

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

F..

OA 590/2021

Ex JWO Anokhey Lal Verma

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Mr. Madan Pal Vats, Advocate

For Respondents : Mr. V Pattabhi Ram, Advocate

CORAM

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

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

ORDER  
30.10.2023

Vide our detailed order of even date, we have allowed the OA 590/2021. 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 590/2021**

**Ex JWO Anokhey Lal Verma**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant : Mr. Madan Pal Vats, Advocate**

**For Respondents : Mr. V Pattabhi Ram, Advocate**

**CORAM :**

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

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

**ORDER**

The applicant Ex JWO Anokhey Lal Verma No. 679905-A vide  
the present OA makes the following prayers:-

*“(a) To direct the Respondents to grant disability pension for the disabilities of the applicant i.e. (i) Pseudophakia (Lt) Eye (Optd) (ii) Type II DM (Old) and the disability be rounded 50%;*

*(b) To direct the Respondents to grant the applicant with the 50% disability pension (rounding off) from the date of discharge i.e. with effect from 31.01.2020;*

*(c) To direct the respondents to pay arrears from the date of discharge along with interest @ 12% per annum till its payment to the applicant;*

*(d) Pass any other or such further order or orders as deemed fit to this Hon'ble Tribunal in order to secure the ends of justice in favour of the applicant.”*



2. The applicant was enrolled in the Indian Air Force on 12.10.1984 after having undergone the initial medical examination vide the AFMSF-2A dated 08.10.1984 on being declared fit for enrollment. He was discharged from service on 31.01.2020 under the clause "On fulfilling the conditions of his enrolment" after rendering a total of 35 years, 03 months and 19 days of regular service.

3. The applicant was initially diagnosed as a case of Cataract Lt Eye and placed in low medical category CEE (T-24) on 06.09.2001 vide AFMSF-15 dated 10.05.2002, while posted at Pathankot. The applicant was also detected to have ID: Type II Diabetes Mellitus and placed in low medical category A4G4 (T-24) vide AFMSF-15 dated 04.11.2011. The applicant was reviewed regularly for all the disabilities. Subsequently, the applicant was placed in composite low medical category A4G4 (P) for ID: (i) Pseudophakia (Lt) Eye (Diagnosis changed from Cataract Lt Eye (OPTD) (ii) DM Type-2 vide AFMSF-15 dated 03.04.2019.

4. His release medical board (RMB) not solely on medical grounds was held at 28 Wing, AF vide AFMSF-16 dated 04 Apr 2019 and found him fit to be released in composite low medical category A4G4 (P) and assessed his disability ID (i) Pseudophakia (Lt) Eye (Optd) @ 15 - 19% and ID (ii) DM Type-II @ 20% (Compositely @ 40%) for life and

recommended both the IDs as being neither attributable to nor aggravated by AF Service.

5. Vide Part V of the RMB dated 04.04.2019, it was opined to the effect:-

<i>Disability</i>	<i>Attributable to service (Y/N)</i>	<i>Aggravated by service (Y/N)</i>	<i>Not connected with service (Y/N)</i>	<i>Reason / Cause / Specific condition and period in service</i>
1.PSEUDOPHAKIA (LT) EYE (OPTD) (Z96.1)	NO	NO	YES	The disability has occurred in Peace (Onset – AUG 01 AT PATHANKOT) and was posted to peace station prior to onset and no close time association with stress & strain of HAA/CIOPs & there was no delay in diagnosis or dietary compulsion or Infection / Trauma. The disability is not due to infection / injury / Trauma or dietary compulsions and there was no delay in diagnosis/treatment. Hence NANA as per para 13 of Ch VI of GMO 2008.
2.TYPE II DM (OLD) (E11.0) (Z09.0)	NO	NO	YES	The disability has occurred in Peace (Onset – SEP 11 AT NAGPUR) and was posted to peace station prior to onset. This is a



				metabolic disease characterized by hyperglycemia due to absolute/relative deficiency of insulin & there was no delay in diagnosis & no close time association of stress & strain of service in field/HAA/CIOPs area is established. Hence NANA as per para 26 of Ch-VI of GMO 2008.
--	--	--	--	---

