

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

B.

OA 13/2020

Ex PO LOG (MAT) Shakti Singh

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Mr. Ved Prakash, Advocate

For Respondents : Mr. Neeraj, Sr. CGSC

CORAM

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

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

ORDER  
08.11.2023

Vide our detailed order of even date, we have allowed the OA 13/2020. 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)

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

**OA 13/2020**

**Ex PO LOG (MAT) Shakti Singh**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant : Mr. Ved Prakash, Advocate**  
**For Respondents : Mr. Neeraj, Sr. CGSC**

**CORAM :**

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

**ORDER**

**OA 13/2020**

The applicant vide the present OA makes the following prayers:-

- “(a) Direct the respondents to grant disability element of pension for disability No. (i)*
- (b) Direct the respondents to issue Corr. PPO for disability element of pension for both the disabilities duly rounded off to 75% w.e.f his date of discharge.*
- (c) Direct respondents to pay the due arrears of disability element of pension with interest @12% p.a from the date of retirement with all consequential benefits.*

*(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost of the applicant and against the respondents."*

2. The applicant Ex POLOG (MAT) Shakti Singh No. 138349F had joined the Indian Navy on 28.01.2004 and was discharged from the service on 21.01.2019 after completion of 15 years and 4 days of service. Subsequently, he was sanctioned Service Pension vide PPO No, 248201901426 dated 14.02.2019. The applicant developed **Type II Diabetes Mellitus, ICD No. E 11.9**. The onset of the disability was when the applicant was posted to peace station and he continued to serve in the peace station till his retirement. However the RMB dated 23.10.2018 opined the said disability of Diabetes Mellitus to be neither attributable to nor aggravated by military service in terms of Para 26 of Chapter VI of the GMO(Military Pensions) 2008. The applicant had also sustained an injury on his right knee that is Fracture Patella (Rt) Knee OPTD, ICD No. 82.0 which the RMB had opined to be attributable to service vide approved copy of the injury report dated 02.03.2016.

3. The opinion of the RMB dated 23.10.2018 in Part V thereof was to the effect:-

**PART V**  
**OPINION OF THE MEDICAL BOARD**

1. Casual relationship of the disability with service condition 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
1. Type II Diabetes Mellitus, ICD No. E 11.9	N	N	Y	The onset of the disability was when the sailor was posted to peace station and the sailor continued to serve in peace station till his retirement. There is no close time relationship between onset and service in field. Hence, the disability is considered as neither attributable to nor aggravated by military service vide para 26 chapter vi of GMO 2008 (MP)
2. Fracture Patella (Rt) Knee OPTD, ICD No. S 82.0	Y	N	N	Attributable to service vide approved copy of injury report dated 02 Mar 16.
Note: A disability "Not connected with service would be neither attributable nor aggravated by service. (This is in accordance with instruction contained in 'Guide to Medical Officers (Military Pensions)-2008)				

4. The percentage of disablement was put forth in the said RMB to the effect :-

“



6. 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) 1-5%, 6-10%, 11-14%, 15-19% and thereafter in multiples of ten from 20% to 100%				
Disability(As numbered in Question 1 Part IV)	Percentage of disablement	Composite assessment for all disabilities with duration (Max 100%)	Disability Qualifying for disability pension with duration	Net assessment qualifying for disability pension (Max 100% with duration)
1. Type II Diabetes Mellitus, ICD No. E 11.9	20% Twenty Percent	52% Rounded off to 50% Fifty Percent	Nil	40% Forty Percent
2. Fracture Patella (Rt) Knee OPTD, ICD No. S 82.0	40% Forty Percent	Life Long	40% Forty Percent Life Long	Life Long
Disability assessed I.A.W office of the DGAFMS letter 16046/DGAFMS/MA(Pens)/Policy dated 20 Jul 12 for Dis(1) and Para 31 Chapter VII of GMO (MP) 2008 for Dis(2)				

”

5. The competent authority rejected the applicant's disability pension claim for the disability of Diabetes Mellitus Type II ICD No. E 11.9 though the applicant was found entitled for the grant of the disability element of pension @40% for life with effect from 01.02.2019 vide NAVPEN letter PEN/600/D/LRDO I: 01/2019/138349F dated 01.02.2019 and it has been submitted on behalf of the applicant that the said disability pension is being

received by the applicant @50% for life in relation to the said disability of Fracture Patella (Rt) knee operated ICD No. S 82.0.

