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

E..

OA 259/2020 with MA 330/2020

Ex MWO (HFO) Rajpal Tanwar ..... Applicant
VERSUS
Union of India and Ors. ..... Respondents

For Applicant : None
For Respondents : Mr. Preeti Kumari, proxy for
Mr. Avdhesh Kumar Singh, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE LT GEN C. P. MOHANTY, MEMBER (A)

ORDER
08.04.2024

Vide our detailed order of even date we have allowed the OA 259/2020. 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 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, the prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

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

AP

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

OA 259/2020 WITH MA 330/2020

Ex MWO (HFO) Rajpal Tanwar .... Applicant
Versus
Union of India & Ors. .... Respondents

For Applicant : Mr. Baljeet Singh, Advocate
For Respondents : Mr. Avdhesh Kumar Singh, Advocate

CORAM :

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE LT. GEN. C.P. MOHANTY, MEMBER (A)

O R D E R

MA 330/2020

This is an application filed under Section 22 of The Armed Forces Tribunal Act, 2007 seeking condonation of delay of **220** 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 330/2020 is allowed despite opposition on behalf of the respondents and the delay of **220** days in filing the OA 259/2020 is thus condoned. The MA is disposed of accordingly.

OA 259/2020

2. The applicant Ex MWO (HFO) Rajpal Tanwar vide the present OA makes the following prayers:-

> ***"(a) To set aside the impugned order Air HQ/99798/1/647519/DAV/DP/CC dated 12.12.2019.***
>
> ***(b) To direct the Respondents to grant the disability pension @40% with effect from the date of discharge for life by considering the disabilities as attributable and aggravated by the military service.***
>
> ***(c) To direct the respondents to grant the benefit of rounding off of the disability of the applicant @50% (40% to be rounded off to 50% with effect from the date of discharge with all consequential benefits.***
>
> ***(d) To direct the respondents to pay the due arrears of disability pension with interest @12% p.a. with effect from the date of discharge till actual payment.***
>
> ***(e) 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."***

3. The applicant was enrolled in the Indian Air Force on 26.02.1977 and discharged from service on 30.06.2016 under the clause on "attaining the age of superannuation" after rendering a total 39 years and 126 days of regular service. The applicant's Release Medical Board (RMB) not solely on medical grounds was held on 03.08.2015 which found him fit to be released in composite low medical category A4G3 (P) and assessed his disabilities IDs (i) Coronary Artery Disease IWMI SVD (Recandalised LCX) @ 30% (ii) Diabetes Mellitus Type-II @ 20% with composite assessment @ 40% for life and recommended both

the disabilities as being neither attributable to nor aggravated by Air Force Service.

4. The claim of the applicant for the disability pension was rejected by AOC, Air Force Records Office vide letter No. RO/3305/3/Med dated 23.12.2015, and the same was communicated to the applicant vide letter No. AirHQ/99798/1/647519/06/16/DAV/(DP/RMB) dated 25.01.2016 with an option that he may prefer an appeal to the Appellate Committee within six months from the date of receipt of the letter. Aggrieved by the aforesaid rejection, the applicant preferred a Legal Notice-cum representation dated 28.11.2019 to the appellate authority, wherein the applicant mentioned all the circumstances which caused his disabililties and requested that he may be considered for grant of disability pension submitting that his disabilities were attributable to or aggravated by military service. Vide letter No. Air HQ/99798/1/647519/DAV/DP/CC dated 12.12.2019 the respondents have rejected the Legal Notice-cum-representation.

CONTENTIONS OF THE PARTIES

5. 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 or 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.

6. The applicant further submits that he was enrolled in the Indian Air Force on 26.02.1977 after having undergone a stringent medical check-up and was in category AYE at the time of his enrolment with the respondents. The applicant submits that he served the respondents for 39 years 04 months and 05 days in the rank of 'HFO'.

