

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

1.

OA 278/2019 with MA 2022/2023 & 739/2019

Ex HFO Satya Prakash Sharma Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Ms. Pallavi Awasthi, Advocate
For Respondents : Mr. Rajeev Kumar, Advocate

CORAM

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

ORDER
08.02.2024

Vide our detailed order of even date, we have allowed the OA 278/2019. 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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ORDER

MA 2022/2023

This is an application filed on behalf of the respondents for condonation of delay of 27 days in filing the counter affidavit. In view of the reasons explained in MA and in the interest of justice, the MA 2022/2023 is allowed and the delay in filing the counter affidavit is condoned.

MA 739/2019

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 1752 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of **UoI & Ors Vs Tarsem Singh**

2009(1)AISLJ 371 and in Ex Sep Chain Singh Vs Union of India & Ors (Civil Appeal No. 30073/2017 and the reasons mentioned, the MA 739/2019 is allowed despite opposition on behalf of the respondents and the delay of 1752 days in filing the OA 278/2019 is thus condoned. The MA is disposed of accordingly.

1. The applicant vide the present O.A 278/2019 has made the following prayers:-

“(a) To set aside the order letter No. Air HQ /99798 /1/647668/08/14/DP/DAV dated 06.02.2014 passed by the respondents wherein they have denied the disability pension to the applicant.

(b) To direct the respondents to grant disability pension @ 40% alongwith arrears to the applicant by treating his disabilities as attributable and aggravated by the military service.

(c) To direct the respondents to grant the benefit of rounding of disability element of pension of the applicant to @50% for life in terms of law settled by Hon'ble Supreme Court of India in Civil Appeal No. 418/2012 titled as UOI & Ors. vs. Ram Avtar vide judgment dated 10.12.2014 as well as in a catena of judgments by the Hon'ble Tribunal.

(d) To direct the respondents to pay the due arrears of disability pension with interest @18% p.a. with effect from the date of retirement with all the consequential benefits.

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

2. The applicant Ex HFO Satya Prakash Sharma was enrolled in the Indian Air Force on 12 Apr 1977 and discharged from service on 31 Aug 2014 under the clause “On attaining the age of superannuation after rendering total 37 years and 173 days of regular service. The

above mentioned Ex Air Warrior underwent initial medical exam and declared fit in Medical category "AYE" vide AFMSF-2A dated 09 Mar 1977. The RMB assessed his disability ID Diabetes Mellitus T-2 @20% for life and recommended it as being neither attributable to nor aggravated by AF Services. The AOC AFRO also upheld the recommendations of the RMB and rejected the disability pension claim vide letter No. Ro/3305/3/Med dated 21 Jan 2014. The outcome was also communicated to the Air Veteran vide letter No. AIR HQ/99798/1/647668/08/14/DAV/DP/RMB dated 06 Feb 2019 with an advise that he may prefer an appeal to the Appellate Committee within six months from the date of receipt of the letter. The applicant was detected to have raised blood sugar level during routine blood test for low backache in the month of Oct 1998 while serving at Air force station Bhuj at the age of 42 years. He was evaluated at MH Bhuj and diagnosed ID- Non Insulin Dependent Diabetes Mellitus. He was managed conservatively by the medical specialist and opined to be placed in LMC CEE (T24) with advise to take diabetic diet and regular walking. His initial medical board was held at 27 Wing, AF vide AFMSF-15 dated 14 Dec 1988 and he was recommended LMC CEE (T24) for ID- Non Insulin Dependent Diabetes Mellitus. He was reviewed regularly and placed in LMC BEE(P) vide AFMSF-15 dated

16.05.2000. During subsequent review he was placed in LMC A4G2(P) vide AFMSF-15 dated 05.05.2008 for ID- Type-II Diabetes Mellitus. Subsequently, he was placed in LMC A4G3(P) vide AFMSF-15 dated 06.11.2013. The original RMB proceedings were produced by the respondents during the course of hearing on 19.12.2023 dated 18.11.2013 which reflect the opinion of the medical board 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 & period in Service
DIABETES MELLITUS TYPE 2(OLD) ICD NO. E 13.0	No	No	Yes	Metabolic disorder with Onset(14 Oct 1998) in peace(Bhuj) wef 27.11.95. There was no delay in diagnosis. There is no close time association with stress/strain or dietary compulsion of field/CIOPS/HAA service and onset or progression of ID, chapter VI of GMO, 2002(amended 2008).
Note: A Disability "Not Connected with Service" would be neither Attributable nor aggravated by Service.				

”

3. The onset of the disability is reflected in the Part-IV of the Personal Statement as under:-

“

PART-IV
STATEMENT OF CASE

1. Chronological list of the disabilities
2. Clinical details : Attach clinical summary here giving the salient facts of

- (a) Personal and relevant family history
- (b) Specialist report
- (c) Treatment- **As attached**
- (d) Present condition in detail

Disabilities	Date of Origin	Rank of the Individual	Place and unit where serving at the time
DIABETES MELLITUS TYPE 2(OLD) ICD NO. E 13.0	14 Oct 1998	Sgt	15 Sqn, AF(Bhuj)

