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

D.

OA 1717/2019

Ex PO ME Manoj Yadav ..... Applicant
VERSUS
Union of India and Ors. ..... Respondents

For Applicant : Mr. Ved Prakash, 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
13.12.2023

Vide our detailed order of even date we have allowed the OA 1717/2019. 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)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

TS

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OA 1717/2019

Ex PO ME Manoj Yadav ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Mr.Raj Kumar, proxy for Mr Ved Prakash 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

The applicant vide the present OA 1717/2019 makes the following prayers:

> *"(a) To Quash the impugned Order No.PEN/600/D/LRDO 1"01/2019/138280Z dated 22.02.2019*
>
> *(b) Direct the respondents to grant disability element of pension duly rounded off to @50% w.e.f. his date of discharge*
> *(c) Direct the respondents to pay the due arrears with interest @12%p.a. from the date of discharge with all the consequential benefits.*
> *(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case alongwith cost of the application in favuor*

of the applicant and against the respondents."

2. The applicant was enrolled in the Indian Navy on 28.01.2004 and discharged from service on 31.01.2019 on expiry of engagement with 15 years and 04 days of qualifying service and subsequently, service pension vide PPO No.248201900100 dated 10.01.2019 was sanctioned to the applicant. At the time of discharge, the applicant was placed in Low Medical Category S2A2(P) PMT for the ID TYPE-II DIABETES MELLITUS(E 11.0) and the Release Medical Board assessed the disablement of the applicant @20% for life as 'neither attributable to nor aggravated by service(NANA) in terms of Para 26, Chapter VI of GMO 2008. The onset of the disability occurred while the applicant was serving in a peace station {MTU(V)}. The claim of the disability element of pension was considered by the competent authority of the respondents and rejected and intimation to this effect was sent to the applicant vide Letter No.PEN/600/D/LRDO/1L01/2019/138280Z dated 22.02.2019 with an advice to the applicant to prefer an appeal within six months from the date of receipt of the letter of rejection(if so desired). The First Appeal dated 26.04.2019 preferred by the applicant was not decided by the respondents till the institution of the present OA on 14.10.2019 and thus in the interest of justice, we consider it appropriate to take up the present OA for consideration under Section 21(1) of the Armed Forces Tribunal Act, 2007 in view of it pending since institution.

CONTENTIONS OF THE PARTIES

3. The applicant submits that he was enrolled in the Indian Navy on 28.01.2004 and discharged from service in Low Medical Category on 31.01.2019 after rendering a service of 15 years. The applicant submits that whilst in active service he suffered with a disability of Type-II Diabetes Mellitus ICD E 11 in January, 2018 and the Release Medical Board conducted at the time of discharge assessed the disability @20% for life however, the disability of the applicant was held to be neither attributable to nor aggravated by Naval service. The applicant submits at the time of entry into the Indian Navy, he was subjected to a thorough medical examination conducted by the Board of Doctors which found him medically fit in all aspects at the Selection Centre and he was enrolled in the Indian Navy. The applicant further submits that even after selection, he was put to thorough a medical examination at the Training Centre and he remained fit for a long period of 14 years which makes it crystal clear that the disability of "Type II Diabetes Mellitus ICD E 11 in January 2018 from which he suffered from whilst in active service assessed @20% for life was due to the rigours of military service. The applicant submits that as per Para 26 of the " Guide to Medical Officer(Military Pension) 2008, Diabetes Mellitus Type –II generally arises in close time relationship to service in field area, active operation area, war like situation both in peace and field area, counter insurgency areas and high altitude areas is acceptable as aggravated when

exceptional stress and strain of service is in evidence. The applicant submits that furthermore, as per the Entitlement Rules of Casualty Pensionary Award 1982, ID of Diabetes Mellitus Type-II is a disease affected by stress and strain of military service and that the Release Medical Board wrongly opined that the disability is neither attributable to nor aggravated by service.