6. The applicant sent a legal notice on 21.06.2019, which as per letter dated 09.07.2019 was stated to be being treated as a first appeal. The said first appeal dated 21.06.2019 of the applicant was rejected vide 04.09.2020 and in as much as the said first appeal had not been disposed of within a period of six months from the date of filing of the same with the present OA having been instituted on 24.12.2019. In these circumstances though the present OA has been filed without filing the second appeal in terms of Section 21(1) and 21(2)(b) of the AFT Act, 2007 we consider it appropriate to take up the OA for consideration. The applicant's First Appeal dated 09.07.2019 against the rejection of the disability pension claim for the disability of Diabetes Mellitus was rejected vide letter no. PN/0134/DP/1289/19 dated 04.09.2020. The same was rejected stating that it had been so rejected in the light of relevant rules and administrative/medical provisions.

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

7. The applicant had submitted to the effect that he had joined the Indian Navy in a fit medical condition after having gone through a thorough medical examination without any note of any disability

recorded on the records of the respondents and thus the applicant places reliance on the guidelines laid down by the Hon'ble Supreme Court in *Dharamvir Singh Vs. UOI & Ors.* in para 28 thereof 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."*

to contend to the effect that the disability that the applicant suffers from of Type II Diabetes Mellitus in the instant case has to be held to be attributable to and aggravated by military service. Reliance was also placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in *Union of India vs. Rajbir Singh* Civil Appeal No. 2904/2011 dated 13.02.2015, and the verdict of the Hon'ble Supreme



Court in *Sukhvinder Singh vs. UOI* 2014 STPL 468SC decided on 25.06.2014 as well as on the verdict of the Hon'ble Supreme Court in *UOI & Ors. vs. Angad Singh Titaria* (AIR 2015 SC 1898) to contend to similar effect. Reliance was also placed on behalf of the applicant on the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 1982. *Inter alia* reliance was placed on behalf of the applicant on the posting profile of the applicant as reflected in the Part II of the RMB dated 23.10.2018 in his personal statement which reads to the effect:-

“

### **PART II PERSONAL STATEMENT**

1. Give details of service (P=Peace OR F=Field/ Operational /Sea service)									
S No	From	To	Place/Ship	P/F (HAA/ Ops/ Sea service/ others)	S No	From	To	Place/ Ship	P/F (HAA/ Ops/ Sea service/ others)
1	28.01.04	13.07.04	INS CHILKA	P	2	14.07.04	09.04.05	INS HAMLAKA	P
3	10.04.05	14.03.08	INS GHARIAL	F	4	15.03.08	30.03.09	SBC (V)	P
5	31.03.09	09.04.12	INS DWARKA	P	6	10.04.12	18.03.14	No. 1 NU NCC (GUJRAT)	P
7	19.03.14	24.02.16	INS MUMBAI	F	8	25.02.16	Till Date	FMU (MBI)	P

”

8. The applicant submits that the disability of Diabetes Mellitus Type II had its onset in January 2017 when the applicant was posted

at Mumbai in his eighth posting after the applicant had *inter alia* been posted from 10.04.2005 to 14.03.2008 onboard INS Gharial and from 19.03.2014 to 24.02.2016 onboard INS Mumbai which are both field postings and the applicant thus places reliance on Para 26 of the GMO (Military Pensions) 2008 to contend to the effect that stress and strain are specifically stipulated therein to be factors which can precipitate diabetes and cause uncontrolled diabetic state. *Inter alia* it is submitted on behalf of the applicant that in terms of Para 26 of the GMO (Military Pensions) 2008 itself it has been stipulated that Type II Diabetes Mellitus will be considered aggravated if its onset occurs while serving in field CI/Ops/HAA and prolonged afloat service and it has been submitted by the applicant that the onset of the disability of Type II Diabetes Mellitus in January 2017 within less than a year from he being posted onboard INS Mumbai, a field posting from 19.03.2014 from 24.02.2016, has to be held to be a precipitative stress and a factor for the causation of the disability of Diabetes Mellitus Type II.

9. Reliance was also placed on behalf of the applicant on Para 423 of the Regulations for the Medical Services of the Armed Forces 423(a) which reads 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.*

to contend to the effect that it has been expressly stipulated therein that for the purpose of determining whether the cause of a disability or



a death is or is not attributable to service, it is immaterial that the cause giving rise to the disability or death occurred in an area declared to be field/active service area or under normal peace conditions though it is essential to establish whether the disability or death has a causal connection with the service conditions.

10. The applicant submits thus that in the instant case the onset of the disability of Type II Diabetes Mellitus being in January 2017 after the induction of the applicant in the Indian Navy on 28.01.2004 after 13 years of service has to be due to the stress and strain that the applicant has suffered from whilst posted as in the logistic trade of the Indian Navy from 28.01.2004 onwards.

