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

3.

OA 2222/2019 WITH MA 3119/2019

Ex Hon Lt Gyan Chand Prasad ..... Applicant
VERSUS
Union of India and Ors. ..... Respondents

For Applicant : Mr. Praveen Kumar, Advocate
For Respondents : Mr. Anil Gautam, Sr. CGSC

CORAM

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

ORDER
19.03.2024

Vide our detailed order of even date, we have allowed the OA 2222/2019. Learned counsel for the respondents makes an oral prayer for grant of leave to appeal in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007 to assail the order before the Hon'ble Supreme Court. After hearing learned counsel for the respondents and on perusal of our order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order to grant leave to appeal. Therefore, prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

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

/nmk

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O R D E R

MA 3119/2019

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 1097 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 3119/2019 is allowed despite opposition on behalf of the respondents and the delay of 1097 days in filing the OA 2222/2019 is thus condoned. The MA is disposed of accordingly.

OA 2222/2019

2. The applicant vide the present O.A 2222/2019 has made the following prayers:-

> ***"(a) Quash and set aside the impugned letters dated 18 Jan 2017.***
>
> ***(b) Direct respondents to grant disability pension@30% and rounding off the same to @50% for life as recommended by RMB to the applicant with effect from 01 Feb 2017 i.e. the date of discharge from service with interest @12% p.a. till final payment is made.***
>
> ***(c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.***

3. During course of submissions made on 12.01.2024, it was submitted on behalf of the applicant that the prayer for the grant of disability element of pension in relation to the disability of Primary Hyperthyroidism was not pressed and that the prayer is confined, to the grant of the disability element of pension in relation to the disability of Diabetes Mellitus Type-2 only. The OA is thus being considered in relation thereto alone.

4. The applicant Ex Hony Lt Gyan Chand Prasad was enrolled in the Indian Navy on 11.01.1982 in a fit medical category with no pre-existing disease after having undergone a thorough medical examination and retired from the Indian Navy after attaining the age of superannuation and rendering a total of 35 years and 21 days of qualifying service. He was

discharged on 31.01.2017 in low medical category S2A2(P) PMT for the disabilities of Primary Hypothyroidism ICD E-3.9 assessed @ 10% and Diabetes Mellitus Type-2 assessed @20% for life. The Composite assessment for both the disabilities has been recorded @ 28% rounded off to 30%. The RMB held on 13.10.2016 prior to the release of the applicant on 31.01.2017 however opined that the said disabilities were '*neither attributable to nor aggravated*' by military service. The recommendation of the RMB was upheld by the Competent Authority and the disability pension claim of the applicant was rejected and communicated to the applicant vide letter No PEN/600/LRDO I:01/2017/11199Z dated 18.01.2017 with an advice to the applicant that he may prefer an appeal to the Appellate Committee within six months from the date of receipt of the letter. The first appeal dated 09.03.2019 was forwarded to the Chief of the Naval Staff (for PCDA) by Naval Pension Officer vide letter No PEN/600/D/1st Appeal/111099Z dated 27.09.2019 to consider the first appeal of the applicant but the same was pending final disposal by DPA (N) New Delhi and and no intimation had been received by the applicant before filling his OA 2222/2019 on 26.11.2019 which was pending even on the date of the counter affidavit dated 08.07.2020. We thus take up the matter for consideration under section 21(2)(b) of the Armed Forces Tribunal Act 2007 in the contents of jurisdictions. .

5. The applicant's posting profile as per his personal statement in Part-I of the RMB proceedings is as under:-

"

