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

C..

OA 1896/2020 with MA 2195/2020

Ex JWO Munendra Kumar ..... Applicant
VERSUS
Union of India and Ors. ..... Respondents

For Applicant : Mr. Virender Singh Kadian, Advocate
For Respondents : Mr. K K Tyagi, Advocate

CORAM

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

ORDER
16.01.2024

Order allowing the OA pronounced, signed and dated.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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O R D E R

MA 2195 / 2020

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of **2055** days in filing the present OA. In view of the verdicts 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),*** the MA 2195/2020 is allowed despite opposition on behalf of the respondents and the delay of **2055** days in filing the OA 1896/2020 is thus condoned. The MA is disposed of accordingly.

OA 1896 / 2020

The applicant 'Ex JWO Munendra Kumar No. 709343-N' vide the present OA makes the following prayers:-

> ***"(a) Quash and set aside impugned letter No Air HQ/99798/5/709343/TBS/Appeal/AV-III(Appeals) dated 14.08.2020. And/or***
>
> ***(b) Direct respondents to treat the disabilities of the applicant as attributable to or aggravated by military service and grant him disability element of pension along with broad banding/rounding off. and / or***
>
> ***(c) Direct respondents to pay the due arrears of disability element of pension with interest @12% p.a from the date of retirement with all the consequential benefits.***
>
> ***(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost of the application in favour of the applicant and against the respondents."***

2. The applicant was enrolled in the Indian Air Force on 11.08.1989 and discharged from service on 31.08.2015 under the clause on "On fulfilling the conditions of enrolment" after rendering total 26 years and 21 days of regular service. The applicant was initially placed in low medical category CEE (T 24) for **ID – Primary Hypothyroidism & ID-Impaired Glucose Tolerance** vide AFMSF-15 dated 26.06.1996 whilst posted to AF Stn Agra. During subsequent review he was placed in LMC

BEE (P) vide AFMSF-15 dated 28.08.1998 and was reviewed regularly and placed in LMC A4G2 (P) composite vide AFMSF-15 dated 30.11.2010 for both ID – Primary Hypothyroidism and ID – Type-II Diabetes Mellitus.

3. His release medical board not solely on medical grounds was held at Air Force Station Jammu vide AFMSF-16 dated 20.11.2014 and he was found fit to be released in low medical category A4G2 (P) for Primary Hypothyroidism and ID: Type-II Diabetes Mellitus. The RMB considered his disabilities as being neither attributable to nor aggravated by service, stating the reason that the individual was not on posting to HAA/Field/Ops area at the time of onset and neither within one year prior to the onset, hence considered the disability neither attributable nor aggravated by Military service in terms of Para 26 of Chapter VI of Guide to Medical Officer (Military Pension 2008. The percentage of disablement were assessed as Primary Hypothyroidism @ 30% and ID: Type-II Diabetes Mellitus @ 20% (composite 40%) for both disabilities for life long, with the disability qualifying elements for disability pension being assessed as Nil for life. His RMB was approved by Dy PMO HQ WAC, IAF dated 10.12.2014.

4. On adjudication, the AOC AFRO also upheld the recommendations of RMB and rejected the disability pension claim vide letter No.

RO/3305/3/Med dated 29.12.2014. The outcome of the same was also communicated to the applicant vide letter No. Air HQ/99798/1/709343/08/15/ DAV(DP/RMB) dated 22.01.2015 with an option that he may prefer an appeal to the Appellate Committee within six months from the date of receipt of letter.

5. The applicant submitted his first appeal dated 12.06.2020 after a lapse of a period of approximately 05 years and 04 months from the date of initial rejection of his disability claim on 22.01.2015. His first appeal, being a time barred case, was not thus processed in terms para 2 of 1(3)/2008/d (Pen/Pol) dated 17.05.2016 as per which the maximum time limit of five years has been fixed from the date of discharge/invalidment from service and from the date of rejection of claim. The applicant was intimated of the same fact vide Air HQ/99798/5/5/709343 /TBS/Appeal/AV-III (Appeals) dated 14.08.2020. We consider it appropriate in the interest of justice to take up the OA for consideration in terms of Section 21 (1) of the AFT Act 2007.

CONTENTIONS OF THE PARTIES

6. The applicant submits that he was enrolled in the Indian Air Force on 11.08.1989 and was discharged from service on 31.08.2015 after fulfilling the conditions of service of his enrolment, on completion of 26 years and 21 days of service in low medical category and was

downgraded to low medical category for the disabilities ID (i) PRIMARY Hypothyroidism (OLD) assessed @ 20% for life, ID (ii) TYPE II DIABETES MELLITUS (OLD) assessed @ 20% for life and compositely assessed @ 40% for life. Inter alia the applicant submits that he served at many places in different kind of climate and geographic conditions.

