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

OA 199/2018 with MA 134/2018

Ex WO Sadananda Rautaray ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Mr. V S Kadian, Advocate
For Respondents : Mr. Rajeev Kumar, Advocate
CORAM :

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

ORDER

MA 134/2018

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 2204 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 134/2018 is allowed and the delay of 2204 days in filing the OA 199/2018 is thus condoned. The MA is disposed of accordingly.

OA 199/2018

The applicant vide the present OA **199/2018** makes the following prayers:

> *"(a) To Quash the impugned Order No.Air HQ/99798/1/633050/DAV/DP/CC dated 29.12.2017. And/or*
>
> *(b) Direct the respondents to treat the disability of the applicant as attributable to or aggravated by military service and grant him disability element of pension with the benefit of broadbanding.*
> *(c) Direct the respondents to pay the due arrears with interest @12%p.a. from the date of discharge with all the consequential benefits.*
> *(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case alongwith cost of the application in favour of the applicant and against the respondents."*

2. The applicant was enrolled in the Indian Air Force on 08.06.1974 and discharged from service on 31.12.2011 under the clause 'On attaining the age of superannuation' after rendering a total of 37 years and 207 days of regular service. The Release Medical Board constituted at the time of retirement qua the applicant, assessed his disability ID "Diabetes Mellitus Type-II @15-19% for life and recommended the same as being neither attributable to nor aggravated by Air Force service. On adjudication , the AOC AFRO also upheld the recommendations of the RMB and rejected the disability pension claim vide letter

No.RO/3305/3/Med dated Cat(D) dated 11.05.2011 and the outcome to this effect was communicated to the applicant vide letter No.RO/2703/633050/P&W(DP/RMB) dated 26.05.2011 with an advise that he may prefer an appeal to the Appellate Committee within six months from the date of receipt of letter. The legal notice dated 14.12.2017 sent by the applicant was responded to by the respondents vide letter No. Air HQ/99798/1/633050/DAV/DP/CC dated 29.12.2017 to the effect:

"3. As per Rule 153 of Pension Regulations for IAF, 1961(Pt.I), the primary conditions for the grant of disability pension are as follows:

(a) *Disability must be either attributable to or aggravated by service.*
(b) *Degree of disablement should be assessed at 20% or more."*

and to submit to the effect that since the RMB recommended his disability as neither attributable to nor aggravated by AF service and assessed @ less than 20% that caused non-fulfilment of the criteria 3(a) and(b) above, therefore he was thus not entitled for grant of disability element as per the said rules. It was further submitted to the effect that as per Rule 153 of the Pension Regulations for IAF, 1961(Ft-1), the disability of the applicant had been recommended by the Release Medical Board as being neither attributable to nor aggravated by Air

Force service and is also less then 20% and thus does not fulfil the requirements of Rule 153 and the applicant is not entitled to the grant of disability element of pension.

3. At the outset, it is essential to observe that the assessment of the disability in relation to Diabetes Mellitus Type-II cannot be assessed less than 20% in terms of MoD letter No.16036/DGAFMS/MA(Pens)/Policy dated 20.12.2012 accorded concurrence by the MoD/D(Pen/Policy) and in practice as per letter No Air HQ/99801/D/DAV(Med) dated 12.05.2023 whereby the minimum assessment of the disability of Diabetes Mellitus Type-II cannot be assessed less than 20%. The only question which needs to be decided is whether the disability is attributable to or aggravated by military service.

4. The posting profile of the applicant is reflected in Part-I Personal Statement of the RMB which reads as under:

"PART -1 PERSONAL STATEMENT

1. Give details of service(P-Peace OR F-Field/Operation/Sea Service

S. No.	From	To	Place/ Ship	P/ F	S. No.	From	To	Place Shit	P/F
(i)	8..6.74	31.8.75	3 GTS	P	(ii)	1.9.75	4.12.78	462 MDF	F
(iii)	5112178	15.1.82	147 Sqn AF	P	(iv)	16.1.82	16.4.85	260 SU AF	P
(v)	17.4.85	30.6.87	150 Sqn AF	F	(vi)	1.7.87	1.6.92	5 Wing, AF	P
(vii)	2.6.92	5..3.97	23 Wing AF	P	(viii	6.3.97	18.2.02	3 Wing AF	P
(ix)	19.2.02	5.1.06	19 Wisng	P	(x)	6.1.06	8.1.10	485 MOF	P

