

COURT NO. 1, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 304 of 2022

with

M.A. No. 406 of 2022

In the matter of :

Ex Sgt Vinod Kumar Gupta

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri Baljeet Singh, Advocate

For Respondents : Shri K.K. Tyagi, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN P.M. HARIZ, MEMBER (A)

ORDER

M.A. No. 406 of 2022 :

1. Vide this application, the applicant seeks condonation of delay of 3273 days in filing the OA. In view of the law laid down by the Hon'ble Supreme Court in the case of **Deokinandan Prasad Vs. State of Bihar [AIR 1971 SC 1409]** and in the case of **Union of India & Ors. Vs. Tarsem Singh [2009 (1) AISLJ 371]**, delay in filing the OA is condoned.

MA stands disposed of accordingly.

O.A. No. 304 of 2022 :

2. Invoking the jurisdiction of the Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 read as under :

“(a) To set aside the Release Medical Board dated 08.05.2008 and impugned letter No. HQ/99798/4/1/719024/1/719024/DAV/DP/CC dated 18.10.2021 passed by the respondents.

(b) To direct the respondents to grant disability element of pension @20% with effect from the date of discharge by treating the disability Type-II Diabetics Mellitus @20% and considering the same as attributable to and aggravated by the Air Force service.

(c) To direct the respondents to grant the benefit of rounding off of disability element of pension of the applicant @50% (20% to be rounded off to 50%) with effect from the date of discharge with all consequential benefits.

(d) To direct the respondents to pay the due arrears of disability element of pension with

interest @12% p.a. with effect from the date of discharge till actual payment.

(e) To pass such further order or orders, direction/Directions as this Hon'ble Tribunal may deem fit and proper in accordance with law.

3. The facts of the case, in brief, are that the applicant was enrolled in the Indian Air Force on 02.02.1989 and was discharged on 28.02.2009 in low medical category A4G2 (Permanent). The Release Medical Board (RMB) held on 09.05.2008 assessed the applicant's disability 'TYPE - II DM' @ 15-19% for life, and the same was considered as 'neither attributable to nor aggravated by service' (NANA).

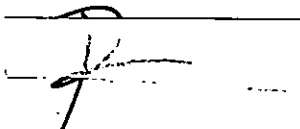
4. The AOC AFRO upholding the recommendations of RMB, rejected the disability pension claim vide letter No. RO/3305/3A/Med (Cat D) dated 06.06.2008. The outcome of the same was communicated to the applicant vide letter No. RO/2703/719024/02/09/P&W(DP) dated 10.06.2008 with an option that he may prefer an appeal to the Appellate Committee within six months from the date of receipt of the letter. The applicant sent a Legal Notice-cum-Representation dated 16.09.2021 through his counsel

seeking disability pension. The said Legal Notice-cum-Representation of the applicant was rejected by the respondents vide their letter No. Air HQ/99798/4/1/719024/1/719024/DAV/DP/CC dated 18.10.2021. Aggrieved by this, the applicant has filed the instant OA for grant of disability pension.

5. Learned counsel for the applicant submitted that the applicant, at the time of joining the service, was declared fully fit medically and physically, and no note was made in his medical record to the effect that the applicant was suffering from any disease at that time. Learned counsel further submitted that the applicant, while posted to SWAC (U), AF Gandhinagar, his duties involved despatch and receipt of large number of signals and had worked in night shifts, in addition to his trade duties; that just before this, the applicant was posted to 14 Wg AF, Chhabua, which was a big station and the applicant was involved in the activities and worked for prolonged working hours including night shifts which put tremendous mental and physical pressure on the applicant had impacted adversely on the health of the applicant and thus, in July, 2007, the applicant was

diagnosed with Diabetes Mellitus Type-II and thereafter he continued to perform Air Force duties which further aggravated the medical condition of the applicant.

6. Learned counsel for the applicant placed reliance on the judgment of the Hon'ble Supreme Court in **Dharamvir Singh Vs. Union of India and Ors. [(2013) 7 SCC 316]**, wherein the Hon'ble Supreme Court had considered the question with regard to grant of disability pension and after taking note of the provisions of the Pension Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers and Para 423 of the Regulations for the Medical Services of the Armed Forces, and it was held by the Hon'ble Supreme Court that an Army personnel shall be presumed to have been in sound physical and mental condition upon entering service except as to physical disability noted or recorded at the time of entrance and in the event of his being discharged from service on medical grounds, any deterioration in his health, which may have taken place, shall be presumed to be due to service conditions.



7. The Apex Court further held that the onus of proof shall be on the respondents to prove that the disease from which the incumbent is suffering is neither attributable to nor aggravated by military service. Learned counsel also relied on *Sukhvinder Singh Vs. Union of India & Ors.* [2014 STPL (Web) 468 SC] and *D.S. Nakara Vs. Union of India & Ors.* to submit that the right to pension is a fundamental right and, therefore, he prayed that the applicant may be granted the disability pension.

8. *Per contra*, the learned counsel for the respondents controverted the arguments put forth on behalf of the applicant and submitted that the applicant is not entitled to the relief claimed for since the RMB, being an expert body, opined the disabilities as "Neither Attributable to Nor Aggravated by Military Service" for the reasons stated therein. Learned counsel further submitted that in December, the applicant was found to be overweight and thereafter again during initial medical board held on 11.10.2004, and thus the applicant suffered from IGT; that in subsequent four re-categorisation medical boards and also at the RMB, the applicant remained overweight till his

discharge from service. Learned counsel added that in the applicant was also noted to be a social drinker vide AFMSF-3B dated 22.03.2006; and thus the applicant was detected with the disability DM Type II in July, 2007.

