

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

**1. SUPPLEMENTARY
OA 444/2020 WITH MA 1643/2023**

Ex Hav Mahesh Chand **Applicant**
VERSUS
Union of India and Ors. **Respondents**

For Applicant : Mr. Shobit Shukla, Proxy for
Mr. Aditya Singh Puar, Advocate
For Respondents : Mr. Avdhesh Kumar Singh, Advocate
CORAM

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

**ORDER
04.10.2023**

Vide our detailed order of even date; we have allowed the OA 444/2020. 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 444/2020 WITH MA 1643/2023

Ex HAV Mahesh Chand

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Aditya Singh Puar, Advocate
For Respondents : Mr. Avdresh Kumar Singh, Advocate

CORAM :

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

ORDER

OA 444/2020

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

- (i) Petitioner, hence, prays for grant of disability pension in accordance with the applicable Rules and The Entitlement Rules, 1982, by setting aside that part of the Medical Board (Impugned Order-1) wherein his disability has been opined to be neither attributable to, nor aggravated by military service being not only in conflict with the Rules but also in direct contravention of a series of decisions of the Hon'ble Supreme Court (as seen supra);*
- (ii) With a further Prayer that the Respondent's may be directed to release disability pension for life, along with arrears too the Petitioner, along with the benefit of Broadbanding in accordance with the Judgment of the Hon'ble Supreme Court in Union of India vs. Ram Avtar with heavy costs and compensation and interest within a time-bound manner;*
- (iii) Any other relief which the Hon'ble Tribunal may deem fit in the interest of Petitioner.*

2. The applicant Ex HAV Mahesh Chand No. 10405162A was initially enrolled in 114 Infantry Battalion TA (JAT) on 20th November

1985 and discharged there from w.e.f 15th March 1997 (AN) at his own request on compassionate grounds after rendering 06 years 11 months and 04 days qualifying service.

3. Thereafter, he was enrolled in DSC on 10th May 1997 and opted to count his former service towards DSC service. On completion of initial terms of engagement, he was granted periodical extension of service w.e.f 10th May 2007 to 09th May 2012 and 10th May 2012 to 09th May 2017. The applicant was placed in low medical category P3 (Permanent) w.e.f 02nd November 2015 for the diagnosis 'ISCAEHMIC STROKE (LT) MCA TERRITORY (OLD)' and P2 (Permanent) w.e.f 05th May 2016 for the diagnosis 'PRIMARY HYPERTENSION' which are stated by the respondents through their counter affidavit dated 25.04.2023 to be unacceptable for further extension of service. Accordingly, the applicant was discharged from DSC service w.e.f 31st May 2017 (AN) under the provisions of Army Rule 13 (3) item III (i) on completion of terms of engagement after rendering 26 years, 10 months and 27 days aggregate qualifying service including both spells for which he was granted Service Pension vide PCDA (P) PPO No. S/27272/2017. As the applicant was placed in permanent low medical category, he was brought before a duly constituted Release Medical Board which assessed his disabilities TYPE-II' DM (OLD)', ISCAEHMIC STROKE (LT) MCA TERRITORY

(OLD)' and PRIMARY HYPERTENSION' as neither attributable to nor aggravated by military service @ 20%, 20% and 30% respectively. The composite disability was assessed @ 60% with 'NIL' percentage of disablement qualifying for Disability Pension. His disability element claim was adjudicated and rejected by the Adjudicating Authority on the findings of the Release Medical Board. The appeal preferred by the applicant was also rejected by the Appellate Committee on First Appeal (ACFA) vide letter No B/40502/950/2019/AG/PS-4((imp-II) dated 13th November 2019. The second appeal preferred by the applicant was also rejected by the competent authority vide Integrated HQ of MoD (Army) letter No. B/38046A/217/2020/AG/PS-4 (2nd Appeal) dated 05th March 2021. The applicant has thus filed the present OA.

4. The applicant submits that during his period of service he remained posted to many peace/field and active operational areas. The applicant submits that his disabilities of Diabetes Mellitus Type II (old) which had its onset on 24.08.2014 at Pune and the Ischemic Stroke (Lt) MCA Territory (old) also with its onset on 24.08.2014 and the disability of Primary Hypertension (Old) with its onset on P18.05.2015 whilst he was posted at 2 Wing AF Pune, are due to the stress and strain of military service and attributable to and aggravated thereby and thus the applicant submits that he is entitled to the grant of the disability element of pension

in relation to the three disabilities which have been assessed at 20%, 20%, and 30% for life each with the composite assessment of 60% which he seeks ought to be broad banded to 75% for life in terms of the verdict of the Hon'ble Supreme Court in *Union of India & Ors. vs. Ram Avtar* in Civil Appeal No. 418/2012.

