policy w.e.f. 01 November 2015 with 9% interest per annum for disabilities of Hypertension assessed @ 30%, Diabetes Mellitus Type @ @20% and Dyslipidemia @1-3% with composite disability of 50%.*

*(b) Grant any other/further relief.*

**BRIEF FACTS**

2. The applicant was enrolled in the Indian Air Force on 21.12.1984 and retired from the Air Force service on 31.01.2019 under the clause

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“On attaining the age of superannuation” after rendering a total of 34 years, 1 month and 10 days of regular service. The Release Medical Board dated 09.07.2018 held that the applicant was fit to be discharged from service in composite low medical category A4G3 (P) for the disabilities of (i) Diabetes Mellitus Type-II @20% for life (ii) Primary Hypertension (old) @30% for life, (iii) Dyslipidemia @ 1-5% for life compositely assessed @50% for life while the net qualifying element for disability was recorded as NIL for life on account of the disabilities being treated as neither attributable to nor aggravated by military service.

3. On adjudication, the competent authority had upheld the recommendations of the RMB and rejected the disability pension claim of the applicant and the same was communicated to the applicant vide letter No. Air HQ/99797/4124/Dis/O/DAV-1 (B) dated 01.01.2019 with an option that the applicant may prefer an appeal to the Appellate Committee within six months from the date of receipt of letter. The applicant's first appeal dated 14.01.2019 was considered and was rejected by Appellate Committee on First Appeal (ACFA) vide letter No. Air HQ/99797/4124/Dis/O/DAV-1 (B) dated 11.07.2019 suggesting that he may prefer a second appeal in this regard, if he so desires. However, the applicant did not prefer any second appeal and aggrieved by the rejection of his disability pension claim by the respondents, the

applicant has 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, in view of its pendency since institution from 07.08.2019.

### ***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 and thus thereby, any disability that arose during his service has to be deemed to be attributable to or aggravated by military service.

5. The applicant placed reliance on the verdicts of the Hon'ble Supreme Court in the case of ***Union of India &Ors vs. Manjeet Singh (JT 2015 (5) SC 255)*** dated 12.05.2015. The learned counsel also placed reliance on the decision of AFT, Principal Bench in OA 482/2014 titled ***Gp Capt DPS Tomar vs. UOI &Ors.*** dated 09.07.2015, in OA 799/2016 titled ***Jyotsana Bhatnagar vs. UOI &Ors.*** dated 05.04.2017 and

in OA 417/2021 titled *WO Raj Kumar (Retd.) vs. UOI & Ors.* dated 10.05.2023 wherein similarly situated personnel were given relief.

6. 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 as it 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.

7. The learned counsel for the respondents also submits that the mere fact that a disease has manifested itself during military service does not *per se* establish attributability to or aggravation by military service. The

learned counsel further submits that in terms of Para 26 of Chapter VI of

the GMO 2008 (MP) "Diabetes Mellitus Type-II is a metabolic disease characterized by hyperglycemia due to absolute/relative deficiency of insulin and associated with long term complications called microangiopathy (retinopathy, nephropathy and neuropathy) and macroangiopathy and is considered a life style disease and it can be conceded aggravated only if its onset occurs while serving in Field, CIOPS, HAA and prolonged afloat service and having been diagnosed as Type II Diabetes Mellitus who are required to serve in these areas."

8. The learned counsel for the respondents placed reliance on the order of AFT, RB Chennai in OA 121/2021 with MA 120/2021 titled as *Ex Sub M Vijayakannan Vs. UoI & Ors.* to argue that the applicant is not entitled to the disability pension.

#### **ANALYSIS**

9. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, we find that the applicant has suffered from three disabilities viz. (i) Diabetes Mellitus Type II @20% (ii) Primary Hypertension (Old) @30%, and (iii) Dyslipidemia @ 1-5% for life compositely assessed @50% for life. In so far as the disability of Dyslipidemia @ 1-5% for life is concerned, the disability is assessed @1-5% which is below 20% and does not fulfill the twin criteria

as per Rule 153 Pension Regulations for IAF, 1961 (Part-I) and hence are not admissible.

10. The consistent view taken by this Tribunal for the disabilities of Primary Hypertension and Diabetes Mellitus Type II 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, the Entitlement Rules for Casualty Pensionary Awards, 1982, and observations in para-28 of the said verdict to the effect:-

*"28. A conjoint reading of various provisions, reproduced above, makes it clear that:*

*(i) Disability pension to be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service in nonbattle 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 AppendixII (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 nonentitlement 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."*

Further as per amendment to Chapter VI of the 'Guide to Medical Officers (Military Pension), 2008 at para-43, it is provided 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 hypertension 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 aggravation must be considered. However, in certain cases the disease has been reported after long and frequent spells of service in field/HAA/active operational area. Such cases can be explained by variable response exhibited by different individuals to stressful situations. Primary hypertension will be*

*considered aggravated if it occurs while serving in Field areas, HAA, CIOPS areas or prolonged afloat service."*

11. 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. **Furthermore, inter alia stress and strain because of service reasons are stated therein to be known factors which can precipitate diabetes or cause uncontrolled diabetic state.**

12. It is 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.

13. 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. Moreover, during his entire service the applicant was posted to various stations including two field postings which can be considered as one of the contributory factors for the diseases with which the applicant is suffering from.

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.*

***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. 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.

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). *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.

14. The disabilities of Primary Hypertension and Diabetes Mellitus Type-II that the applicant Gp Capt K Manoharan (Retd.) suffers from even though had their origin in peace area were however due to the stress and strain of service which occurred during active service in adverse conditions which has not been refuted by the respondents.

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”,*

which makes it apparent that the facts of that case 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 March 2001, after a period of about 16 years of enrolment of the applicant in the Indian Air Force on 21.12.1984, in his sixth posting, and the stress and strain of military service as adverted to in Para 14 herein above brings out the causal connection between the disability and the military service.

16. 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 diseases/disabilities and the disabilities 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.

17. Regarding broadbanning 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**

18. Therefore, in view of our analysis, the OA 1264/2019 is allowed and the Respondents are directed to ***grant the benefit of the disability element of pension @20% for life*** (for DIABETES MELLITUS Type II) & ***@30% for life*** (for Primary Hypertension (Old)), compositely assessed @ 44% for life ***rounded off to 50% for life in view of judgement of Hon'ble Apex Court in Union of India versus Ram Avtar (supra) from the date of discharge i.e 31.01.2019.*** 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.

19. No order as to costs.

20. Pronounced in the open Court on 6 day of December, 2023.

**[REAR ADMIRAL DHIREN VIG]**  
**MEMBER (A)**

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

/nmk/