

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

Suppl.

1.

OA 869/2020

WO AK Singh (Retd)

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Mr. Manoj Kr Gupta, Advocate

For Respondents : Ms. Barkha Babbar, Advocate

CORAM

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

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

ORDER  
06.11.2023

Vide our detailed order of even date, we have allowed the OA 869/2020. 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**

**O.A. No. 869 of 2020**

**In the matter of :**

**Warrant Officer A.K. Singh (Retd)                      ... Applicant**

**Versus**

**Union of India & Ors.    ... Respondents**

**For Applicant        :    Shri Manoj Kr. Gupta, Advocate**

**For Respondents    :    Ms. Barkha Babbar, Advocate**

**CORAM:**

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

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

**O R D E R**

Invoking the jurisdiction of the Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 read as under :

- (a)      *Quash and set aside the RMB proceedings and Impugned Order to the extent this order deny the grant of Disability Pension to the applicant;***
- (b)      *To direct the respondents to grant the disability pension @ 50% broad-banded to 75% with interest @ 10% p.a. wef date of discharge, by***

*treating the disabilities as attributable to and aggravated by military service.*

*(c) To pass such further order or orders/Directions as this Hon'ble Tribunal may deem fit and proper in accordance with law.*

### **BRIEF FACTS**

2. The applicant, having been found medically and physically fit after thorough medical examination, was enrolled in the Indian Air Force on 15.03.1980 and was discharged from service on 31.12.2017 in permanent low medical category. The Release Medical Board held on 07.03.2017 assessed the applicant's disabilities '(i) CAD-SVD, IWMI-PAMI TO RCA (DES) @ 50% for life and (ii) DM TYPE-2 @ 20% for life, with composite assessment of disabilities @ 60% for life and held the same as 'neither attributable to nor aggravated by military service' (NANA). Based on the recommendations of the RMB, the disability pension has been denied to the applicant.

3. The initial claim of the applicant for grant of the disability pension was rejected by the AOC AFRO vide letter dated 13.03.2018 and the said decision was communicated

to the applicant vide letter dated 19.07.2018. The first appeal preferred by the applicant was rejected by the First Appellate Committee vide Air HQ letter dated 02.09.2019 considering both the disabilities as neither attributable to nor aggravated by military service. Against this, the applicant preferred the second appeal dated 13.11.2019, which was stated to be pending before the Ministry of Defence for final disposal till the filing of the counter affidavit by the respondents on 08.02.2021. Aggrieved by not receiving any reply to his second appeal, the applicant filed the instant OA on 30.06.2020. In the interest of justice, in terms of Section 21(2)(b) of the AFT Act, 2007, we take up the same for consideration.

### **CONTENTIONS OF THE PARTIES**

4. The learned counsel for the applicant submitted that the applicant, at the time of joining the service, was declared fully fit medically and physically and no note was made in his medical record that the applicant was suffering from any disease at that time and any medical disability contracted by him during the course of his service should be treated as being attributable and aggravated by the stresses and strains



of his service. The learned counsel explained about the stressful and challenging conditions of service undertaken by the applicant during his service tenure. The learned counsel submitted that the applicant was posted in various stations having tough and different weather and environmental conditions in his career and discharged all assigned duties with utmost dedication and in a well-disciplined and professional manner. The applicant further submitted that due to the additional tasks, the applicant used to stay in Workshop/Repair Depot very often beyond working hours including Saturdays and Sundays, leaving almost no time to rest and proper sleep, which caused a lot of stress and strain not only mentally but also physically. The learned counsel further submitted that because of discharging duties for a prolonged period in such strenuous and challenging conditions of service with tremendous mental and physical pressure, the applicant's health got adversely affected and thus, on 24.07.2016, the applicant was diagnosed with CAD-SVD, IWMI-PAMI TO RCA (DES) and Diabetes Mellitus Type-2. The learned counsel further submitted that even after suffering from the above disabilities, the applicant was not

exempted from extra duties and had to perform many duties including supervising all maintenance/repair work, liaising etc. and had to ensure proper and optimum utilization of manpower with promptness and he was away from his family, all put tremendous stress and strain on him resulted in worsening of his medical condition. The learned counsel submitted that the diseases suffered by the applicant have been listed as affected by stress and strain of service/dietary compulsions in the Entitlement Rules for Casualty Pensionary Awards, 1982.