7. The applicant submits that he suffered the disabilities while performing military service which are required to be considered as attributable to / aggravated by military service. Inter alia the applicant submits that the respondents rejected the claim for the grant of disability element of pension vide letter No Air HQ/99798/1/709343/08/15/DAV/(DP/RMB) dated 22.01.2015 stating the reasons that the disabilities were considered as neither attributable to nor aggravated by military service arbitrarily.

8. Inter alia the applicant submits that he had served at many places in different kinds of climatic and geographic conditions and suffered the disabilities while performing military service which were required to be considered as attributable to/aggravated by military service. Inter alia the applicant submits that he has suffered the disabilities due to prolonged service and various kind of food. The applicant further submits that at the time of entry into service he was subjected to a thorough medical

examination conducted by a board of doctors and when found medically fit at the Selection Centre in all respects he was enrolled in the Air Force and was again put through a medical examination at the Training Centre before training and was found medically fit.

9. Inter alia the applicant submits that there was no note of any disability recorded in the record of the applicant and submits that the Hon'ble Supreme Court in a catena of judgments has held that the persons, who joined the defence forces in a fit medical category and retired thereafter due to some disability, are required to be compensated by grant of disability pension.

10. Inter alia the applicant places reliance on the verdict of 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 and prayed that he be held entitled for the grant of the disability element of pension @ 50% for life in terms of the verdict of the Hon'ble Supreme Court in Civil Appeal No 418/2012 titled as ***UOI & Ors v. Ram Avtar*** vide judgment dated 10.12.2014.

11. On the other hand, the respondents place reliance on Rule 153 of the Pension Regulations for IAF, 1961 (Part-1), submitting that the primary conditions for the grant of disability pension are:-

"Unless otherwise specifically provided, disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by Air Force service and is assessed at 20% or over."

In other words, disability pension is granted to those who fulfill 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.

12. The respondents submit that the RMB in the instant case has assessed the applicant's disabilities as neither attributable to nor aggravated by service which caused non-fulfilment of the criteria (i) hereinabove and submit that the applicant is not entitled for the grant of disability pension in accordance with prevailing rules & policies.

ANALYSIS

13. 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 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***.

14. It is also essential to observe that the prayer for 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 versus Rajbir Singh*** (Civil Appeal 2904/2011) dated 13.02.2015.

15. It is 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, it being a disability of a permanent nature.

16. 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)

17. As per the amendment to Para 26 of Chapter VI of the 'Guide to Medical Officers(Military Pensions), 2008, 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.

18. Para 26 of the Chapter VI, GMO 2008 (Military Pensions) is 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."

19. It is essential to observe that the verdict of the Hon'ble Supreme Court in ***Rajbir Singh*** (supra) vide Paras 12 to 15 observed to the effect:-

"12. Reference may also be made at this stage to the guidelines set out in Chapter-II of the Guide to Medical Officers (Military Pensions), 2002 which set out the "Entitlement: General Principles", and the approach to be adopted in such cases. Paras 7, 8 and 9 of the said guidelines reads as under:

"7. Evidentiary value is attached to the record of a member's condition at the commencement of service, and such record has, therefore, to be accepted unless any different conclusion has been reached due to the inaccuracy of the record in a particular case or otherwise. Accordingly, if the disease leading to member's invalidation out of service or death while in service, was not noted in a medical report at the commencement of service, the inference would be that the disease arose during the period of member's military service. It may be that the inaccuracy or incompleteness of service record on entry in service was due to a non-disclosure of the essential facts by the member e.g. pre-enrolment history of an injury or disease like epilepsy, mental disorder, etc. It may also be that owing to latency or obscurity of the symptoms, a disability escaped detection on enrolment. Such lack of recognition may affect the medical categorisation of the member on enrolment and/or cause him to perform duties harmful to his condition. Again, there may occasionally be direct evidence of the contraction of a disability, otherwise than by service. In all such cases, though the disease cannot be considered to have been caused by service, the question of aggravation by subsequent service conditions will need examination.

[pic] The following are some of the diseases which ordinarily escape detection on enrolment:

(a) Certain congenital abnormalities which are latent and only discoverable on full investigations e.g. Congenital Defect of Spine, Spina bifida, Sacralisation,

(b) Certain familial and hereditary diseases e.g. Haemophilia, Congential Syphilis, Haemoglobinopathy.

(c) Certain diseases of the heart and blood vessels e.g. Coronary Atherosclerosis, Rheumatic Fever.

(d) Diseases which may be undetectable by physical examination on enrolment, unless adequate history is given at the time by the member e.g. Gastric and Duodenal Ulcers, Epilepsy, Mental Disorders, HIV Infections.

(e) Relapsing forms of mental disorders which have intervals of normality.