4. The applicant places reliance on the verdict of the Hon'ble Supreme Court in ***Dharamvir Singh*** Vs ***Union of India & Ors(*** Civil Appeal No.4949 of 2013) 2013(7) SCC 36 and ***Union of India & Anr*** Vs ***Rajbir Singh*** Civil Appeal No.2904/2-011, 2015(2) Scale 371 to submit to the effect that in terms of 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 the "General Rules of Guide to Medical Officers(Military Pensions) 2002 and Para 423 of the Regulations for the Medical Services of the Armed Forces, 2010, it is well settled that where there is no note in the service record of the applicant at the time of entry into service and there is nothing opined by the Medical Board to indicate as to why the applicant was suffering from the disability, a presumption has to be drawn in favour of the applicant who was discharged in low medical category that he suffered from the disease due to the service conditions of military service and the disability from which the applicant suffers is attributable to and aggravated by military service and that thus the applicant is

entitled to the grant of the disability element of pension as claimed by him.

5. The respondents on the other hand reiterated that the disability of the applicant is neither attributable to nor aggravated by military service as the disability is an idiopathic/lifestyle related disorder and was detected while the applicant was serving in a peace area and that there is no close time association of stress and strain with military service. The respondents placed reliance on Para 26 of Chapter VI of GMO(Mil Pen) 2008 to submit to the effect that the applicant is not entitled to the grant of the disability element of pension. It is submitted by the respondents that the medical test at the time of his entry is not exhaustive but its scope is limited to broad physical examination and thus, it may not detect some dormant disease and certain hereditary, constitutional and congenital diseases which may manifest later in life, irrespective of service conditions. *Inter alia*, the respondents submit that Diabetes Mellitus Type-II is a constitutional disease i.e. its etiology depends to a significant degree on the action of generic factors and inherent genes that make them susceptible to Type II- Diabetes Mellitus but lifestyle factors like obesity and inactivity are also important

6. The respondents thus submit that the applicant is not entitled to the grant of the disability element of pension as prayed by him and that the question of percentage of disability does not arise. *Inter alia*, the respondents submit that reliance that has been placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in ***Union of India***

& Ors Vs *Ram Avtar* in Civil Appeal No. 418/2012 is misplaced submitting to the effect that *Ram Avtar* was discharged from service after completion of terms of engagement with 20% disability whereas in the instant case, the applicant's disability i.e. Diabetes Mellitus Type-II was conceded as NANA. The respondents also submit that the applicant in the case of *Dharamvir Singh*(supra) was invalided from service but in the instant case the applicant had superannuated. The respondents thus seek that the OA filed by the applicant be dismissed.

ANALYSIS

7. 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)* ,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 of 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.*

8. The Hon'ble Supreme Court in *Dharamvir Singh* vs. *Union of India* and Ors. (2013) 7 SCC 316, vide observations in para 28 thereof has had laid down the guiding canons 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

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."

9. 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)

10. On a consideration of the submissions that have been made on behalf of either side, it is essential to observe that the aspect of determination of the disability resulting from the disease being attributable to service apart from being governed by the 'Entitlement Rules for Casual Pensionary Awards to the Armed Forces Personnel, 2008

is also governed by Regulation 423 of the Regulations for the Medical Services of the Armed Forces, 2010 which is still in operation. Regulation 423 (a) specifically provides that it is immaterial for the purpose of determining whether the cause of a disability or death resulting from disease is or is not attributable to service, ***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.***

(emphasis supplied)

11. As per Regulation 423 of Chapter 8 of the Regulations for the Medical Services of the Armed Forces, 2010, the revised version which is in force, it has been regulated to the effect:-

> ***"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),

12. It is also essential to observe that 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 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),

13. On a consideration of the submissions that have been made on behalf of either side as has already been observed hereinabove despite the 'Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 1982' having been superseded by the 'Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008' which have been made effective from 01.01.2008 as per letter dated 18.01.2010 F.No.1(3)/2002/Vol-1/D(Pen/) of the Government of India, Ministry of Defence Department of Ex-Servicemen Welfare, the factum that the ratio of the verdicts in ***Dharamvir Singh (supra)***, ***Sukhvinder Singh (supra)***, ***Rajbir Singh (supra)*** and ***Manjeet Singh (supra)*** form the fulcrum of the 'Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008' cannot be overlooked.