”

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

“

<b>Disability (As numbered in Para I Part IV)</b>	<b>Percentage of disablement with duration</b>	<b>Composite assessment for all disabilities with duration (Max 100%)</b>	<b>Disability Qualifying for Disability Pension with duration</b>	<b>Net Assessment Qualifying for Disability Pension (Max 100%) with duration</b>
1.PSEUDOPHAKIA (LT) EYE (OPTD) (Z96.1)	15-19% (fifteen percent) for life	40% (Forty percent) for life	NIL	NIL
2.TYPE II DM (OLD) (E11.0) (Z09.0)	20% (Twenty percent) for life		NIL	NIL

”

7. The onset of the disability as reflected in Part IV in the statement of the case is as under:-

“

<i>Disability</i>	<i>Date of origin</i>	<i>Rank of the Indl</i>	<i>Place and unit where serving at the time</i>
1.PSEUDOPHAKIA (LT) EYE (OPTD) (Z96.1)	AUG 01	SGT	PATHANKOT/18 WG AF
2.TYPE II DM (OLD) (E11.0) (Z09.0)	SEP 11	JWO	NAGPUR/HQMC IAF

”

It was stated in paragraph 3 in Part I of the RMB to the effect:-

*“3. Did you suffer from any disability before joining the Armed Forces? If so give details and dates: NO.”*

Paragraphs 2, 3, 5 (a), 5 (b), 5 (c) in Part V of the said RMB are as under:-

*“2. Did the disability exist before entering service? (Yes / No / Could be) : Dis (i) & (ii) 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 entry? : Dis (i) & (ii) NO*

*5. (a) Was the disability attributable to the individual's own negligence or misconduct? If Yes, in what way? : Dis (i) & (ii) NO*

*(b) If not attributable was it aggravated by negligence or misconduct? If so, in what way and to what percentage of the total disablement: Dis (i) & (ii) NO*

*(c) Has the individual refused to undergo operation / treatment? If so, individual's reason will be recorded: Dis (i) & (ii) NO.”*

8. The RMB proceedings which assessed the disabilities of the applicant at 40% for life, but quantified the same at Nil for grant of the

disability pension finding it to be neither attributable to nor aggravated by military service which was approved by the DPMO HQ WAC, IAF dated 23.07.2019. On adjudication, the AOC AFRO upheld the recommendations of the Release Medical Board and rejected the disability pension claim of the applicant vide letter dated 11.12.2019 of which the applicant was informed vide letter dated 08.01.2020 advising the applicant to prefer an appeal if he so sought within a period of six months from the date of receipt of the said letter.

9. The applicant preferred an appeal against the non-grant of disability of pension to the respondents on 20.03.2020 and on 17.07.2020 sent the reminder for the same but did not receive any response from the respondents till institution of the OA on 26.02.2021. In the interest of justice and in terms of Section 21 (2) (b) of the AFT Act 2007, we consider it appropriate to take up the OA for consideration.

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

10. The applicant vide the present OA places reliance on his posting profile as reflected in Part I of the RMB dated 04.04.2019 in his personal statement which is to the effect:-

<i>S. no.</i>	<i>From</i>	<i>To</i>	<i>Place Ship</i> /	<i>P/F/ HAA/ Ops / Sea</i>	<i>S. no.</i>	<i>From</i>	<i>To</i>	<i>Place Ship</i> /	<i>P/F/ HAA/ Ops / Sea</i>

				service / others					service / others
(i)	12.10.84	31.01.86	WTI/MTI (Tambaram)	P	(vii)	16.10.00	20.04.03	18 WING (Pathankot)	P
(ii)	01.02.86	04.08.90	5 BRD (SULUR)	P	(viii)	21.04.03	14.04.07	33 WING (Jamnagar)	P
(iii)	05.08.90	16.08.92	21 WIN (LEH)	F	(ix)	15.04.07	15.04.09	27 WING (Bhuj)	P
(iv)	17.08.92	24.10.93	PTS (AGRA)	P	(x)	16.04.09	14.11.13	HQ MC (Nagpur)	P
(v)	25.10.93	06.02.98	ADRDE (AGRA)	P	(xi)	15.11.13	07.01.18	18 WING (Pathankot)	P
(vi)	07.02.98	15.10.00	45 SQN (NALIYA)	F	(xii)	08.01.08	Till date	28 WING (Hindon)	P