(f) Diseases which have periodic attacks e.g. Bronchial Asthma, Epilepsy, Csom, etc.

8. The question whether the invalidation or death of a member has resulted from service conditions, has to be judged in the light of the record of the member's condition on enrolment as noted in service documents and of all other available evidence both direct and indirect.

In addition to any documentary evidence relative to the member's condition to entering the service and during service, the member must be carefully and closely questioned on the circumstances which led to the advent of his disease, the duration, the family history, his pre-service history, etc. so that all evidence in support or against the claim is elucidated. Presidents of Medical Boards should make this their personal responsibility and ensure that opinions on attributability, aggravation or otherwise are supported by cogent reasons; the approving authority should also be satisfied that this question has been dealt with in such a way as to leave no reasonable doubt.

9. On the question whether any persisting deterioration has occurred, it is to be remembered that invalidation from service does not necessarily imply that the member's health has deteriorated during service. The disability may have been discovered soon after joining and the member discharged in his own interest in order to prevent deterioration. In such cases, there may even have been a temporary worsening during service, but if the treatment given before discharge was on grounds of expediency to

prevent a recurrence, no lasting damage was inflicted by service and there would be no ground for admitting entitlement. Again a member may have been invalided from service because he is found so weak mentally that it is impossible to make him an efficient soldier. This would not mean that his condition has worsened during service, but only that it is worse than was realised on enrolment in the army. To sum up, in each case the question whether any persisting deterioration on the available [pic]evidence which will vary according to the type of the disability, the consensus of medical opinion relating to the particular condition and the clinical history."

13. In Dharamvir Singh's case (supra) this Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words:

"29.1. Disability pension to be granted to an individual who is invalided 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 to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).

29.2. 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 read with Rule 14(b)].

29.3. The 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).

29.4. 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)]. [pic]
29.5. 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 [Rule 14(b)].

29.6. 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 [Rule 14(b)]; and 29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 - "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."

14. Applying the above principles this Court in Dharamvir Singh's case (supra) found that no note of any disease had been recorded at the time of his acceptance into military service. This Court also held that Union of India had failed to bring on record any document to suggest that Dharamvir was under treatment for the disease at the time of his recruitment or that the disease was hereditary in nature. This Court, on that basis, declared Dharamvir to be entitled to claim disability pension in the absence of any note in his service record at the time of his acceptance into military service. This Court observed:

"33. In spite of the aforesaid provisions, the Pension Sanctioning Authority failed to notice that the Medical Board had not given any reason in support of its opinion, particularly when there is no note of such disease or disability available in the service record of the appellant at the time of acceptance for military service. Without going through the aforesaid facts the Pension Sanctioning Authority mechanically passed the impugned order of rejection based on the report of the Medical Board. *As per Rules 5 and 9 of the Entitlement Rules for Casualty Pensionary Awards, 1982, the appellant is entitled for presumption and benefit of presumption in his favour. In the absence of any evidence on record to show that the appellant was suffering from "generalised seizure (epilepsy)" at the time of acceptance of his service, it will be presumed that the appellant was in sound physical and mental condition at the time of entering the service and deterioration in his health has taken place due to service."*

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)

It is thus held in the instant case that the presumption that the disability of Diabetes Mellitus Type II was attributable to and aggravated by military services has not been rebutted by the respondents.

20. 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.

21. It is essential to observe that vide para-33 on the verdict of the Hon'ble Supreme Court in ***Dharamvir Singh*** (Supra) it is laid down 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."*
>
> *(emphasis supplied)*

22. 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) <u>Injuries:</u>

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),

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.

23. As regards, the disability of 'Primary Hypothyroidism (Old)' assessed @ 20% for life by the RMB, it is essential to advert to Para 38 of Chapter VI of the GMO (Military Pensions) 2008 which is as under:-

*"38. **Goitre.** Goitres are swellings of thyroid which can be broadly divided into simple goitre and toxic goitre.*

Simple goitre can be a diffuse or multinodular enlargement of the thyroid. It is likely that sub optimal dietary iodine intake associated with dietary compulsions and employment in localities peculiar to Armed Forces may lead to development of goitre which may present either in euthyroid and hypothyroid state. Sometimes hypothyroid state may develop as an after math to ablation of gland to over generous surgery or irradiation and also drug therapy like PAS, lithium carbonate and phenylbutazone. Attributability can be conceded in simple and multi nodular goitre due to iodine deficiency in endemic areas and in hypothyroidism following therapeutic trials.