5. The learned counsel for the applicant further contended that the instant matter is squarely covered by a catena of judgments of the Hon'ble Supreme Court such as ***Dharamvir Singh Vs. Union of India & Ors. [2013 (7) SCC 316]***, ***Union of India and Ors. Vs. Rajbir Singh [(2015) 12 SCC 264]***, ***Union of India & Ors. Vs. Angad Singh Titaria [(2015) 12 SCC 257]*** and the orders passed by this Tribunal and submitted that the respondents' action in denying him the grant of the disability pension is unjustified and unlawful, when the disabilities recorded by the RMB occurred during the military service and were caused due to

stress and strain of service. The learned counsel, therefore, prayed that the disabilities in question may be held to be attributable to/aggravated by military service and that the disability pension may be granted to the applicant.

6. *Per contra*, the learned counsel for the respondents contended that the applicant is not entitled to the relief claimed since the RMB, being an Expert Body, found the disabilities as being "Neither Attributable to Nor Aggravated by Military Service". The learned counsel contended that while rejecting the first appeal of the applicant, the respondents have given detailed reasons for not assessing the disabilities as attributable to or aggravated by military service as the same occurred in a peace station with no exceptional stress and strain of service and that the applicant was managed promptly and appropriately at the service hospital with no worsening of condition due to service factors and the disabilities were conceded as neither attributable to nor aggravated by military service in terms of Paras 47 and 26 of Chapter VI of Guide to Medical Officers (Military Pensions) 2002, amendment 2008. The learned counsel submitted that since the applicant's disabilities do

not fulfil one of the twin conditions in terms of Regulation 153 of the Pension Regulations for the Air Force, 1961 (Part-I) as the same were assessed as neither attributable to nor aggravated by military service, the applicant is not entitled to the grant of the disability pension and, therefore, the OA deserved to be dismissed.

### **ANALYSIS**

7. We have heard the learned counsel for the parties and have gone through the records produced before us. We find that the issue which needs to be considered is as to whether the disabilities of the applicant are attributable to or aggravated by military service or not.

8. In the instant case, it is an undisputed fact that at the time of joining the Indian Air Force on 15.03.1980, the applicant was found medically and physically fully fit and both the present disabilities have admittedly first occurred on 24.07.2016 and at the time of discharge, the applicant was in low medical category A4G4(P).

9. The law on the issue of attributability of a disability is already settled by the Hon'ble Supreme Court in the case of

***Dharamvir Singh Vs. Union of India [(2013) 7 SCC 316],***

which has been followed in subsequent decisions of the Hon'ble Supreme Court and in a catena of orders of this Tribunal, wherein the Hon'ble Apex Court had considered the question with regard to grant of disability pension and after taking note of the provisions of the Pension Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers and Para 423 of the Regulations for the Medical Services of the Armed Forces, it was held by the Hon'ble Supreme Court that an Army personnel shall be presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance and in the event of his being discharged from service on medical grounds, any deterioration in his health, which may have taken place, shall be presumed to be due to service conditions. The Apex Court further held that the onus of proof shall be on the respondents to prove that the disease from which the incumbent is suffering is neither attributable to nor aggravated by military service. The guidelines laid down vide the verdict in *Dharamavir Singh (supra)* are as under:-

**"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."*

10. The Hon'ble Supreme Court in the case of ***Union of India and Ors. Vs. Rajbir Singh [(2015) 12 SCC 264]***, after taking into consideration the judgment in ***Dharamvir Singh (supra)*** upheld the decision of this Tribunal granting disability pension and observed as under :

*"15. .... 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....."*

11. 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 and 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.*** [(2013) 7 SCC 316], ***Union of India Vs. Rajbir Singh*** [(2015) 12 SCC 264] and ***Union of India & Ors. Vs. Angad Singh Titaria*** [(2015) 12 SCC 257], as laid down by the Hon'ble Supreme Court are the fulcrum of these rules as well.

12. Furthermore, Regulation 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 favour, 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."*

has not been obliterated.