9. Learned counsel submitted that the disability arose independently of service conditions and his own actions contributed towards the development of the disease and, therefore, the applicant is not entitled to disability pension and thus the OA may be dismissed. Learned counsel further submitted that as the applicant's disability of Type-II DM does not fulfil the necessary conditions for being eligible to get disability pension in terms of Regulation 153 of the Pension Regulations for the Air Force, 1961 (Part-I) of being assessed at 20% or more and being attributable to or aggravated by military service, thus the applicant is not entitled to disability pension.

10. We have heard the learned counsel for the parties and have gone through the records produced before us.

11. It is an undisputed fact that at the time of joining the Indian Air Force on 02.02.1989, the applicant was found medically and physically fully fit and the applicant was

diagnosed with the disability 'Type-II DM' in July, 2007, and at the time of discharge, the applicant was placed in low medical category A4G2 (Permanent).

12. So far as the assessment of the disability of the applicant at less than 20% (15-19%) is concerned, we may refer to MoD Policy letter No. 16036/DGAFMS/MA (Pens)/Policy dated 20.07.2012 which lays down guidelines on assessment of disability percentage in Diabetes as under :

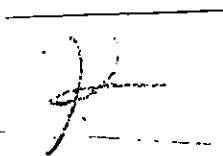
"(a) Diabetes Mellitus (DM) :

- | | |
|--|-------------------------|
| (i) DM Type II, on Oral Hypoglycemic agents (OHA) without Target Organ Damage (TOD) | : 20% |
| (ii) DM Type II, on insulin without organ damage | : 30% |
| (iii) DM Type II/Type II with TOD | : 40% and above |
| status | As per clinical |
| (iv) Impaired Fasting Glucose/ Impaired Glucose Tolerance | : less than 20%" |

Thus, as per the policy as referred to above, the disability percentage of Type-II DM cannot be assessed less than 20%. Therefore, the assessment of the disability Type-II DM is to be taken as 20%.

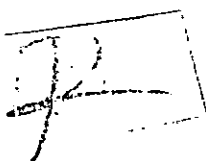
13. As regards the attributability or aggravation of the disability in question, having gone through the pleadings and records and it has emerged therefrom that the applicant was found to be overweight in the initial medical board held on

11.10.2004 and was detected to have IGT and thus was advised to reduce body weight and follow diabetic diet and regular exercise. Thereafter, in Recategorisations Medical Boards held from time to time i.e. on 31.03.2005, 25.10.2005, 22.03.2006 and 20.07.2007, despite continuous advice to reduce weight and follow diabetic diet with regular exercise, the applicant was always found to be overweight by 16, 16, 18, 13.23 and 16 Kgs. respectively and it would show that such a condition continued from 2004 and it was on account of dietary indiscretion and lack of exercise and the applicant did not follow the advice properly and, consequently, in July, 2007, he was diagnosed with Type-II DM. Even at the time of RMB held in May, 2008, we find that the weight of the applicant has been recorded as **'76 Kg.'** as against the ideal weight indicated as '65 Kg' and thus was overweight by 16%. It has also been stated by the respondents that the applicant was a social drinker also. The above statements or averments made by the respondents were not disputed by or on behalf of the applicant at any point of time and nor has the applicant proved it otherwise.



14. As per clinical material available on the internet, being overweight or obese is closely linked to insulin resistance. Therefore, the disability first detected i.e. IGT is connected with the applicant's being overweight, which itself can lead to many diseases like, high blood pressure, Type 2 diabetes, metabolic syndrome etc., which are commonly seen in obese/overweight patients and as the applicant has been overweight for a prolonged period, he was diagnosed with Type II DM, which was a consequence of the applicant's being overweight and having IGT earlier.

15. We are further of the view that obesity or being overweight plays a vital role in disability like diabetes etc. which is a serious health condition that entails a higher risk of cardiovascular diseases and hypertension. Since the applicant was found overweight since October, 2004, he should have reduced his weight to overcome the problem by restricting the diet and required exercise. We do not find any substance in the submission of the learned counsel for the applicant that the disability has causal connection with the military service.



16. Furthermore, military is a combatant force where only physically and mentally fit army personnel maintaining the fitness standard fixed for them can discharge onerous duties to safeguard our mother land and any disability which make them unfit on account of their way of life or volition and independent of any service conditions, cannot enable them to seek disability pension. Considering the aforesaid and the fact that the applicant was already overweight in October, 2004 and he has remained to be overweight over a considerable period of time which resulted in the disability in question, and was found overweight till the time the RMB was held before his discharge, finding no infirmity, we uphold the opinion of the RMB that the disability is neither attributable to nor aggravated by military service and not connected with service.

17. In view of the above, as the disability of the applicant does not qualify one of the twin conditions of Para 153 of the Pension Regulations for the Air Force, 1961 (Part I) of being considered attributable to or aggravated by military service, the applicant is not entitled for grant of disability element of



pension. Accordingly, the OA stands dismissed being devoid of merit.

18. There is no order as to costs.

Pronounced in open Court on this 27th day of September, 2024.


[JUSTICE RAJENDRA MENON]
CHAIRPERSON


[LT GEN P.M. HARIZ]
MEMBER (A)

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