11. The applicant submits that in as much as he was enrolled in the Indian Air Force in a fit medical condition in the absence of any note on the record of any disability or disease that he suffered from having been made in the records of the respondents, the disability that he suffers from has to be held to be attributable to / aggravated by military service.

12. The applicant submits that he was enrolled in the Indian Air Force in the trade of 'Safety Equipment Worker' on 12.10.1984 after having undergone a stringent medical check-up and was in SHAPE I at the time of his enrolment with the respondents. The applicant submits that he served the respondents for about 36 years and was promoted to the rank of 'JWO' at the time of his discharge on 31.01.2020.

13. Inter alia the applicant submits that he was entrusted with the duties and responsibilities for various assignments by the respondent's organization and during the performance of the same, he contracted the disabilities i.e. (i) Pseudophakia (Lt) Eye (Optd) Z 96.1 in August 2001

at Pathankot (Punjab) and (ii) DM Type-II (Old) (E11.0) (Z09.0) in September 2011 at Nagpur.

14. Inter alia the applicant submits that the Release Medical Board (RMB) has recommended him as **"Fit to be Released from service in Low Medical CAT A4G4 (P)"** and assessed the disability @ 40% as composite assessment for the disabilities assessment was qualified for 40% for disability pension, however, the respondents have not issued any PPO in this regard as the RMB has declared the disabilities to be neither attributable to nor aggravated by service.

15. Reliance has thus been placed on behalf of the applicant on the following decisions of the AFT:-

- (i) OA 31/2014 *Ex Hav Jhunu Kumar Das vs UOI* (AFT RB Guwahati) dated 27.01.2016;
- (ii) OA 138/2019 *Ex JWO Ram Nagina Yadav vs UOI* (AFT RB Lucknow) dated 02.04.2019;
- (iii) OA 467/2023 *MWO Ravindra Singh (Retd) vs UOI* (AFT RB Lucknow) dated 20.07.2023.

During the course of submissions made on 03.08.2023, the learned counsel for the applicant submitted that the prayer made through the present OA for the grant of disability element of pension is confined to the disability of DM Type-II (Old) assessed @ 20% for life, and that the prayer for the grant of disability element of pension in relation to ID-Pseudophakia (Lt) Eye (Optd) is not pressed.



16. Inter alia the applicant prayed that the disability of the applicant i.e. DM Type-II (Old) assessed at 20% for life be rounded off to 50% for life in terms of the verdict of the Hon'ble Supreme Court in *UoI vs Ram Avtar* (Civil Appeal no. 418/2012) dated 10.12.2014.

17. The respondents through their counter affidavit submit that as per Rule 5 of the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008, the mere fact that a disease has manifested itself during military service does not *per se* establish attributability to or aggravation by military service, that the medical test at the time of entry is not exhaustive, but its scope is limited to broad physical examination and therefore, it may not detect some dormant diseases. Besides, certain hereditary constitutional and congenital diseases may manifest later in life, irrespective of service conditions.

18. Inter alia the respondents place reliance on Rule 153 of the Pension Regulations for IAF, 1961 (Part-I) which is to the effect:-

*"Unless, otherwise specifically provided a disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by Air Force service and is assessed at 20% or over."*

to submit that disability pension is granted to those who fulfill the following two criteria simultaneously:-

- (i) Disability must be either attributable to or aggravated by service.
- (ii) Degree of disablement should be assessed at 20% or more.



and reiterate that the applicant is not entitled to the grant of the disability element of pension in accordance with the prevailing rules and policies.