PART I PERSONAL STATEMENT									
1. Give details of the service (P=Pease OR F= Field/Operational/Sea Service)									
SL. NO	FROM	TO	PLACE/SHIP	P/F	SL. NO	FROM	TO	PLACE/SHIP	P/F
(i)	11.01.82	11.07.82	INS MANDOVI	P	(ii)	12.07.82	05.02.83	INS SHIVAJI	P
(iii)	06.02.83	19.04.83	INS SATAVAHANA	P	(iv)	20.04.83	24.06.86	INS ANJADEEP	F
(v)	25.06.86	19.05.89	CCDT (MBI)	P	(vi)	20.05.89	30.11.91	INS PRABAL	F
(vii)	01.12.91	14.08.93	INS SHIVAJI	P	(viii)	15.08.93	13.01.96	INS MIRUPAK	F
(ix)	14.01.96	22.05.2000	INS GHARIAL	F	(x)	23.05.2000	05.06.03	INS SUJATA	F
(xi)	06.06.03	09.06.06	IN LCU-L38	F	(xii)	10.06.06	14.12.09	FMU (MBI)	P
(xiii)	15.12.09	22.06.11	INS INGATOR	F	(xiv)	23.06.11	26.06.13	FOMAG	P
(xv)	27.06.13	05.03.14	INS ALLEPPEY	F	(xvi)	06.03.14	22.03.16	HQ WNC	P
(xvii)	23.03.16	TILL TO DATE	MMT (E)	P					

"

6. The onset of the disability of Diabetes Mellitus Type-2 is shown therein to be in 14.02.2012 at Mumbai. The applicant as per Part-III of the RMB proceedings vide the statement of the Commanding Officer was not excused any duty and was shown to be living in outside unit lines under own arrangement with his family. The RMB vide Part-V thereby opining that the disability of the applicant of Diabetes Mellitus Type-2 was '*neither attributable to nor aggravated*' as Para-26 of the GMO 2008, opined to the effect that:-

"

1. Causal relationship of the disability with Service conditions or otherwise.				
Disability	Attributable to service(Y/N)	Aggravated by Service(Y/N)	Not Connected with Service(Y/N)	Reason/Cause/Specific Condition & period in Service
PRIMARY HYPOTHYROIDISM ICDE-0.39	**No**	**No**	**Yes**	**Neither attributable nor aggravated by Military. No close time association as disability occurs in peace area vide para 43 of GMO 2008.**
TYPE II DM ICD-E 11.0,	**No**	**No**	**Yes**	**Neither attributable nor aggravated by Military Service. No close time association with field service as disability occurs in peace area vide Para 26 of GMO 2008.**
Note: A Disability "Not Connected with Service" would be neither Attributable nor aggravated by Service.(This is in Accordance with instructions contained in Guide to medical officers (Mil Pension)-2002.				

"

However though the said RMB proceedings categorically stated that the disability had no close relationship to service but stated categorically that it did not exist prior to induction into service and that it was not possible, that it could not be detected during the routine medical examination at the time of entry. The applicant has thus submitted that the disability of the applicant was because of the nature of duties and responsibilities attached to his trade and appointment which always extended beyond working hours. The applicant submits that the disabilities started whilst he was posted to INS Alleppey, Mumbai a field station and stayed there for 09 months. He performed various operational activities and also performed

miscellaneous duties as applicable to a sailor. The applicant also submits that his trade duties were very stressful and the schedule of work was very hectic which aggravated his disabilities. The applicant represents that the disabilities occurred after serving in the Indian Navy for around 31 years and he never suffered any kind of diseases before 2012. The applicant has thus submitted that the rejection of the disability claim of the applicant for the grant of disability pension for the Diabetes Mellitus Type-2 by the respondents is illegal, arbitrary and unjust.

7. The respondents through their counter affidavit dated 08.07.2020, submit that the mere occurrence of any disease in service does not mean that it has happened due to service and placed reliance on Para-26 of Chapter VI of GMO (Military Pension), 2008 to contend to the effect that the disability in the instant case was neither attributable to nor aggravated by service and thus as the disability was assessed @ 20% for life, the same could not suffice to fulfil the parameters of the Regulations-101 of Navy (Pension) Regulations 1964, which require that the disability must be either attributable to or aggravated by service. The respondents thus sought that the OA 2222/2019 be rejected.

8. The respondents through the counter affidavit filed on their behalf reiterate that in terms of the Para 43 of Chapter VI of GMO (Military Pension), 2008 an individual can be considered for the grant of the

disability pension only if the conditions laid down under the extant regulation and policy on the subject are satisfied and submit to the effect qua attributability and aggravation to the effect :-

"Attributability

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.

Aggravation

A disability shall be considered as aggravated by service if its onset is hastened or its-subsequent course is worsened by specific conditions of military service, such as posting in places of extreme climatic conditions, environmental factors related to service conditions e.g. Field Operations, High Altitudes etc."

