

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

1.

OA 857/2017

Cdr Maha Ram Yadav

VERSUS

..... Applicant

Union of India and Ors.

..... Respondents

For Applicant : Mr Baljeet Singh, proxy for Mr. OS
Punia, Advocate

For Respondents : Mr. Shyam Narayan, Advocate

CORAM

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

ORDER
21.11.2023

Vide our detailed order of even date, we have allowed the OA 857/2017. 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)

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OA 857/2017

Cdr Maha Ram Yadav(Retd)

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. O S Punia, Advocate
For Respondents : Mr Shyam Narayan, advocate

CORAM :

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

ORDER

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

*“(A) Set aside the impugned order dated 27.03.2017 and direct the respondents to consider the disability of the applicant as attributable to and aggravated by service;
(B) To direct the respondents to give the benefits of rounding off of disability element from 11-14% for life to @50% for life in the light of law laid down by Hon’ble Supreme Court alongwith interest @12% per annum alongwith all consequential benefits’ and*

(C) To award any other/further relief which this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case alongwith cost of the application in favour of the applicant and against the respondents.”

2. The applicant was enrolled in the Indian Navy as a Sailor on 26.12.1976 and thereafter commissioned on 01.04.1990 and superannuated from the Naval Service on 31.01.2012. The applicant was stated to be suffering from the disability, namely, Diabetes Mellitus Type-II and the Release Medical Board held on 21.10.2011 assessed the disablement of the applicant @ 11-14% for life but considered the said ID as neither attributable to nor aggravated by Naval Service. The claim of the applicant dated 08.03.2017 for the grant of the disability element of pension was rejected by the respondents vide letter No.PN/69919/DP11 dated 27.03.2017 stating that the onset of ID Diabetes Mellitus Type-II was in February, 2009, whilst the applicant was posted at Delhi i.e. a peace area describing the disability DM-Type-II as a metabolic disorder of idiopathic origin with a strong genetic/familial preponderance and thus not attributable to military service in terms of Para 26, Chapter VI, GMO 2002 amendment 2008.

CONTENTIONS OF THE PARTIES

3. The applicant submits that before joining the Indian Navy, he was subjected to a detailed and extensive medical examination and on having being found fit in all respects, he was granted a commission in the Indian Navy. Thereafter, he successfully underwent and completed all trainings from time to time. The applicant submits that while being posted at AHQ/SID, he was diagnosed with 'Diabetes Mellitus Type-II' and was placed in Low Medical Category S1H1A1P3(T-24)E1/EQUIVALENT FOR

24 WEEKS and was further reviewed from time to time. The Release Medical Board held on 21.10.2011 assessed his disablement @11-14% and declared the medical category as S1A2(Perm) with Diabetes Mellitus Type-II for life, however, the RMB opined the disability as neither attributable to nor aggravated by military service. The applicant further submits that his representation dated 08.03.2017 for the grant of the disability element of pension was rejected by the respondents vide letter No.PN/6919/D P/11 dated 27.03.2017 hence this OA.

4. Placing reliance on the judgment of the Hon'ble Supreme Court in *Dharamvir Singh v. UOI & Ors [2013 (7) SCC 36]* the learned counsel for the applicant submitted that there was no note of any disability recorded in the service documents of the applicant at the time of the entry into the service, and that he served in the Air Force at various places in different environmental and service conditions in his prolonged service and thus thereby that arise during his service has to be deemed to be attributable to or aggravated by military service.

5. The learned counsel for the respondents on the other hand submitted that there are some diseases particularly Diabetes Mellitus Type-II which have no connection with military service and are caused due to life style factor and are hereditary. The respondents further submit that the onset of the ID-Diabetes Mellitus Type-II was in the month of February, 2009 whilst the applicant was posted at Delhi, a peace area and the Type-II Diabetes Mellitus is a metabolic disorder of idiopathic origin

with a strong genetic/familial preponderance and thus is not attributable to service conditions. *Inter alia*, the respondents submit that the benefit of doubt is given due to the dietary restrictions and stress and strain of service and that aggravation is conceded if the onset occurs while serving in Field/CI Ops/HAA/Afloat and if the individual serves in such areas following the onset of disease. The respondents further submit that the ID occurred while the applicant was posted in peace area and thus the disability was conceded as neither attributable to nor aggravated by Naval service in terms of Para 26, Chapter VI, GMO 2002, Amendment 2008. The respondents further submit that the applicant had adequate glycaemia control with oral drugs and there was no evidence of any target organ damage at the time of his release.

ANALYSIS

6. On a perusal of the record and the submissions made on behalf of either side, we are of the view that it is not in dispute that the extent of the disability of Diabetes Mellitus Type II could not have been assessed at a percentage of disablement of less than 20% in terms of the letter No.16036/DGAFMS/MA(Pens)/Policy dated 20.12.2012 issued by the Ministry of Defence to which concurrence has been accorded vide letter No.Air HQ/99801/4/DAV(Med) dated 12.05.2023 which indicates thus that the percentage of disablement of Type –II Diabetes Mellitus without Target Organ Damage(TOD) cannot be assessed at less than 20%.

7. It has, already been observed by this Tribunal in a catena of cases that peace stations have their own pressure of rigorous military training and associated stress and strain of the service. It may also be taken into consideration that most of the personnel of the armed forces have to work in the stressful and hostile environment, difficult weather conditions and under strict disciplinary norms.