5. *Inter alia* the applicant places reliance on the observations vide Para 28 of the verdict of the *Hon'ble Supreme Court in Dharamvir Singh vs. Union of India & Ors.* in (2013) 7SCC 316, wherein it has been laid down 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.

and submits that in the absence of any note of any disability for the applicant recorded on the records of the respondents at the time of his induction into military service, the subsequent disabilities that have arisen during the course of military service have to be held to be attributable to military service and aggravated thereby.

6. The respondents on the other hand, contend that there is no infirmity in the RMB dated 08.10.2016 opining the disabilities of the applicant as being neither attributable to nor aggravated by military service, in as much as none of the disabilities has any close time association with stress and strain and that all the disabilities arose in peace areas. Likewise, the respondents contend that there is no infirmity

in the rejection of the first appeal and second appeal filed by the applicant and reiterate that the disabilities of the applicant are neither attributable to nor aggravated by military service.

ANALYSIS

7. The disabilities of the applicant as reflected in the RMB with their onset are as under:-

“

| Disabilities | Date of origin | Rank of Indl | Place and unit serving at the time |
|--|----------------|--------------|------------------------------------|
| Type II Diabetes Mellitus (Old) | 24.08.14 | HAV | 454 DSC PL att to 2 Wing AF Pune |
| Ischemic Stroke (Lt) MCA Territory (Old) | 24.08.14 | HAV | 454 DSC PL att to 2 Wing AF Pune |
| Primary Hypertension | 18.05.15 | HAV | 454 DSC PL att to 2 Wing AF Pune |

”

8. The posting profile of the applicant as put forth in the RMB is as under :-

“

| S/No | From | To | Place/Ship | P/F |
|--------|------------|------------|---|-----|
| (i) | 10.05.1997 | 16.08.1997 | DSC Centre Kannur, Kerala | P |
| (ii) | 17.08.1997 | 05.08.2000 | 106 DSC PI att to NSD Ghatkoper Mumbai | P |
| (iii) | 06.08.2000 | 10.08.2002 | 431 DSC PI att to 1 WG AF (Srinagar) | F |
| (iv) | 11.08.2002 | 03.09.2005 | 171 DSC PI att to ord Fy (Kanpur) | P |
| (v) | 04.09.2005 | 02.06.2007 | 133 DSC PI att to 383 Coy ASC | F |
| (vi) | 03.06.2007 | 18.07.2009 | 366 DSC PI att to ord Fy Trichirapalli (TN) | P |
| (vii) | 19.07.2009 | 29.09.2012 | 190 DSC PI att to ord depot Sukarbasti | P |
| (viii) | 30.09.2012 | 29.10.2015 | 454 DSC PI att to 2 Wing AF Pune | P |

| | | | |
|------|------------|-----------|--|
| (ix) | 30.10.2015 | Till Date | 475 DSC PI att to 28 WG AF P Hindan |
|------|------------|-----------|--|

”

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

“

**PART V
OPINION OF THE MEDICAL BOARD**

| 1. 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 |
| (a) Type II Diabetes Mellitus (old) | NO | NO | YES | No close time association with stress and strain of field/ HAA/CIOPS service. Hence NANA as per Para 26 Ch VI of GMO-2008 |
| (b) Ischemic Stroke (Lt) MCA Territory | NO | NO | YES | No close time association with stress and strain of field/ HAA/CIOPS service. Hence NANA as per Para 14 Ch VI of GMO-2008 |
| (c) Primary Hypertension | NO | NO | YES | No close time association with stress and strain of field/ HAA/CIOPS service. Hence NANA as per Para 43 Ch VI of GMO-2008 |

”

