

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

13.

OA 32/2018

Ex Nk P Madurai Veeran Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Ms. Sangeeta Tomar, Advocate
For Respondents : Mr. YP Singh, Advocate

CORAM

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

ORDER
20.11.2023

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

- "(a) The respondents shall consider the discharge of the applicant as invalidation out of service on account of medical disability, thus, treating his Release Medical Board as Invalidment Medical Board.*
- (b) Set aside the order dated 27.09.2017 passed by the respondents vide letter bearing no. 14809397/Disb/Pen/DP-II dated 27.09.2017 rejecting applicant's claim of disability pension;*
- (c) Direct the respondents to round off the disability of applicant from 15-19% to 50% and accordingly pay Disability Pension (in accordance with Regulation 183 of the Pension Regulations for the Army, 1961) to the applicant with effect from 30.09.2008 (date of discharge); in terms of judgement of Atul Chandra Karmakar vs. UoI & Ors.*
- (d) Direct the respondents to consider the Review Medical Board as Invaliding Board inturn consider the applicant to have been Invaliding Out from service; in terms of Judgment of Atul Chandra Karmakar Vs. UoI & Ors.*
- (e) Any other order as may be deemed fit and proper in the facts and circumstances of the case."*

2. The applicant was enrolled in the Indian Army on 26.02.1993 and suffered from the disability of Diabetes Mellitus Type-II which had its onset in January 2006 as averred in the counter affidavit of the respondents dated 27.03.2018 which as per the statement of the case in Part IV of the RMB proceedings dated 02.08.2008 is indicated to be on 22.05.2006, the posting profile of the applicant as per the RMB placed on record by the applicant states details of his service as under:-

SI. NO.	UNIT	FROM	TO	PLACE	PEACE/FD
(a)	ASC Centre (s) Bangalore	26 Feb 93	26 Feb 94	Bangalore (Karnataka)	Peace
(b)	5021 ASC Bn	27 Feb 94	17 Apr 97	Pathankot (Punjab)	Field
(c)	504 ASC Bn	18 Apr 97	07 Oct 99	Allahabad (UP)	Peace
(d)	557 ASC Bn	08 Oct 99	24 Oct 02	Massingpur (Assam)	Field
(e)	MI-25 (AHQ)	25 Oct 02	02 Apr 06	Delhi	Peace
(f)	510 ASC Bn	03 Apr 06	Till date	Akhnor (J&K)	Field

3. The said posting profile indicates that during his 6th posting, the applicant was posted from 03.04.2006 onwards at Akhnor Jammu and Kashmir i.e. a field area. In the circumstances, in view of the service record of the applicant on the record and the RMB placed on the record by the respondents, the onset of the disability put forth on the record, on 22.05.2006 in a field area during the 6th posting of the applicant from 03.04.2006 at Jammu and Kashmir.

The applicant was placed in the low medical category pursuant to his disability and in terms of letter issued by the Integrated Headquarter of Ministry of Defence letter no. B/102001/06-08/VOL-I/MP-3 dated 12.04.2007 awarded on 27.06.2007, whereby, the Government decided to discharge all low medical category (LMC) JCOs and ORs who had completed 20 and 15 years or more on service respectively who pursuant to judgment dated 07.11.2008 arising out of Civil Appeal 6587/2008 **Union Of India & Ors. vs Rajpal Singh** whereby the Union of India was directed to reinstate such persons retrospectively, and to pay all allowances, all affected persons were issued option letters to rejoin and according to the respondents the applicant was also called upon to rejoin service however, the applicant was unwilling to rejoin the service and accepted his discharge.

4. *Qua* the disability of the applicant in the instant case, as per the RMB dated 02.08.2008, the Medical Board in Part V thereof opined as under:-

Causal Relationship of the Disability with Service conditions or otherwise.				
Disability	Attributable to service (Y/N)	Aggravated By service (Y/N)	Not connected with service (Y/N)	Reason/Cause Specific condition and period in service.
Diabetes Mellitus	No	No	Yes	Neither Attributable nor

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Type-II (EIA)				aggravated by service.
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thus, opining to the effect that the disability of Diabetes Mellitus Type II that the applicant suffered from was neither attributable to nor aggravated by military service. The percentage of disablement of the said disability was put forth in the said RMB as under:

“

6. What is the 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 with duration	Composite assessment for all disabilities with duration (Max 100%) with duration	Disability Qualification for Disability Pension with duration	Net Assessment qualifying for Disability Pension (Max 100%) with duration
1. Diabetes Mellitus Type II	15-19% (fifteen to nineteen percent final and for life)	15-19% (fifteen to nineteen percent final and for life)	NIL	NIL 20

”

thus, assessing the disability of the applicant @15% to 19%, final and for life with the quantifying net assessment for grant of disability pension as being @ NIL.