(xi)	9.1.10	Till date	HQ WAC(U)	P					
2.	Give particulars of any diseases, wounds or injuries from which are suffering								

Illness, wound Injury	First stated		Rank of Individual	Where treated	Approximate dates and periods tested
	Date	Place			
Diabetes Mellitus Type II(Old)X.09	Apr 2010	New Delhi	WO	BHDC	09 Apr 10-30 Apr 10(21 days)

The onset of the disability is indicated in Part IV of the RMB to the effect:

PART IV
STATEMENT OF CASE

1. Chronological list of disabilities

Disabilities	Date of origin/Rank	Place and unit where serving at the time
Diabetes Mellitus Type II(Old)Z-09	Apr 2010/WO	New Delhi/HQWAC(U)

The opinion of the Release Medical Board as reflected in Part V thereof is 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 and period in service
Diabetes Mellitus Type II(Old) Z-09	NO	NO	YES	A lifestyle related disorder. Onset in May 2010 in peace station(Delhi) Prior to onset individual served in peace station only. No close time association with

				stress/strain of Field/HAA/CI Ops service. Hence neither attributable to service nor aggravated by service in terms of Para 26 of Chapter VI of Guide to Medical Officer(MP) 2002, amended 2008.

"

The percentage of disablement had been put forth in the RMB proceedings to the effect:

"

6. What is present degree of disablement as compared with a healthy person of the same age and sex? (Percentage will be expressed as NIL or as follows): 1-5%, 6-10%, 11-14%, 15-19% and thereafter in multiple of ten from20% to 100%)				
Disability as numbered in Para 1 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
Diabetes Mellitus Type II(Old) Z-09	15-19% for life	15-19% for life	15-19% for ife	15-19% for life

"

It has already been observed in para 4 hereinabove that the said percentage of disablement in relation to Diabetes Mellitus Type-II could not have been assessed at less than 20% for life.

CONTENTIONS OF THE PARTIES

5. The applicant submits that he had been engaged in the Indian Air Force in the trade of Radio Telephony Operator(RTO) on 08.06.1974 in a fit medical category without any note of any ailment on the records of

the respondents as has also been reflected in Para 2 and 3 of Part V of the RMB proceedings to the effect:

"2. Did the disability exist before entering service?(Y/N/could be NO
3. In case the disability existed at the time of entry, it is possible that it could not be detected during the routine medical examination carried out at the time of entry? NO

with it having been also stipulated in Para 5(a) and (b) of the RMB

5.(a) Was the disability attributable to individual's own negligence or conduct? If yes, in what way? NO
(b) If not attributable, was it aggravated by negligence or misconduct? If yes, in what way and to what percentage of the total disablement? NO
"

which thus indicates that the disability of the applicant was not due to any act of the applicant and that there was no ostensible reason put forth through the RMB as to why the said disability could not have been detected during the routine medical examination conducted at the time of entry and thus the disability the applicant suffered from has to be presumed to have arisen during the military service and is attributable to and aggravated thereby. It has further been submitted on behalf of the applicant that prior to the onset of the ID Diabetes Mellitus Type-II in April 2010, the applicant had been deputed from 17.04.1985 to 30.06.1987 at 150 Sqn AF and from 01.09.1975 to 04.12.1978 at 462 MOF, both field areas. The applicant further submits that the onset of the said disability was in his 11th posting after 36 years of military service in the Indian Air Force and that the same was due to stress and strain of Air

Force service has not been effectively rebutted by the respondents. The applicant submits that furthermore, as per the Entitlement Rules for Casualty Pensionary Awards 1982, the ID of Diabetes Mellitus Type-II is a disease affected by stress and strain of military service and that the Release Medical Board wrongly opined that the disability is neither attributable to nor aggravated by service.