### **ANALYSIS**

19. 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 vs UOI & Ors*** (Civil Appeal No. 4949/2013) 2013 AIR SCW 4236 decided on 02.07.2013), 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*.

20. 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.

21. 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.

22. 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)*

23. It is essential to observe that para-28 of the verdict of the Hon'ble Supreme Court in *Dharamvir Singh* (Supra) lays down the guiding canons which are 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."*

24. It is essential to observe that the verdict of the Hon'ble Supreme Court in ***UOI & Ors. vs Rajbir Singh*** in Civil Appeal no. 2904/2011 dated 13.02.2015 (2015) 12 SCC 264 vide Para 15 is to the effect:-

*"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)*

25. Para 26, Chapter VI of the Guide to Medical Officers (Military Pensions), 2008, 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."

(emphasis supplied)

which specifically stipulates therein that 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.

26. The 'Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel 2008, which take effect from 01.01.2008 vide Paras 6, 7, 10, 11 thereof provide as under:-

**"6. Causal connection:**

*For award of disability pension/special family pension, a causal connection between disability or death and military service has to be established by appropriate authorities.*

**7. Onus of proof.**

*Ordinarily the claimant will not be called upon to prove the condition of entitlement. However, where the claim is preferred after 15 years of discharge/retirement/invalidment/release by which time the service documents of the claimant are destroyed after the prescribed retention period, the onus to prove the entitlement would lie on the claimant.*

**10. Attributability:**

**(a) Injuries:**

*In respect of accidents or injuries, the following rules shall be observed:*

*(i) Injuries sustained when the individual is 'on duty', as defined, shall be treated as attributable to military service, (provided a nexus between injury and military service is established).*

*(ii) In cases of self-inflicted injuries while 'on duty', attributability shall not be conceded unless it is established that service factors were responsible for such action.*



**(b) Disease:**

*(i) For acceptance of a disease as attributable to military service, the following two conditions must be satisfied simultaneously:-*

- (a) that the disease has arisen during the period of military service, and*
- (b) that the disease has been caused by the conditions of employment in military service.*

*(ii) Disease due to infection arising in service other than that transmitted through sexual contact shall merit an entitlement of attributability and where the disease may have been contracted prior to enrolment or during leave, the incubation period of the disease will be taken into consideration on the basis of clinical course as determined by the competent medical authority.*

*(iii) If nothing at all is known about the cause of disease and the presumption of the entitlement in favour of the claimant is not rebutted, attributability 'should be conceded on the basis of the clinical picture and current scientific medical application.*

*(iv) When the diagnosis and/or treatment of a disease was faulty, unsatisfactory or delayed due to exigencies of service, disability caused due to any adverse effects arising as a complication shall be conceded as attributable.*

**11. Aggravation:**

*A disability shall be conceded aggravated by service if its onset is hastened or the subsequent course is worsened by specific conditions of military service, such as posted in places of extreme climatic conditions, environmental factors related to service conditions e.g. Fields, Operations, High. Altitudes etc."*

*(emphasis supplied),\_\_*

Thus, the ratio of the verdicts in ***Dharamvir Singh Vs. Union Of India &Ors*** (Civil Appeal No. 4949/2013); (2013 7 SCC 316, ***Sukhvinder Singh Vs. Union Of India &Ors***, dated 25.06.2014 reported in 2014

STPL (Web) 468 SC, *UOI & Ors. Vs. Rajbir Singh* (2015) 12 SCC 264 and *UOI & Ors. Vs. Manjeet Singh* dated 12.05.2015, Civil Appeal no. 4357-4358 of 2015, as laid down by the Hon'ble Supreme Court are the fulcrum of these rules as well.