10. The percentage of disablement for the three disabilities is put forth in para 6 of the RMB as under :-

“

| 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 to hereafter in multiples of ten from 20% to 100%. | | | | |
|--|---|--|---|---|
| Disability (As numbered in Para 1 Part IV) | Percentage of disablement with duration | Composite assessment for all disabilities with duration (Max 100% with duration) | Disability Qualifying for Pension with duration | Net assessment qualifying for disability pension (Max 100% with duration) |
| (a) Type-II Diabetes Mellitus | 20% life long | 60% life long | Nil | Nil |
| (b) Ischemic Stroke (Lt) MCA Territory | 20% life long | | Nil | Nil |
| (c) Primary Hypertension | 30% life long | | Nil | Nil |

”

11. The responses in Para 2, 3 and 5 (a), (b), (c) in Part V of the RMB are as under :-

“

| |
|--|
| 2. Did the disability exist before entering service? (Y/N/Could be) NO |
| 3. In case the 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 the entry? NO |
| 5. (a) Was the disability attributable to the individual's own negligence or misconduct? If yes, in what way? NO, NA |
| (b) If not attributable, was it aggravated by negligence or misconduct? If so, in what way and to what percentage of the total disablement? NO, NA |
| (c) Has the individual refused to undergo operation/ treatment? If so, individual's reasons will be recorded NO, NA |
| NOTE:- In case of refusal of operation/ treatment, a certificate from the individual will be attached. |

”

12. The reasons for rejection of the disability claim of the applicant were put forth in the letter dated 24.05.2017 sent by the respondents to the applicant and are as under :-

“

| Sr. No. | Disability | Relationship with service conditions | Reason for rejection |
|---------|--|--------------------------------------|---|
| (a) | Type-II Diabetes Mellitus (old) | Not connected with military service | Not connected with military service due to onset of disease in peace and life style disorder/poor diet control and lack of exercise. (Ref Para 26, Chapter VI of GMO-2008) |
| (b) | Ischemic Stroke (Lt) MCA Territory (old) | Not connected with military service | Not connected with military service due to onset leading to neurological deficit with no service related cause of disease in peace station. (Ref Para 26, Chapter VI of GMO-2008) |
| (c) | Primary Hypertension | Not connected with military service | Not connected with military service due to onset of disease in peace station. There was no close time association with field/HAA/ active, operational area. (Ref Para 43, Chapter VI of GMO -2008 (Military Pensions) |

”

13. The reasons for rejection of the first appeal of the applicant stated vide letter dated 13.11.2019 are as under :-

“

| Sr. No. | Disability (S) | Reason (s) |
|---------|---------------------------------|--|
| (a) | Type-II Diabetes Mellitus (old) | In the instant case as per authenticated posting profile, at the time of onset of ID the veteran was posted in peace area and subsequent to onset of ID he continued serving in peace area. Hence the ID is conceded as neither attributable to nor aggravated by military service in terms of Para 26, Chap VI of GMO 2002, amendment 2008 and ER |

| | | |
|-----|--|--|
| | | 2008. |
| (b) | Ischemic Stroke (Lt) MCA Territory (old) | In the instant case, the veteran was posted at a peace location at the time of onset of ID. As per 14 days charter of duties enclosed does not reveal any exceptional mental/physical stressor. Hence the ID is conceded as neither attributable to nor aggravated by military service in terms of Para 14, Chap IV of GMO 2002, amendment 2008 and ER 2008. |
| (c) | Primary Hypertension | In the instant case onset of the ID was detected while the individual was posted in a peace location as per authenticated posting profile. Hence the ID is conceded as neither attributable to nor aggravated by military service by RMB and we concur in terms of Para 14, Chap IV of GMO 2002, amendment 2008 and ER 2008. |

14. The reasons for rejection for the second appeal as communicated to the applicant vide letter dated 05.03.2021 are stated to the effect :-

“

| Sr. No. | Disability (s) | Reason (s) |
|---------|--|---|
| (a) | Type-II Diabetes Mellitus (old) | The onset of disability was in peace station and the individual continued to serve in the peace stations till release from service. Hence, the disability is conceded as neither attributable to nor aggravated by military service in terms of Para 26, Chap VI, GMO 2002, amendment 2008. |
| (b) | Ischemic Stroke (Lt) MCA Territory (old) | The onset of disability was in a peace station while on leave and the individual continued to serve in peace till release. The 14 day charter of duties preceding onset does not reveal exposure to exceptional stress and strain of service. He was managed appropriately at service hospitals with no worsening due to service conditions. Hence, the disability is conceded as neither attributable to or aggravated in terms of Para 14, Chap VI, GMO 2002, amendment 2008. |
| (c) | Primary Hypertension | The onset of disability was in a peace station. Hence, the disability is conceded as neither attributable to nor aggravated by military service in terms of Para 43, Chap VI, GMO 2002, amendment 2008. |