6. The applicant places reliance on the verdict of the Hon'ble Supreme Court in ***Dharamvir Singh*** Vs ***Union of India & Ors(*** Civil Appeal No.4949 of 2013) 2013(7) SCC 36 and ***Union of India & Anr*** Vs ***Rajbir Singh*** (Civil Appeal No.2904/2-011, 2015(2) Scale 371) to submit to the effect that in terms of the Entitlement Rules for Casualty Pensionary Awards, 1982 as shown in Appendix-II, the Government of India, Ministry of Defence Letter No.1(1)/81/D(Pen-C) dated 20.06.1996 and the "General Rules of Guide to Medical Officers(Military Pensions) 2002" and Para 423 of the Regulations for the Medical Services of the Armed Forces, 2010, it is well settled that where there is no note in the service record of the applicant at the time of entry into service and there is nothing opined by the Medical Board to indicate as to why the applicant was suffering from the disability, a presumption has to be drawn in favour of the applicant who was discharged in low medical category that he suffered from the disease due to the service conditions of military service and the disability from which the applicant suffers is attributable

to and aggravated by military service and that thus the applicant is entitled to the grant of the disability element of pension as claimed by him.

7. The respondents on the other hand reiterated that the disability of the applicant is neither attributable to nor aggravated by military service as the disability is an idiopathic/lifestyle related disorder and was detected while the applicant was serving in a peace area and that there is no close time association of stress and strain with military service. The respondents placed reliance on Para 26 of Chapter VI of GMO(Mil Pen) 2008 to submit to the effect that the applicant is not entitled to the grant of the disability element of pension. It is submitted by the respondents that the medical test at the time of his entry is not exhaustive but its scope is limited to broad physical examination and thus, it may not detect some dormant disease and certain hereditary, constitutional and congenital diseases which may manifest later in life, irrespective of service conditions. *Inter alia*, the respondents submit that Diabetes Mellitus Type-II is a constitutional disease i.e. its etiology depends to a significant degree on the action of generic factors and inherent genes that make them susceptible to Type II- Diabetes Mellitus but lifestyle factors like obesity and inactivity are also important

8. The respondents thus submit that the applicant is not entitled to the grant of the disability element of pension as prayed by him and that

the question of percentage of disability does not arise. *Inter alia*, the respondents submit that reliance that has been placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in ***Union of India & Ors*** Vs ***Ram Avtar*** in Civil Appeal No. 418/2012 is misplaced submitting to the effect that ***Ram Avtar*** was discharged from service after completion of terms of engagement with 20% disability whereas in the instant case, the applicant's disability i.e. Diabetes Mellitus Type-II was conceded as NANA. The respondents also submit that the applicant in the case of ***Dharamvir Singh***(supra) was invalided from service but in the instant case the applicant had superannuated. The respondents thus seek that the OA filed by the applicant be dismissed.

ANALYSIS

9. 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 (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***.

10. The Hon'ble Supreme Court in ***Dharamvir Singh*** vs. ***Union of India*** and Ors. (2013) 7 SCC 316, vide observations in para 28 thereof has had laid down the guiding canons 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

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."

11. It is essential to observe that the verdict of the Hon'ble Supreme Court in ***Rajbir Singh*** (supra) vide Para 15 lays down 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)

12. On a consideration of the submissions that have been made on behalf of either side, it is essential to observe that the aspect of determination of the disability resulting from the disease being attributable to service apart from being governed by the 'Entitlement Rules for Casual Pensionary Awards to the Armed Forces Personnel, 2008 is also governed by Regulation 423 of the Regulations for the Medical Services of the Armed Forces, 2010 which is still in operation. Regulation

423 (a) specifically provides that it is immaterial for the purpose of determining whether the cause of a disability or death resulting from disease is or is not attributable to service, ***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.***

(emphasis supplied)

13. As per Regulation 423 of Chapter 8 of the Regulations for the Medical Services of the Armed Forces, 2010, the revised version which is in force, it has been regulated 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),

14. It is also essential to observe that 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 thereof as under:-

"6. Causal connection:
For award of disability pension/special family pension, a causal connection between disability or death and military service has to be established by appropriate authorities.