27. Furthermore, Para 423 of the Regulations for the Medical Services of the Armed Forces 2010 which relates to 'Attributability to Service' provides as under:-

*"423.(a). For the purpose of determining whether the cause of a disability or death resulting from disease is or not attributable to Service. It is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a Field Area/Active Service area or under normal peace conditions. It is however, essential to establish whether the disability or death bore a causal connection with the service conditions. All evidences both direct and circumstantial will be taken into account and benefit of reasonable doubt, if any, will be given to the individual. The evidence to be accepted as reasonable doubt for the purpose of these instructions should be of a degree of cogency, which though not reaching certainty, nevertheless carries a high degree of probability. In this connection, it will be remembered that proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. If the evidence is so strong against an individual as to leave only a remote possibility in his/her favor, which can be dismissed with the sentence "of course it is possible but not in the least probable" the case is proved beyond reasonable doubt. If on the other hand, the evidence be so evenly balanced as to render impracticable a determinate conclusion one way or the other, then the case would be one in which the benefit of the doubt could be given more liberally to the individual, in case occurring in Field Service/Active Service areas.*

*(b). Decision regarding attributability of a disability or death resulting from wound or injury will be taken by the authority next to the Commanding officer which in no case shall be lower than a Brigadier/Sub Area Commander or equivalent. In case of injuries which were self-inflicted or due to an individual's own serious negligence or misconduct, the Board will also comment*

*how far the disablement resulted from self-infliction, negligence or misconduct.*

*(c). The cause of a disability or death resulting from a disease will be regarded as attributable to Service when it is established that the disease arose during Service and the conditions and circumstances of duty in the Armed Forces determined and contributed to the onset of the disease. Cases, in which it is established that Service conditions did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, will be regarded as aggravated by the service. A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in Service if no note of it was made at the time of the individual's acceptance for Service in the Armed Forces. However, if medical opinion holds, for reasons to be stated that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.*

*(d). The question, whether a disability or death resulting from disease is attributable to or aggravated by service or not, will be decided as regards its medical aspects by a Medical Board or by the medical officer who signs the Death Certificate. The Medical Board/Medical Officer will specify reasons for their/his opinion. The opinion of the Medical Board/Medical Officer, in so far as it relates to the actual causes of the disability or death and the circumstances in which it originated will be regarded as final. The question whether the cause and the attendant circumstances can be accepted as attributable to/aggravated by service for the purpose of pensionary benefits will, however, be decided by the pension sanctioning authority.*

*(e). To assist the medical officer who signs the Death certificate or the Medical Board in the case of an invalid, the CO unit will furnish a report on :*

- (i) AFMSF – 16 (Version – 2002) in all cases*
- (ii) IAFY – 2006 in all cases of injuries.*

*(f). In cases where award of disability pension or reassessment of disabilities is concerned, a Medical Board is always necessary and the certificate of a single medical officer will not be accepted except in case of stations where it is not possible or feasible to assemble a regular Medical Board for such purposes. The certificate of a single medical officer in the latter case will be furnished on a Medical Board form and countersigned by the Col*

*(Med) Div/MG (Med) Area/Corps/Comd (Army) and equivalent in Navy and Air Force."*

*(emphasis supplied),*\_\_

has not been obliterated.

28. It is essential to observe that para-33 of the verdict of the Hon'ble Supreme Court in ***Dharamvir Singh*** (supra) is to the effect:-

*"33. As per Rule 423(a) of General Rules for the purpose of determining a question whether the cause of a disability or death resulting from disease is or is not attributable to service, it is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a field service/active service area or under normal peace conditions. "Classification of diseases" have been prescribed at Chapter IV of Annexure I; under paragraph 4 post traumatic epilepsy and other mental changes resulting from head injuries have been shown as one of the diseases affected by training, marching, prolonged standing etc. Therefore, the presumption would be that the disability of the appellant bore a casual connection with the service conditions."*

*(emphasis supplied)*

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.

### **CONCLUSION**

29. In the circumstances, the **OA 590/2021** is allowed and the applicant is held entitled to the grant of the disability element of pension qua the disability of the applicant i.e. **DM TYPE II (OLD) (E11.0) (Z09.0)** assessed at 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 *Ram Avtar* (supra) 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.

30. No order as to costs.

Pronounced in the Open Court on the 30 day of October 2023.

[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)

[JUSTICE ANU MALHOTRA]  
MEMBER (J)

/AP/