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

"6. Causal connection:

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

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 courses 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 Altitude etc."

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.

9. Furthermore, Regulation 423(a)(e) 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.

(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."*

(emphasis supplied),__

and has not been obliterated.

10. Furthermore, Para 26, Chapter VI of the Guide to Medical Officers (Military Pensions), 2008 reads 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.

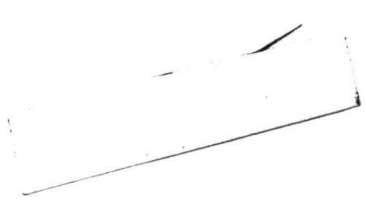
Secondary diabetes can be due to drugs or due to trauma to pancreas or brain surgery or otherwise. Rarely, it can be due to diseases of pituitary, thyroid and adrenal gland. Diabetes arises in close time relationship to service out of infection, trauma, and post surgery and post drug therapy be considered 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."

11. It is essential to advert to the posting prolife of the applicant which is as under:



PERSONAL STATEMENT PART-II

RECORD OF SERVICE-CDR MR YADAV(82018-B)

S.No	From	To	COUNTRY	FIELD STATION	PEACE STATION
1.	26 Dec 76	30 Jun 77	India	-	Mandovi
2.	01 Jul 77	08 Feb 78	India	-	Venduruthy/Sig Sch
3.	09 Feb 78	04 Aug 80	India	-	COMETCEN(MBI)
4.	05 Aug 80	02 Apr 82	India	Himgiri	-
5.	03 Apr 82	10 Jun 83	India	-	INS TRATA
6.	11 Jun 83	0 Dec 83	India	-	Venduruthy Sig Sch
7.	09 Dec 83	05 Jan 86	India	-	HQ 32
8.	06 Jan 86	10 Jul 86	India	SDB T-58	-
9.	11 Jul 86	10 Nov.86	India	-	Venduruthy/Sig Sch
10.	11 Nov.86	05 May 88	India	Nilgiri	-
11.	06 May 83	15 Jun 89	India	-	HQ 32 EWU(V)
12.	16 Jun 89	31 Mar 90	India	-	Venduruthy/Sig Sch
13.	01 Apr 90	05 Sep 90	India	-	Venuduthy/SD PPC
14.	05 Sep 90	08 Jan 94	India	-	HQ 31 EWU
15.	09 Jan 94	02 Apr 96	India	-	INS India
16.	03 Apr 96	10 Jul 01	India	-	HQ 32 EWU(V)
17.	11 Jul 01	12 Sep 04	India	-	AHQ/SID
18.	13 Sep 04	20 Aug 06	India	-	7M Det Ramnad
19.	21 Aug 06	24 Mar 08	India	-	COMCEN(D)
20.	25 Mar 08	20 Jul 09	India	-	AHQ /SID
21.	21 Jul 09	Till date	India	-	DWARKA II/NOIC(GUP)

The onset of the disability of Diabetes Mellitus Type II as per the RMB dated 21.10.2011 is as under:

PART IV STATEMENT OF CASE

“

Disability	Date of origin	Rank of Indl	Place and Unit where serving at the time
DIABETES MELLITUS TYPE II ICD NO.E-11	Feb 2009 NEW DELHI	CDR	NEW DELHI IHQ Mod(Army)/SID

”

The Release Medical Board assessed the disability of the applicant to the effect:

“

6. What is the present degree of disablement as compared with a health person of the same age and sex?(percentage will be expressed as NIL or as follows) 105, 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 displacement	Composite assessment for all the disabilities with duration(Max 100%)	Disability Qualifying for Pension with duration	Net Assessment Qualifying for Disability pension(Max 100% with duration
DIABETES MELLITUS TYPE II ICD No. E-11	11-14% For life	11-14% for life	11-14% for life	11-14% for life

”

13. The applicant during his tenure of more than 36 years of service in the Indian Navy had 21 postings out of which 03 postings were in field areas. That the onset of the disability of Diabetes Mellitus Type II was after 33 years of military service cannot be overlooked.

14. 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.

15. *Qua* broadbanding benefits, it is essential to observe that the Hon'ble Supreme Court in its order dated 10.12.2014 in *Union of India v. Ram Avtar, Civil Appeal No. 418 of 2012* and connected cases, has observed that individuals similarly placed as the applicant are entitled to rounding off the

disability element of pension. We also find that the Government of India vide its Letter No. F.No.3(11)2010-D (Pen/Legal) Pt V, Ministry of Defence dated 18th April 2016 has issued instructions for implementation of the Hon'ble Supreme Court order dated 10.12.2014 (supra).

CONCLUSION

16. Therefore, in view of our analysis, the OA 857/2017 is allowed and the Respondents are directed to **grant the benefit of disability element of pension @20% for life** for the disability of DIABETES MELLITUS TYPE- II which is rounded off to 50% for life in view of judgment of the Hon'ble Apex Court in *Union of India versus Ram Avtar (supra)* from the date of discharge i.e 31.01.2012. However, in as much as the present OA has been filed on 05.05.2017 after discharge of the applicant on 31.01.2012, the arrears shall commence to run from a period of three years prior to the institution of the OA. The arrears shall be disbursed to the applicant within three months of receipt of this order failing which it shall earn interest @ 6% p.a. till the actual date of payment.

17. No order as to costs.

Pronounced in the open Court on 21st day of November, 2023.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/Chanana/