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 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),

15. On a consideration of the submissions that have been made on behalf of either side as has already been observed hereinabove despite the 'Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 1982' having been superseded by the 'Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008' which have been made effective from 01.01.2008 as per letter dated 18.01.2010 F.No.1(3)/2002/Vol-1/D(Pen/) of the Government of India, Ministry of Defence Department of Ex-Servicemen Welfare, the factum that the ratio of the verdicts in ***Dharamvir Singh (supra)***, ***Sukhvinder Singh (supra)***, ***Rajbir Singh (supra)*** and ***Manjeet Singh (supra)*** form the fulcrum of the 'Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008' cannot be overlooked.

16. This is so in as much as the observations of the Hon'ble Supreme Court in the verdicts referred to hereinabove in relation to the aspect of causal connection between disability or death and military service are based on the nexus between the injury/disability and military service and the arising of the disease during the period of the military service which has been caused by the conditions of employment in military service.

17. That peace stations have their own pressure of rigorous military training and associated stress and strain of service and that most of the personnel of the Armed Forces have to work in stressful and hostile environment, difficult weather conditions and under strict disciplinary norms has already been taken into consideration by this Tribunal in a catena of cases at the time of consideration of the prayers made for grant of disability pension.

18. As per the amendment to Chapter VI of 'Guide to Medical Officers(Military Pensions), 2008, Para 26 thereof, Type-II 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.

19. Para 26, Chapter VI of the Guide to Medical Officers (Military Pensions), 2008, is as under:-

"26. Diabetes Mellitus

This is a metabolic disease characterized 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."

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

20. In view of the ratio of the verdicts in ***Dharamvir Singh*** vs ***UOI & Ors*** (Civil Appeal No. 4949/2013) (2013) 7 SCC 316, ***Sukhvinder Singh*** vs ***UOI & Ors***, dated 25.06.2014 reported in 2014 STPL (Web) 468 SC, ***UOI & Ors. vs Rajbir Singh*** (2015) 12 SCC 264 and ***UOI & Ors*** versus ***Manjeet Singh*** dated 12.05.2015, Civil Appeal no. 4357-4358 of 2015, as laid down by the Hon'ble Supreme Court which are the fulcrum of the Entitlement Rules for Casualty Pensionary Awards for the Armed Forces-2008 as already observed hereinabove thus, in the absence of any disability recorded by the medical board at the time of induction of the applicant into military service of any disease that he suffered from, with the onset of the disability being in service in April 2010 after induction of the applicant in the Indian Air Force on **08.06.1974** i.e. after 36 years of induction into the Indian Air Force and the disability that the applicant suffers from has to be held attributable to and aggravated by military service.

21. 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.

22. In terms of the verdict of the Hon'ble Supreme Court in Civil Appeal No.5970/2019 titled as ***Commander Rakesh Pande*** Vs ***Union of India & Ors*** dated 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% broadbanded to 50% for life was upheld.**

23. In these circumstances, the applicant herein who suffered from Diabetes Mellitus Type-II though whilst serving in peace area is entitled to the disability element of pension for Diabetes Mellitus Type-II assessed @20% for life which has to be held to be due to the stress and strain of military service in terms of Para 26 of Chapter VI of the Guide to Medical Officers(MP) 2008.

CONCLUSION

24. The **OA 199/2019** is thus allowed and the applicant is held entitled to the grant of the disability element of pension *qua* the disability of 'Diabetes Mellitus Type II' @ 20% 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 ***Union of India*** vs ***Ram Avtar*** decided on

10.12.2014 in Civil Appeal no. 418 of 2012 with effect from the date of his discharge. However, the arrears shall be limited to three years prior to the date of filing of this OA i.e. 16.01.2018 in terms of the verdict of the Hon'ble Supreme Court in ***UoI & Ors*** Vs ***Tarsem Singh*** 2009(1)AISLJ 371. 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.

25. No order as to costs.

Pronounced in the open court on this 12th day of January ,2024.

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

[JUSTICE ANU MALHOTRA)
MEMBER (J)

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