5. On behalf of the applicant, it has been submitted to the effect that the applicant seeks the grant of disability element of

pension and that the disability that the applicant suffered from is due to stress and strain of the service that the applicant underwent due to his posting profile as already reflected hereinabove in Para No. 2, which indicates the applicant's postings from 27.02.1994 to 17.04.1997 at Pathankot (Punjab) a field area, from 08.10.1999 to 24.10.2002 at Massingpur (Assam) a field area and from 03.04.2006 till his release at Aknoor (J & K) a field area i.e. he was posted in three field postings out of his six postings during his whole tenure. The applicant further submits that the onset of the applicant's disability was on 22.05.2006 after induction of the applicant into the military service on 26.02.1993 and with there being no note of any disability recorded on the records by the respondents of any element whatsoever, as reflected also through Paragraph 2 of the RMB proceedings:-

“

2. Did the disability exist before entering service? (Y/N/Could be) **NO**

”

and also the factum as reflected vide the response to query no. 3 in the RMB proceedings as under:-

“

3. In case of disability existed at the time of entry, is it possible that it could not be detected during the routine medical examination carried out at the time of entry? **NO**

”

there being nothing on record to indicate that the respondents could not have ascertained the existence of the disability before the induction of the applicant into the military service in terms of the verdict of Hon'ble Supreme Court in *Dharamvir Singh v. UOI & Ors* [2013 (7) SCC 36], and a catena of verdicts of the Hon'ble Supreme Court pursuant thereto in Civil Appeal no. 5970/2019 titled as *Commander Rakesh Pande Vs UOI & Ors.*, dated on 28.11.2019, *UOI & Ors Vs. Manjeet Singh* dated 12.05.2015, Civil Appeal no. 4357-4358 of 2015 and *Sukhvinder Singh Vs. UOI & Ors*, dated 25.06.2014 reported in 2014 STPL (Web) 468 SC, the applicant is entitled to the grant of the presumption in his favour that the disability that arose was due to military service.

6. On behalf of the respondents, the learned counsel for the respondents submits to the effect that the applicant in the instant case had suffered the disability of Diabetes Mellitus Type-II which the RMB had opined to be neither attributable to nor aggravated by military service and that the opinion of the RMB is same thus, entitled to be granted due weight and credence.

7. It is essential to advert to Paragraph 26 of Chapter VI of the GMO Military Pension 2008, which provides 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, CIOFS, 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."

8. Stress and strain, improper diet and non-compliance of therapeutic measures because of service reasons are causative factors *inter alia* which precipitates Diabetes Mellitus Type-II and causes uncontrolled diabetic state.

9. 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. The applicant thereof had been granted the benefit of the disability element of pension in relation to the disability of Diabetes Mellitus Type -II.

10. It has been laid down by the Hon'ble Supreme Court in case of **Sukhvinder Singh** (supra), as under:-

"9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Thirdly, there appears to be no provisions authorising the discharge or invaliding out of service where the disability is below twenty per cent and seems to us to be logically so. Fourthly, wherever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension".

11. As has been observed hereinabove, the applicant's disability had its onset in the field area in the 6th posting of the applicant and prior to the same that the applicant had been posted on two field postings. Apart from the same, on behalf of the respondents

it is sought to be submitted that in as much as the disability of the applicant was assessed by the Release Medical Board @15-19%, the same does not fulfill the requisite criteria for the grant of disability element of pension in as much as it was not assessed with the percentage of disablement for 20% or more.

12. Reliance is also placed on behalf of the respondents on the verdict of Hon'ble Supreme Court in the case of *Union of India & Ors. Vs. Wing Commander S.P. Rathore [Civil Appeal No. 10870/2018]*, to submit to the effect that in the absence of the disability having not been assessed @20% or more, the applicant is not entitled to the grant of disability element of pension in relation to the disability that he suffers from.