Toxic goitres are commonly seen in Grave's disease and less commonly in multinodular goitre, sub-acute Dequervain's thyroiditis and adenoma thyroid showing features of toxicity. At times hyperthyroid state may follow therapeutic and diagnostic trial with iodine compounds like anti-arrhythmic drugs e.g. amiodarone, radiographic contrast media and during the course of iodine prophylaxis programme. Grave's disease is an immunologically mediated disease and its onset or course can be aggravated by service conditions such as worry, stress and strain, shock which can precipitate the toxic symptoms. It will be appropriate to concede attributability in hyperthyroidism associated with multinodular goitre and sub-acute thyroiditis and also in post therapeutic and diagnostic trials of iodine and its compounds."

The same indicate thus that dietary compulsions and employment in localities peculiar to Armed Forces may lead to a hypothyroid state.

24. Vide order dated 18.10.2023 in OA 168/2022 in ***Ex Hav Raghubir Singh vs UOI & Ors,*** this Tribunal observed vide Paras 9, 10 and 11 thereof to the effect:-

"9. Before proceeding further with the observation, it became pertinent to mention Army Order 16036/ RMB/ IMB/ DGAFMS/ MA (Pens) dated 20.05.2019, dealing with Award Of Entitlement And Assessment Of Hypothyroidism And Obesity, the relevant portion of which is produced as under;

xxxxx

a) Hypothyroidism:

(i) Attributability and Aggravation:

- ***Hypothyroidism may be considered attributable if due to post therapeutic or post diagnostic intervention.***
- ***Aggravation may be conceded in all cases of Primary Autoimmune Hypothyroidism.***

(ii) Assessment of Disability Percentage:

- *Subclinical Hypothyroidism not on any treatment- 5%*

- *Subclinical Hypothyroidism on treatment - 10%*

- *Post therapeutic or post diagnostic - 15%*

- *Primary Autoimmune Hypothyroidism - 51%*

- *Hypothyroidism associated with Pericardial or pleural effusion/ Encephalopathy/ Carpal tunnel syndrome likely due to hypothyroidism - 20%*

10. In light of the aforesaid letter the disability of Primary Hypothyroidism can be inferred to be attributable to service and since no cogent reasons were given in the records as to why the said disability is not attributable, the disability, in this particular case in absence of specialised medical opinion can be held as attributable.

11. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, we are of the opinion that it is not in dispute that the extent of disabilities was assessed to be 20% which is the bare minimum for grant of disability pension in terms of Rule 179 of the Pension Regulations for the Indian Army, 1961 (Part-I). The only question that arises in the above backdrop is whether disability suffered by the applicant was attributable to or aggravated by military service."

25. Further in OA 1292/2019 vide order dated 24.05.2023 in ***Ex SGT Anil Das P vs UOI & Ors*** it is reflected therein to the effect:-

"It is submitted at the outset on behalf of the respondents by learned counsel for the respondents while submitting the copy of the PPO Order No. 349201813314 as well the letter dated 11.02.2020 indicating to the effect that the Appellate Committee for First Appeal had accepted the ID (i) for the disability i.e. Primary Hyperthyroidism @20% as aggravated by service with a disablement assessment of 20% net referable for DP which was with effect from 01.09.2018 i.e. the next day of his discharge from service with the percentage of disablement to be rounded off from 20% to 50% in terms of PCDA(P) Allahabad Circular No. 584 dated 07.09.2017 and MoD letter no 1(2)/97/D (Pen-C) dated 31.01.2001."

thus indicating that the respondents have accepted Primary Hypothyroidism to be a condition of a disability aggravated by military service in that case.

26. Thus as the said disability of Primary Hypothyroidism (Old) had its onset on 01.03.1996, in the fourth posting of the applicant after more than six years of service in the Indian Air Force after posting twice in Modified Field Area, and in different climatic terrains, coupled with the factum that the existence of dietary compulsions cannot be held to have been obliterated and the opinion of the RMB is silent in relation to the applicability of Para 38 of the GMO (Military Pensions) 2008 in relation to the said disability coupled with the factum that in the circumstances of the instant case, as the respondents have been unable to dislodge the presumption of attributability in terms of Para 10 (b) (iii) of the Entitlement Rules for Casualty Pensionary Awards, 2008 and have been unable to dislodge the presumption of aggravation of the disability in terms of Para 11 of the Entitlement Rules for Casualty Pensionary Awards, 2008 the disability of 'Primary Hypothyroidism'. In the circumstances held to be both attributable to and aggravated by military service.

CONCLUSION

27. Thus in view of our above analysis, the **OA 1896/2020** 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. **'Primary Hypothyroidism (Old)' & 'Type II Diabetes Mellitus (Old)'** both compositely assessed at 40% for life, which 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. However, the arrears of the grant of the disability element of pension are directed to be confined to commence to run from a period of three years prior to the institution of the present OA in terms of the verdict of the Hon'ble Supreme Court in ***UOI & Ors. vs Tarsem Singh***, 2009(1) AISLJ 371 and 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.

28. No order as to costs.

Pronounced in the Open Court on the 16 day of January, 2024.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/AP/