14. This is so in as much as the observations of the Hon'ble Supreme Court in the verdicts referred to hereinabove in relation to the aspect of causal connection between disability or death and military service are based on the nexus between the injury and military service and the

arising of the disease during the period of the military service which has been caused by the conditions of employment in military service.

15. The posting profile of the applicant as per the Medical Board Proceedings dated 31.07.2018 in Part-I thereof as per the personal statement of the applicant is as under:

"PART -1 PERSONAL STATEMENT

1. Give details of service(P-Peace OR F-Field/Operation/Sea Service

S. No.	From	To	Place/ Ship	P/ F	S. No.	From	To	Place Shit	P/
(i)	28.01.2004	13.7.2004	CHILKA	P	(ii)	14.7.2004	7.5.2005	CR SHIVAJI	P
(iii)	8.5.2005	4.4.2012	INS NISHANK	F	(iv)	05.04.2012	23.3.2015	NETAJI SUBHASH	P
(v)	24.03.2015	30.6.2017	INS RAJPUT	F	(vi)	01.07.2017	Till date	MTU(V)	p

The onset of the disability of DM Type-II(ICD No.E11.0) as indicated through the said RMB dated 31.07.2018 occurred in January 2018 at the Machinery Trials Unit(V) Visakhapatnam. As per Part-I of the RMB in response to a query No.3, it has been recorded to the effect:

"3.Did you suffer from any disability before joining armed forces/If, so give details and dates: NO"

The opinion of the Medical Board in Part-V of the RMB is as under:

PART V

OPINION OF THE MEDICAL BOARD

As per the RMB, it was stated to the effect:

"

1. Casual Relationship of the Disability with Service conditions or otherwise.				
Disability	Attributab service Y/	Aggravate Service (Y	Not conne With serv (Y/N)	Reason/cause/specific Condition and period In service.
Diabetes Mellitus Type-II ICD No. E-11Z09.0	NO	NO	YES	Neither attributable nor aggravated by military service vide Para 26, Chapter VI of GMO 2008. Onset of Disability occurred while serving in Peace station EG. MTU(V)

"

Note: A disability "not connected with service" would be neither attributable nor aggravated by service.

16. That peace stations have their own pressure of rigorous military training and associated stress and strain of service and that most of the personnel of the Armed Forces have to work in stressful and hostile environment, difficult weather conditions and under strict disciplinary norms has already been taken into consideration by this Tribunal in a catena of cases at the time of consideration of the prayers made for grant of disability pension.

17. As per the amendment to Chapter VI of 'Guide to Medical Officers(Military Pensions), 2008, Para 26 thereof, Type-II 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.

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

"26. Diabetes Mellitus

This 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.

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."

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.

19. In view of 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 which are the fulcrum of the Entitlement Rules for Casualty Pensionary Awards for the Armed Forces-2008 as already observed hereinabove thus, in the absence of any disability recorded by the medical board at the time of induction of the applicant into military service of any disease that he suffered from, with the onset of the disability being in service in January, 2018, after induction of the applicant in the Indian Navy on **28.01.2004** i.e. after 18 years of induction into the Indian Navy and the disability that the applicant suffers from has to be held attributable to and aggravated by military service.

20. 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.

21. In terms of the verdict of the Hon'ble Supreme Court in Civil Appeal No.5970/2019 titled as ***Commander Rakesh Pande*** Vs ***Union of India & Ors*** dated 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% broadbanded to 50% for life was upheld.**

22. In these circumstances, the applicant herein who suffered from Diabetes Mellitus Type-II though whilst serving in peace area is entitled to the disability element of pension for Diabetes Mellitus Type-II assessed @20% for life which has to be held to be due to the stress and strain of military service in terms of Para 26 of Chapter VI of the Guide to Medical Officers(MP) 2008.

CONCLUSION

23. The **OA 1717/2019** is thus allowed and the applicant is 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 and the respondents are directed to issue the corrigendum PPO with directions to the respondents 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 this 13 day of December ,2023.

[REAR ADMIRAL DHIREN VIG]
MEMBER(A)

[JUSTICE ANU MALHOTRA)
MEMBER (J)

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