13. In relation thereto, on behalf of the applicant, reliance is placed by the learned counsel for the applicant on Letter No. 16036/DGAFMS/MA (PENS) dated 20.07.2012 to submit to the effect that as per the said guidelines on the assessment of disability percentage in Type II Diabetes Mellitus *inter alia*, the Ministry of Defence had itself stated therein to the effect:-

1. There are no laid down guidelines for assessment of disability percentage in regard to Diabetes Melitus and Epilepsy cases in Guide to Medical Officers (Military Pension) 2008. Due to lack of clear policy, problems are being faced in final adjudication and it is difficult to maintain uniformity. It is even more difficult to file reply in court cases.

2. Guidelines on assessment of disability percentage in Diabetes and Epilepsy cases in consultation with Senior Consultant (Medicine) have been framed. The details are as under:-

“ Diabetes Mellitus (DM):

(i)DM Type II on oral hypoglacemia agents (OHA) Without target organ damage: 20%

(ii)DM Type II on insulin Without target organ damage: 30%

(iii)DM Type I/ Type II on insulin with TOD : 40% and above As per clinical assessment

(iv)Impaired fasting glucose/ Impaired glucose tolerance : Less than 20% ”

which indicates that in relation to Diabetes Mellitus Type-II the percentage of disablement of the said disability cannot be assessed less than @20%. Significantly, the concurrence in relation to this document has been accorded on 12.05.2023 vide letter no. Air Air HQ/99801/4/DAV (Med).

14. On behalf of the respondents, it is sought to be contended that the documents dated 20.07.2012 and 12.05.2023 in relation to the Diabetes Mellitus Type-II, which states to the effect that the assessment thereof is to be @20% and do not indicate a lesser quantum of assessment than that in relation to Diabetes Mellitus Type-II, cannot relate to the date of discharge of the applicant who was discharged on 30.09.2008. The said contention is wholly unacceptable as the determination of the assessment of the disability cannot relate to time and the assessment of the percentage of disablement can only be in relation to the disability and not as to in which year and when it arose.

15. A submission is made on behalf of the respondents further to the effect that the applicant despite having been given an

option to rejoin service, did not choose to continue his service and thus, the applicant is not entitled to the grant of the prayer made by him. It is essential to observe that the applicant had completed his tenure of qualifying service of 15 years 7 months in the instant case and apart from the same it cannot be overlooked that in terms of the order of this Tribunal in OA 189 of 2011 in case of ***Maj (Retd) Rajesh Kumar Bhardwaj Vs Union of India & Ors.,*** which has not been assailed by the respondents, the principles laid down thereon bring forth categorically that despite the applicant having not opted to rejoin even if, he had taken voluntary retirement, the applicant would be entitled to the grant of the disability element of pension if otherwise entitled to the same.

16. In view thereof in as much as the percentage of disablement in the instant case has to be assessed @20% in terms of the policy letter dated 20.07.2012 and 12.05.2023 of the respondents themselves, with it having been observed hereinabove by us that the disability that the applicant suffers from of Diabetes Mellitus Type-II in terms of, Para 26 of Chapter VI of the GMO (Military Pension), 2008, and the posting profile of the applicant has to be held to be attributable to and aggravated by military service, in the circumstances of the instant case, the applicant is held entitled to the grant of disability

element of pension in relation to the disability of Diabetes Mellitus Type-II directed in terms of the policies letter nos. 16036/DGAFMS/MA (PENS) dated 20.07.2012 and Air HQ/99801/4/DAV (Med) dated 12.05.2023 of the respondents to be assessed with percentage of the disablement @20% for life, which in terms of the verdict of Hon'ble Supreme Court in **Union of India Vs. Ram Avtar** is directed to be broad banded to @ 50% for life from the date of discharge.

17. In as much as, the present OA has been filed on 27.12.2017 with much delay, in terms of the verdict of the Hon'ble Supreme Court in **Union of India and others Vs. Tarsem Singh** (2008) 8 SCC 648, the arrears for the grant of disability pension shall commence to run from a period of three years prior to the institution of the present OA the respondents are directed to issue the corrigendum PPO to the applicant and pay arrears within a period of three months liable to pay interest at the rate of 6% per annum.

18. The OA is disposed of accordingly.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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