13. In Para 47 of Chapter VI of the Guide to Medical Officers (Military Pensions) 2002, amended 2008 (hereinafter referred to as 'GMO (MP) 2008', various factors including prolonged stress and strain and physical hardship caused by serving in field and high altitude areas have been given which cause the heart diseases to the army personnel. It would be relevant to reproduce Para 47 of the GMO (MP) 2008, which is as under:-

**"47. Ischaemic Heart Disease (IHD). IHD is a spectrum of clinical disorders which includes asymptomatic IHD, chronic stable angina, unstable angina, acute myocardial infarction and sudden cardiac death (SCD) occurring as a result of the process of atherosclerosis. Plaque fissuring and rupture is followed by deposition of thrombus on the atheromatous plaque and a variable degree of**

occlusion of the coronary artery. A total occlusion results in myocardial infarction in the territory of the artery occluded. Prolonged stress and strain hastens atherosclerosis by triggering of neurohormonal mechanism and autonomic storms. It is now well established that autonomic nervous system disturbances precipitated by emotions, stress and strain, through the agency of catecholamines affect the lipid response, blood pressure, increased platelet aggregation, heart rate and produce ECG abnormality and arrhythmias. The service in field and high altitude areas apart from physical hardship imposes considerable mental stress of solitude and separation from family leaving the individual tense and anxious as quite often separation entails running of separate establishment, financial crisis, disturbance of child education and lack of security for family. Apart from this, compulsory group living restricts his freedom of activity. These factors jointly and severally can become a chronic source of mental stress and strain precipitating an attack of IHD. IHD arising in while serving in Field area/HAA/CI Ops area or during OPS in an indl who was previously in SHAPE-I will be considered as attributable to mil service....."

*[Emphasis supplied]*

14. As regards the disability ID (ii) Diabetes Mellitus Type-2, as per the amendment to Chapter VI of 'Guide to Medical Officers (Military Pensions), 2008, Para 26 thereof, Type 2 Diabetes Mellitus is to be conceded as aggravated if the onset occurs while serving in Field/CIOPS/HAA/prolonged afloat service and having been diagnosed as 'Type II Diabetes Mellitus' who are required to serve in these areas. Furthermore, inter alia stress and strain because of service reasons are stated therein to be known factors which can

precipitate diabetes or cause uncontrolled diabetic state.

Para 26, Chapter VI of the GMO (MP), 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."*

15. The Hon'ble Supreme Court also in the case of  
**Commander Rakesh Pande Vs. Union of India & Ors.**

**[Civil Appeal No. 5970 of 2019]** decided on 28.11.2019, has upheld the decision of the Armed Forces Tribunal granting disability pension in respect of diabetes to the applicant.

16. In the present case, it is not disputed that the applicant had been posted in field and peace stations in the entire service career located in the different parts of the country having diverse climatic, social and environmental conditions and he performed strenuous and stressful duties with prolonged working hours without much rest and proper sleep as explained in Para 4 hereinabove. Moreover, it has already been observed by this Tribunal in large number of cases that peace area postings in military service have their own pressure of rigorous military training and associated stress and strain, physically and mentally, of the service and that it cannot be contended that there is no evidence of stress and strain of service in Peace stations to decline the grant of the disability pension. It may also be taken into consideration that the most of the personnel of the armed forces, during their service, work in the stressful and hostile environment, difficult weather conditions and under strict



disciplinary norms. Moreover, there is no note made in the medical documents of the applicant that he was suffering from any disease at the time of joining the service. There is no record to show that the applicant has suffered the disabilities due to hereditary or unhealthy life style or there is any family history thereof. We are, therefore, of the considered view that in these circumstances and in view of the above referred to judgments and settled law on the point of attributability/aggravation and the disabilities suffered by the applicant should be held to be attributable to/aggravated by the military service.

17. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is held entitled for the disability element of pension in respect of both the disabilities i.e. CAD-SVD, IWMI-PAMI TO RCA (DES) @ 50% for life and Diabetes Mellitus Type-2 @ 20% for life, compositely assessed @ 60% for life, which is to be rounded off to 75% for life from the date of his discharge.

### **CONCLUSION**

18. Therefore, the OA 869 of 2020 is allowed. The respondents are directed to grant the disability element of

disability pension to the applicant @ 60% which is directed to be rounded off to 75% for life from the date of discharge in terms of the judicial pronouncement of the Hon'ble Supreme Court in the case of ***Union of India Vs. Ram Avtar (Civil Appeal No. 418/2012)*** decided on 10.12.2014.

19. Accordingly, the respondents are directed to calculate, sanction and issue necessary PPO to the applicant within three months from the date of receipt of copy of this order, *failing which*, the applicant shall be entitled to interest @ 6% per annum till the date of payment.

20. There is no order as to costs.

Pronounced in open Court on this 1 day of November, 2023.

[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)

/ng/

[JUSTICE ANU MALHOTRA]  
MEMBER (J)