9. The respondent thus submit that as much as in the instant case, the RMB has assessed the disabilities of the applicant as being 'neither attributable to nor aggravated by service', that caused non-fulfillment of criteria of Regulation-101 of Navy (Pension) Regulations 1964 and thus the applicant is not entitled for the grant of disability element of pension in accordance with prevailing rules & policies. It is thus submitted by the respondents that consequentially, the applicant is not entitled to any

broadbanding on the disability element of pension in terms of the verdict of the Apex Court in Civil Appeal 418/2012 dated 10.12.2014 titled as ***UOI & Ors. Vs. Ramavtar.***

ANALYSIS

10. On a consideration of the submissions made on behalf of either side, it is essential to observe that the factum that as laid down 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***.

11. It is also essential to observe that the prayer for the grant of the disability element of pension for the disability of 'Diabetes Mellitus' in C.A. 7368/2011 in the case of ***Ex. Power Satyaveer Singh*** has been upheld by the Hon'ble Supreme Court vide the verdict in ***UOI & Anr*** Vs. ***Rajbir Singh*** (Civil Appeal 2904/2011) dated 13.02.2015.

12. It is essential to observe that vide the verdict of the Hon'ble Supreme Court in Civil Appeal no. 5970/2019 titled as ***Commander Rakesh Pande vs UOI & Ors.,*** dated on 28.11.2019, wherein the applicant

thereof was suffering from **Non-Insulin Dependent Diabetes Mellitus(NIDDM) and Hyperlipidaemia the grant of disability pension for life @ 20% broad banded to 50% for life was upheld by the Hon'ble Supreme Court.** As per the amendment to Chapter VI of 'Guide to Medical Officers (Military Pensions), 2008, Para 26 thereof Type 2 Diabetes Mellitus is to be conceded as aggravated if the onset occurs while serving in Field/ CIOPS/HAA/prolonged afloat service and personnel having been diagnosed as 'Type II Diabetes Mellitus', 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.

13. Para 26, Chapter VI of the Guide to Medical Officers (Military Pensions), 2008, 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."

(emphasis supplied)

14. It is essential to observe that the verdict of the Hon'ble Supreme Court in ***Rajbir Singh*** (supra) vide Paras 12 to 15 lays down 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.

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)

15. Furthermore, the 'Entitlement Rules for Casualty Pensionary Awards, to the Armed Forces Personnel , 2008, which take effect from 01.01.2008 provide vide Paras 6, 7, 10, 11 to the effect:-

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

7. Onus of proof.
Ordinarily the claimant will not be called upon to prove the condition of entitlement. However, where the claim is preferred after 15 years of discharge/retirement/ invalidment/release by which time the service documents of the claimant are destroyed after the prescribed retention period, the onus to prove the entitlement would lie on the claimant.

10. Attributability:

(a) <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),___

16. Furthermore, Regulation 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.

17. 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.

18. The submission of the applicant herein that his postings profile specially at the time after the onset of Diabetes Mellitus Type-II from 27.06.2013 to 05.03.2014 wherein he was posted at INS Alleppey, a Field posting, he has participated in various operational activities and performed various trade duties till his superannuation on 31.01.2017, had high level of stress and strain that caused the aggravation of the disability has not been refuted by the respondents and thus, the contention of the applicant that his disability has been aggravated due to service conditions cannot be overlooked and essentially has to be accepted.

CONCLUSION

19. Thus, the OA 2222/2019 is allowed and applicant is held entitled to the grant of the disability element of pension qua the disability of Diabetes Mellitus @ 20%, which in terms of the verdict of the Hon'ble Supreme Court of India in Civil Appeal 418/2012 dated 10.12.2014 titled as ***UOI &***

Ors. Vs. Ramavtar, directed to be broad banded to 50% for life from the date of discharge.

20. The respondents are directed to calculate, sanction and issue the necessary Corrigendum PPO to the applicant within three months from the date of receipt of the copy of this order and in the event of default, the applicant shall be entitled to the interest @6% per annum till the date of payment.

Pronounced in the open Court on the 19th day of March, 2024.

[LT GEN CP MOHANTY]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/akc/