”

15. It is essential to observe that the disabilities of the applicant of TYPE-II Diabetes Mellitus (OLD) and ISCAEHMIC STROKE (LT) MCA TERRITORY (OLD) had their onset on 24.08.2014 after the enrolment of the applicant in the DSC on 10.05.1997 that is after a period of 17 years of enrollment in the DSC with the applicant having also rendered former service towards the Territorial Army for the period from 20.11.1985 to 15.03.1997 when he was enrolled in 114 Infantry Battalion TA (JAT) that is virtually after 29 years of military service. The disability of the applicant of **Primary Hypertension (old)** with its onset on 18.05.2015 thus consequentially after 18 years of joining the DSC is virtually after approximately 30 years of military service. The submissions that the respondents have raised through the rejection of the disability claim, the rejection of the first appeal and the rejection of the second appeal of the applicant are in relation to the onset of the disabilities being in a peace area with no close time association with Field/HAA/Active operational area and any consequential stress or strain thereby. In relation to the same it is essential to advert to 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.

(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),

and has not been obliterated.

16. It is essential to observe that vide Para 33 of the verdict of the Hon'ble Supreme Court in *Dharamvir Singh vs. Union of India & Ors.* it has been 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 causal connection with the service conditions."

Thus, merely because a disability has its onset in the peace area is no ground simplicitor to contend that the same is neither attributable to nor aggravated by military service and each case has to be analyzed on its facts in relation to the extent of causal stress and strain that an applicant may have suffered.

17. 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*.

18. 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 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 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),__

19. It is essential to observe that Para 43 of Chapter VI of the GMO (Military Pensions) itself provides that in certain cases the disease is reported after long and frequent spells of service in field/HAA/Active Operational Area and such cases can be explained by variable responses exhibited by different individuals to stressful situations. As regards, the

disability of Primary Hypertension (old) it is essential to advert to Para 43 of the Chapter VI of the 'Guide to Medical Officers (Practice Military Pension, 2008) which is 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."

20. The posting profile of the applicant indicates that he was posted at 1 WG AF (Srinagar) from 06.08.2000 to 10.08.2002 and from 04.09.2005 to 02.06.2007 at 383 Coy ASC both field stations and apart from the same as has already been observed, it is well settled vide a catena of the orders of this Tribunal that stress and strain caused to personnel of the Armed Forces due to varying climatic and geographical conditions and rigorous military training and military duties are factors which trigger stress and strain resulting into the disability of PRIMARY HYPERTENSION.

21. As regards, the disability 'ISCAEHMIC STROKE (LT) MCA TERRITORY (OLD)' it is essential to advert to Para 14 of Chapter VI of GMO (Military Pensions) which reads as under :-

"14. Cerebrovascular: Accident (Stroke). Stroke or cerebrovascular accident is a disease of acute onset leading to neurological deficit such as hemiplegia caused by intravascular events. Cerebral infarction following thrombosis and embolism accounts for a large number of cases whereas cerebral hemorrhage is the cause only in a few cases. Atherosclerotic thrombosis is of gradual onset and any permanent neurologic deficit is preceded by TIAs (Transient Ischaemic Attacks). TIAs result mostly from embolism of thrombus or platelet material from an extra cerebral artery (Internal carotid) and some times due to stenosis of a major artery, altering hemodynamics in the event of change of posture and exertion. Mural thrombus from the heart in IHD and SBE and ulcerated plaques of atherosclerotic arteries are the principal source of embolism. Among other causes, physical trauma (heat) and mechanical trauma and arteritis associated with infection like TB, connective tissue disorder (PAN, SLE) can give rise to stroke. Service in HAA can precipitate stroke by virtue of hypercoagulable state. About half of the strokes caused by cerebral hemorrhage are due to subarachnoid hemorrhage from rupture of a berry aneurysm (Circle of Willis) and less commonly due to arteriovenous malformation. Remaining cases of hemorrhage in cerebral substance are due to rupture of small perforating arteries/arterioles weakened by hypertension or atheromatous degenerations. The majority cases exhibit greater degree of hemiparesis, dysphasia (if dominant hemisphere is involved), hemianaesthesia and hemianopia. In some cases ataxia, cranial nerve palsy, nystagmus may be the presentation depending on the territory of brain involved. It will be appropriate to award attributability if there is sufficient evidence of infection underlying the disease and physical and mechanical trauma related to service. Aggravation can be conceded when atherosclerosis is the underlying cause and exceptional stress and strain of service is in evidence irrespective of his service in peace or field. 17 It nearly takes 6

months for complete recovery. However, cases showing no sign of improvement up to two years are unlikely to improve further and should be labelled as permanent."