11. *Inter alia* on behalf of the respondents it was contended to the effect that the disability that the applicant suffers from was not attributable to military service and thus in terms of Regulations 105(B) of the Navy Pension Regulations 1964 which is to the effect:-

*“A sailor who is discharged from service after he was completed the period of his engagement and is at the time of discharge found to be suffering from a disability attributable to or aggravated by naval service, may at the discretion of the competent authority be granted in addition to the service pension admissible, a disability element as if he has been discharged on account of that disability”,*



the applicant was not entitled to the grant of the disability element of pension in relation thereto. The respondents have thus sought that the present OA be dismissed.

### **ANALYSIS**

12. On a consideration of the submissions made on behalf of either side, it is essential to observe that the factum that as laid down by the Hon'ble Supreme Court in *Dharamvir Singh (Supra)* that, a personnel of the Armed Forces has to be presumed to have been inducted into military service in a fit condition, if there is no note on the record at the time of entrance in relation to any disability, - in the event of his subsequently being discharged from service on medical grounds, the disability has to be presumed to be due to service unless the contrary is established, - is no more *res integra*.

13. Furthermore, 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 to the effect:-

**"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 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.

14. Furthermore it is essential to observe that Regulation 423 of the Regulations for the Medical Services of the Armed Forces 2010 which relates to 'Attributability to Service' and 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.

15. Furthermore para 33 of the verdict of the Hon'ble Supreme Court in the case of *Dharamvir Singh Vs. Union Of India & Ors* (Civil Appeal No. 4949/2013) has observed to the effect :-

*"33. As per Rule 423(a) of General Rules for the purpose of determining a question whether the cause of a disability or death resulting from disease is or is 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 service/active service area or under normal peace conditions. "Classification of diseases" have been prescribed at Chapter IV of Annexure I; under paragraph 4 post traumatic epilepsy and other mental changes resulting from head injuries have been shown as one of the diseases affected by training, marching, prolonged standing etc. Therefore, the presumption would be that the disability of the appellant bore a casual connection with the service conditions."*

16. It is also essential to observe that the prayer for the 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 Vs. Rajbir Singh* (Civil Appeal 2904/2011) dated 13.02.2015.

17. 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.

18. Taking into account the factum that the disability of the applicant had its onset in January 2017 after period of 13 years of the applicant having been inducted in the Indian Navy on 28.01.2004 with the disability having its onset in a period of less than a year after the posting of the applicant of a field station onboard INS Mumbai from 19.03.2014 to 24.02.2016, the disability that the applicant suffers from has in the circumstances to be held to be due to the precipitative stress and strain of Naval service which the applicant underwent even for the period from 10.04.2005 to 14.03.2008 when he had been posted on INS Gharial, another field posting.

19. In the instant case in as much as in the present OA has been filed on 24.12.2019 with the applicant having been discharged from the Indian Navy on 31.01.2019, in terms of Para 7 of the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel 2008 as are applicable to the applicant in the facts and circumstances of the instant case, the initial presumption of the disability having arisen due to Naval service arises in favour of the applicant which the respondents in the absence of any note on the record of the respondents for the medical disability of the applicant, have been unable to dislodge in terms of Section 10(b)(iii) of the said Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008. In these circumstances the applicant is thus held entitled to the grant of the disability element of pension for the disability of Diabetes Mellitus Type II, assessed with a percentage of disablement of 20% for life.

### ***CONCLUSION***

20. In view of the above analysis, the applicant is held entitled to the grant of the disability element of pension in relation to the disability of Diabetes Mellitus Type II assessed at 20% for life with effect from the date of discharge and taking into account the factum that the applicant is already in receipt of the disability element of

pension in relation to the disability of Fracture Patella assessed at 40% which has been rounded off to 50%, with the composite assessment of the two disabilities of the applicant of Type II Diabetes Mellitus assessed at 20% and the Fracture Patella knee OPTD assessed at 40% at being 52% rounded off to 50% for life as per the RMB proceedings detailed in para 4 hereinabove, the applicant in terms of verdict of the Hon'ble Supreme Court in *Union of India & Ors. vs. Ram Avtar* in Civil Appeal No. 418/2012 in para 7 of the letter dated 07.02.2001, is held entitled to the grant of the disability element of pension for the two disabilities of Diabetes Mellitus and Fracture Patella (Rt) Knee OPTD @75% for life with effect from the date of discharge.

21. The respondents are directed to calculate, sanction and issue the necessary Corrigendum PPO to the applicant within three months from the date of receipt of the copy of this order and in the event of default, the applicant shall be entitled to the interest @6% per annum till the date of payment.

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

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

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

/yogita/