7. The applicant vide the present OA places reliance on his posting profile as reflected in Part I of the RMB dated 03.08.2015 in his personal statement which is to the effect:-

Sl.No.	*From*	*To*	*Place / Ship*	*P/F/ HAA/ Ops / Sea service / others*	*Sl.no.*	*From*	*To*	*Place / Ship*	P/F/ HAA/ Ops / Sea service / others
(i)	*26.02.77*	*13.10.77*	*Belgaum*	*P*	*(ii)*	*14.10.77*	*20.10.80*	*BOMBAY*	*P*
(iii)	*21.10.80*	*18.07.83*	*Shillong*	*P*	*(iv)*	*19.07.83*	*08.12.87*	*CHANDIGARH*	*P*
(v)	*09.12.87*	*27.12.92*	*Devellali*	*p*	*(vi)*	*28.12.92*	*07.09.97*	*BHUJ*	*P*
(vii)	*08.09.97*	*26.10.02*	*Tambram*	*P*	*(viii)*	*27.10.02*	*16.03.03*	*IGWTI, Baroda*	*P*
(ix)	*17.03.03*	*30.10.05*	*2231 Sqn Baroda*	*P*	*(x)*	*31.10.05*	*05.11.07*	*Srinagar*	*P*
(xi)	*06.11.07*	*28.08.11*	*25 Sqn, Chandigarh*	*P*	*(xii)*	*29.08.11*	*16.04.12*	*12 Wg, Chandigarh*	*P*
(xiii)	*17.04.12*	*14.07.14*	*Tezpur*	*P*	*(xiv)*	*15.07.14*	*16.12.14*	*14 sqn, Ambala*	*P*
(xv)	*17.12.14*	*Till Date*	*7 Wg Ambala*	*P*	-	-	-	-	-

8. 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, and that its scope is limited to broad physical examination and therefore, it may not detect some dormant diseases. The respondents further submit that besides, certain hereditary constitutional and congenital diseases may manifest later in life, irrespective of service conditions.

9. Inter alia the respondents submit that disability pension is granted to those who fulfil 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 and that the applicant has throughout his service served only in peace station.

ANALYSIS

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

Disability (As numbered in Para I Part IV)	***Percentage of disablement with duration***	***Composite assessment for all disabilities with duration (Max 100%)***	***Disability Qualifying for Disability Pension with duration***	***Net Assessment Qualifying for Disability Pension (Max 100%) with duration***
1. CAD	*30%*	*40% (Eighty percent) (Life Long)*	*NIL*	*NIL*
2. DM-II (old) Z 09.0, E 10.0	20%		*NIL*	

11. 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 or 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***.

12. It is 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.

13. It is also 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, being a disability of a permanent nature.

14. 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)

15. 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."

16. 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 relevant to this case 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)

17. 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 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) <u>Disease:</u>

(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 contacted 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)

18. 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.

19. 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.

20. It is essential to take note of para-33 of the verdict of the Hon'ble Supreme Court in ***Dharamvir Singh*** (supra) reads as under:-

"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)

Thus merely because the onset of the disabilities, that the applicant suffers from, were whilst he was posted in peace station is *per se* immaterial to negate his prayer for the grant of the disability element of the pension. The onset of the disability of Coronary Artery Disease IWMI SVD (Recandalised LCX) was in February, 2013, after 26 years of induction of the applicant in the Indian Air Force, and the onset of the ID (ii) DM-II (OLD) was in April, 2014, after more than 27 years of service in the Indian Air Force. The cumulative stress and strain of the length of service in arduous working conditions cannot be overlooked.

21. It is thus held that the presumption that the disabilities that the applicant suffered from of (i) Coronary Artery Disease @ 30% (ii) Diabetes Mellitus Type-II @ 20% were attributable to and aggravated by military services has not been rebutted by the respondents.

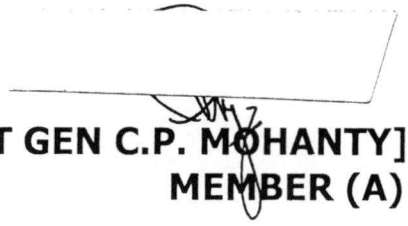
CONCLUSION

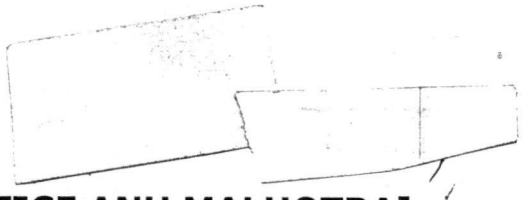
22. In the circumstances, the **OA 259/2020** is allowed and the applicant is held entitled to the grant of the disability element of pension qua the disabilities of the applicant i.e. (i) Coronary Artery Disease @ 30% (ii) Diabetes Mellitus Type-II @ 20%, with

composite disability of 40%, in view of which the same 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. 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.

23. No order as to costs.

Pronounced in the Open Court on the 8th day of April, 2024.





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

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/ps/