22. It is essential to observe that in Para 14 of the GMO (Military Pensions) 2008 itself, it has been stipulated to the effect that the aggravation can be conceded where atherosclerosis is the underlying cause and exceptional stress and strain of service is in evidence irrespective of the Armed Forces personnel's service in peace or field. In the circumstances, the said disability of the applicant of 'ISCAEHMIC STROKE (LT) MCA TERRITORY (OLD)' has also be held to be aggravated by military service.

23. As regards, the disability of Type II Diabetes Mellitus (old) which had its onset on 24.08.2014 it is essential to advert to Para 26 of the GMO (Military Pensions) 2008 which is as under :-

"26. Diabetes Mellitus: This is a metabolic disease characterised by hyperglycemia due to absolute/relative deficiency of insulin and associated with long term complications called microangiopathy (retinopathy, nephropathy and neuropathy) and macroangiopathy. There are two types of Primary diabetes, Type 1 and Type 2. Type 1 diabetes results from severe and acute destruction of Beta cells of pancreas by autoimmunity brought about by various infections including viruses and other environmental toxins in the background of genetic susceptibility. Type 2 diabetes is not HLA-linked and autoimmune destruction does not play a role. Secondary diabetes can be due to drugs or due to trauma to pancreas or brain surgery or otherwise. Rarely, it can be due to diseases of pituitary, thyroid and adrenal gland. Diabetes arises in close time relationship to service

out of infection, trauma, and post surgery and post drug therapy be considered attributable. Type 1 Diabetes results from acute beta cell destruction by immunological injury resulting from the interaction of certain acute viral infections and genetic beta cell susceptibility. If such a relationship from clinical presentation is forthcoming, then Type 1 Diabetes mellitus should be made attributable to service. Type 2 diabetes is considered a life style disease. Stress and strain, improper diet non-compliance to therapeutic measures because of service reasons, sedentary life style are the known factors which can precipitate diabetes or cause uncontrolled diabetic state. Type 2 Diabetes Mellitus will be conceded aggravated if onset occurs while serving in Field, CIOPS, HAA and prolonged afloat service and having been diagnosed as Type 2 diabetes mellitus who are required serve in these areas. Diabetes secondary to chronic pancreatitis due to alcohol dependence and gestational diabetes should not be considered attributable to service."

24. 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.

25. It is essential to observe that in OA 1532/2016 titled *Cdr Rakesh Pande vs UOI & Ors.*, vide order dated 06.02.2019 of the AFT (PB), New Delhi, the prayer made therein for the grant of disability element of pension in relation to the medical disability of 'NIDDM' and 'hyperlipidemia' assessed at 20% for NIDDM and 6-10% of hyperlipidemia, composite 20% for a period of 5 years in view of the

verdict of the Hon'ble Supreme Court in *Dharamvir Singh vs UOI & Ors* (Civil Appeal No. 4949/2013) and in *UOI & Ors. vs Rajbir Singh* (2015) 12 SCC 264, was upheld for a period of 5 years, which vide judgment of the Hon'ble Supreme Court in Civil Appeal no. 5970/2019 titled as *Commander Rakesh Pande vs UOI & Ors.*, dated 28.11.2019, was upheld for life, it being a disability of a permanent nature.

