

OA 1356/2019 WTH MA 2129/2020

Diabetes Mellitus Type-II, has been assessed @ 20% for life as is evident from the medical records.

5. Keeping in view the consistent stand taken by this Tribunal based on the law laid down by the Hon'ble Supreme Court in the case of **Dharamvir Singh v. Union of India and others** (2013) 7 SCC 316 wherein it is clearly spelt out that any disease contracted during service is presumed to be attributable to military service, if there is no record of any ailment at the time of enrollment into the military Service, we see no reason not to allow the prayer of the applicant with regard to the aforesaid disability.

6. Furthermore, in accordance with the judgment of Hon'ble Supreme Court in **Commander Rakesh Pande v. UOI & Ors. [Civil. Appeal No. (s) 5970/2019]**, we find that the issue pertaining to grant of disability pension for DM-II as well as the question of disabilities of permanent nature to be deemed to have been assessed for life, has been settled.

7. As far as reliance of the respondents on the order dated 11.09.2023 in **OA 121/2021, AFT (RB, Chennai) titled Ex Sub M Vijaykannan v. UOI & Ors.** is concerned, the said issue has been adequately settled by the judgement of the Principal Bench of this Tribunal in **OA 2176/2019 Ex JWO Krishan**

Kumar Tyagi v. UOI & Ors. wherein it held that by virtue of the fact that the said judgement did not consider the judgement rendered in ***Ex. Power Satyaveer Singh [C.A. 7368/2011]*** as has been upheld by the Hon'ble Supreme Court vide the verdict in ***UOI & Anr Vs. Rajbir Singh [Civil Appeal 2904/2011; Date of Decision: 13.02.2015]*** nor the judgement of Hon'ble Supreme Court in ***Commander Rakesh Pande vs UOI & Ors., [Civil Appeal 5970/2019; Date of Decision: 28.11.2019]*** wherein Hon'ble Supreme Court has upheld the judgement of this Tribunal in ***Cdr Rakesh Pande vs UOI & Ors., [OA 1532/2016 AFT (PB), New Delhi; Date of Decision: 06.02.2019]*** for grant of disability pension for the disability of Diabetes Mellitus, and therefore, in our considered view, the decision in ***Ex Sub M Vijayakannan Vs. Union of India & Ors (supra)*** is limited to the facts of that case, and cannot be held to be a binding precedent.

8. Accordingly, we allow this application and direct the respondents to grant disability element of pension to the applicant @ 20% for life which be rounded off to 50% for life from the date of retirement i.e. 28.05.2019 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.

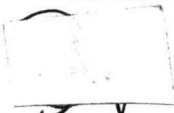
9. Accordingly, the respondents are directed to calculate, sanction and issue necessary PPO to the applicant within four months from the date of receipt of copy of this order, failing which, the applicant shall be entitled to interest @ 6% per annum till the date of payment.

10. No order as to costs.

11. Pending miscellaneous application, if any, stands disposed of.

Pronounced in the open Court on this 2 day of April, 2024.


[JUSTICE RAJENDRA MENON]
CHAIRPERSON


[LT GEN C. P. MOHANTY]
MEMBER (A)

Akc