4. The posting profile of the applicant reflected in the RMB is as under:-

“

PART I PERSONAL STATEMENT

1. Give details of the service (P=Peace OR F= Field/Operational/Sea Service)

SL. NO	FROM	TO	PLACE/SHIP	P/F	SL. NO	FROM	TO	PLACE/SHIP	P/F
01	16.03.77	26.03.78	ATS(U), BELGAUM	P	02	27.03.78	14.07.81	2 SED BANGALORE	P
03	15.07.81	23.12.84	11 BRD, NASIK	P	04	24.12.84	08.03.87	14 NG, CHABUA	P
05	09.03.87	29.04.87	28 WG, HINDON	P	06	30.04.87	06.07.82	9 SQN, HINDON	P
07	06.07.92	26.11.95	763 SU, PANAHRGARH	P	08	27.11.95	28.05.01	15 SQN, BHUJ	P
09	29.05.01	04.09.03	2 WG, PUNE	P	10	05.09.03	23.04.06	6 SQN, PUNE	P
11	24.04.06	22.04.07	AIR HQ(VB), NEW DELHI	P	12.	23.04.07	10.05.09	28 WG,HINDON	P
13	11.05.09	02.09.12	16 WG, HASHIMARA	P	14.	03.09.12	31.08.14	AIR HQ(RKP), NEW DELHI	P

”

5. The percentage of disablement was assessed as under:-

“

3. What is present degree of disease/disablement as compared with a healthy person of the same age and sex?(Percentage will be expressed as Nil or as follows) 5%,10%,15% and thereafter in multiples of ten from 20% to 100%				
Disease/Disability (As numbered in Para 1 Part VI)	Percentage of disablement	Composite assessment for all disabilities (Max 100%) with duration	Disability Percentage Qualifying for Disability Pension with duration	Net Assessment Qualifying for disability Pension (Max 100%) with duration
DIABETES MELLITUS TYPE 2(OLD) ICD NO. E 13.0	20%	20% for lifelong	Nil for lifelong	Nil for lifelong

”

6. The physical parameters of the applicant as per part-II of Medical Examination depicts his actual weight to be 68 Kgs and Ideal weight to be 65 Kgs, the applicant shows to be overweight – less than 1SD, and thus the applicant was found to be not overweight.

7. The first appeal filed by the applicant was rejected vide ACFA vide AirHQ/997998/5/137/18/647668/DP/AV-III dated 17.06.2019, for the reasons in as much as the first appeal of the applicant dated 30.04.2018 was not disposed of within a period of six months from the date of filing of the same and not even till the institution of the present OA on 05.02.2019 and thus we take up the OA for consideration in terms of Section-21(2)(b) of the AFT Act, 2007 and in terms of Section-21(1) of the said enactment though the first appeal was disposed of on 17.06.2019.

CONTENTIONS OF THE PARTIES

8. The applicant submits that he joined the Indian Air Force in a fit medical category without any note or record for any disability which he suffered at the time of induction of service and submits further that rather as Para-2&3 of the Part-V of the opinion of the medical board is reflected 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? N/A "

to thus submit that it is apparent from the records of the respondents themselves that the applicant joined the Indian Air Force in a fit medical category. The applicant has placed reliance on the verdict of the Hon'ble Supreme Court in CA No. 4949/2013 in ***Dharamvir Singh Vs. UOI & Ors.*** in para-28 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 *UOI & Ors. Vs. Rajbir Singh* (2015) 12 SCC 264 to contend to similar effect. The applicant further submits that the disability that he suffered from was due to stress and strain of military service and has to be aggravated to the same.

9. It is further submitted on behalf of the applicant that the disability that he suffers from had its onset in his 8th posting i.e. after more than 21 years of service in the Indian Air Force in the trade of

Clk GD and that the cumulative stress and strain of service in the Indian Air Force has to be held to be the causative factor for the Attributability and aggravation of the disability. On behalf of the respondents, reliance was placed on Para-26 of Chapter-VI of the GMO(MP), 2008 to submit to the effect that the disability had not been contracted in a field area and is a metabolic disorder.

ANALYSIS

10. On a consideration of the submissions made on behalf of either side, it is essential to observe that the factum that as laid down in the Hon'ble Supreme Court in *Dharamvir Singh(Supra)*, 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 service 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*.

11. 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 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).

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.

12. Regulation 423 of the Regulations for the Medical Services of the Armed Forces 2010, provides to the effect:-

"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.

13. The verdict of the Hon'ble Supreme Court in *Dharamvir Singh Vs. UOI & Ors.* vide Para-33 thereof, also stipulates 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.”,-

Thus, it is immaterial in terms of Regulation-423 of Regulations for the Medical Services of the Armed Forces 2010 of the respondents whether the disability arises in peace area, High Altitude Area, Clops area, and to ascertain the aspect of attributability of the disability all that is required to be ascertained is the existence of the causal connection between the onset of the disability and the military service.

14. 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.

15. It is 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.

16. In as much as the onset of the disability of the applicant has arisen after more than 21 years of the induction of the applicant in the IAF and as in terms of Para-26 of Chapter-VI of the GMO(MP), 2008 the stress and strain of service are causative factors for precipitation for the aggravation of the disability in question, the disability of Diabetes Mellitus Type-II that the applicant suffers from in the instant case is held to be attributable to and aggravated by military service.

CONCLUSION

17. The OA 278/2019 is allowed. The applicant is thus entitled to the grant of disability element of pension @20% for life for the disability of Diabetes Mellitus Type-2(Old) ICD No. E13.0 with rounding off to 50% for life, from the date of discharge, which in terms of the verdict of the Hon'ble Supreme Court in **UOI & Ors. vs Ramavtar** in Civil Appeal No. 418/2012. However, as the OA has been filed with much delay, the arrears of the disability element of pension shall commence to run from a period of three years prior to the institution of the present OA.

18. 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 8 day of February, 2024.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/TS/