26. In the case of OA 1532/2016 titled as *Cdr Rakesh Pande vs UOI & Ors.*, the observations in relation to the grant of the disability element of pension as depicted in paras 8, 9, 10, 11 and 12 thereof were upheld by the Hon'ble Supreme Court in *Commander Rakesh Pande* (supra). The observations in paras 8, 9, 10, 11 and 12 of the decision of the AFT (PB), New Delhi in OA 1532/2016 were to the effect:-

"8. On the merits of the case, the respondents submit that the medical disability NIDDM is considered as a metabolic disorder resulting from a diversity of aetiologies, both genetic and environmental, acting jointly. It is characterized by hyperglycemia and often associated with obesity and improper diet. Diabetes Mellitus Type 2, as per Para 26 of Amended Guide to Medical Officers (Medical Pensions) 2008 can be conceded as aggravated while serving in field, CI operations, high altitude areas and prolonged afloat service. However, the same is not relevant in the applicant's case as he was serving in shore duties in New Delhi, Mumbai and Goa prior to onset of the disease. As regards the disability Hyperlipidaemia, respondents submit that associated high cholesterol levels are also a result of metabolic disorder caused due to genetic causes or dietary indiscretion and there can be no service causes that can be considered responsible for predisposition and onset of the disability. Thus, respondents contend that the RMB was just and correct in assessing that the disability

was neither attributable nor aggravated by military service.

9. Further, the respondents aver that the RMB had granted the medical disability only for five years and the same period has expired on 30.04.2006. The applicant made no effort whatsoever to present himself before a Resurvey Medical Board after expiry of the medical disability period. Respondents contend that the contents of Govt. of India (MoD) Circular dated 07.02.2001 can, in no way, be taken to imply that the applicant's disability period would automatically be extended 'for life' even without reference to the medical authorities for reassessment of medical disability on conclusion of the said period.

Consideration :

10. Having given careful consideration to the arguments on both sides, we find that the basic issue before us is whether the applicant, a naval officer who contracted NIDDM and Hyperlipidaemia after about 17 years of service, and was assessed @ 20% composite for these two diseases for a period of 5 years by the RMB three years later, on his taking premature retirement, can be granted disability element of pension despite the fact that (a) the applicant has approached the respondents and the Tribunal about 15 years after his premature retirement from service, and (b) the RMB assessed his disabilities (composite @ 20% for five years) as neither attributable nor aggravated (NANA) by military service.

11. In the first instance, we have considered the delay of about 15 years by the applicant in forwarding his representation against non-grant of disability element of pension and filing his OA thereafter. We have examined the averments in M.A. No. 566 of 2019 explaining the delay and, in the interests of justice, condoned the delay, relying upon the judgment dated 13.08.2008 of the Hon'ble Supreme Court in the matter of Union of India Vs. Tarsem Singh (2009) (1) AISIJ 371.

12. With regard to the merits of the OA, we find that the applicant's case is squarely covered by the judgments in the case of Dharamvir Singh (supra) and Rajbir Singh (supra), whereby the Hon'ble Apex Court had observed to the effect that, unless cogent reasons are given to the contrary by the medical authorities, attributability or aggravation will be conceded in cases where military personnel contract medical disabilities during the course of the service based on the grounds that military

personnel are put through thorough medical examination at the time of their entry into service, and are not enrolled or commissioned unless they are found fully fit medically."

(emphasis supplied)

27. As per Para 26 of the GMO (Military Pensions) 2008 itself it has been stipulated that stress and strain improper diet non compliance to therapeutic measures because of service reasons, sedentary lifestyle are the known factors which can precipitate diabetes or uncontrolled diabetic state and thus the disabilities of Type II Diabetes Mellitus (old) and Primary Hypertension are attributable to military service and the disability of ISCAEHMIC STROKE (LT) MCA TERRITORY (OLD) in the instant case is held to be aggravated by military service.

CONCLUSION

28. The applicant is thus entitled to the grant of the disability element of pension for the disabilities of Type II Diabetes Mellitus (old) and Primary Hypertension as being attributable to military service and the disability of ISCAEHMIC STROKE (LT) MCA TERRITORY (OLD) as being held aggravated by military service and with all the three disabilities being compositely assessed @60% for life which in terms of the verdict of the Hon'ble Supreme Court in *Union of India & Ors. vs. Ram Avtar* in Civil Appeal No. 418/2012 is broad banded to 75% for life.

29. The respondents are thus directed to calculate, sanction and issue the necessary PPO to the applicant within a period of three months from the date of receipt of copy of this order and the amount of arrears shall be paid by the respondents, failing which the applicant will be entitled for interest @6% p.a. from the date of receipt of copy of the order by the respondents.

Pronounced in the Open Court on the 4th day of October, 2023.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/yogita/