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

# OA 618/2017
with
MA 540/2017

Ex Sgt Rajender Singh Shekhawat ..... Applicant
Versus
Union of India & Ors. ..... Respondents

For Applicant : Mr. Praveen Kumar, Advocate
For Respondents : Mr. D K Sabat, Advocate

CORAM
HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

## ORDER

### MA 540/2017

Keeping in view the averments made in this application and finding the same to be bona fide, in the light of the decision in the case of ***Union of India and others*** Vs. ***Tarsem Singh*** [(2008) 8 SCC 648], the instant application is allowed condoning the delay in filing the OA.

2. The MA stands disposed of.

### OA 618/2017

3. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has

filed this application and the reliefs claimed in Para 8 read as under:

> *"(a) Quash and set aside the impugned letters dated 09 Feb 2017.*
>
> *(b) Direct respondents to grant disability Pension @50% after rounding off from 15-19% for life as recommended by RMB to the applicant with effect from 01 May 2011 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."*

4. Briefly, the facts of the case are that the applicant was enrolled in the Indian Air Force on 30.04.1991 and was discharged from service on 30.04.2011 being in low medical category A4G4 (P). The Release Medical Board (RMB) assessed the disability of the applicant, i.e., DIABETES MELLITUS TYPE-II (OLD) @ 15-19% for life, and the same was opined by the RMB as 'neither attributable to nor aggravated by military service'. Aggrieved by this, the applicant sent a legal notice dated 10.01.2017 for grant of disability pension and its rounding off, however, the same got rejected by the competent authority vide their letter dated 09.02.2017. Hence, this OA.

5. Learned counsel for applicant argues that after thorough

medical examination, the applicant was enrolled into the Indian Air Force and there was no note of any disability recorded in his service records. It is further contended that he served in the Air Force at various places in different environmental and service conditions in his prolonged service; therefore, any disability occurring during the period of his service is deemed to be attributable to or aggravated by the military service. In support of his contentions, learned counsel relied upon the judgments of the Hon'ble Supreme Court including ***Dharamvir Singh*** Vs. ***Union of India*** [(2013) 7 SCC 316], ***Union of India & Ors.*** Vs. ***Rajbir Singh,*** [(2015)12 SCC 264] and ***Union of India & Ors.*** Vs. ***Ram Avtar*** [Civil Appeal No.418 of 2012] decided on 10.12.2014 as well as various orders of the Tribunal to submit that since the applicant was discharged from service being in permanent low medical category, the disability must be presumed to have arisen during service and he shall be entitled to the disability pension granting rounding off benefit to 50% as per the letter of the GoI, MoD dated 31.01.2001. Learned counsel, therefore, contended that the respondents committed an error in rejecting the claim of the applicant for disability pension to which he is entitled to.

6. *Per contra*, learned counsel for the respondents controverted the arguments put forth on behalf of the applicant and contended that the applicant is not entitled to the relief claimed since the RMB, being an Expert Body, found the disability of the applicant as 'neither attributable to nor aggravated by military service' and was assessed @ less than 20% (15-19%). Hence, learned counsel prayed that the OA may be dismissed.

7. We have heard respective submissions of the learned counsel for the parties and have carefully perused the records.

8. It is an admitted position that the disability of the applicant, i.e., DIABETES MELLITUS TYPE-II (OLD) was held to be NANA and thus disability element of pension claim was rejected. However, it is an undisputed fact that at the time of joining the service in April, 1991, the applicant was found medically and physically fit and the disability of DIABETES MELLITUS TYPE-II (OLD) had occurred in February, 2009 during service.

9. The law on the issue of attributability of a disability is already settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh*** Vs. ***Union of India*** [(2013) 7 SCC 316], which has been followed in subsequent decisions of the Hon'ble

Supreme Court and in a catena of orders of this Tribunal, wherein the Apex 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 for Casualty Pensionary Awards, 1982 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, 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 disabilities 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 due to service conditions. 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. The guidelines laid down vide the verdict in ***Dharamavir Singh*** (supra) are as under:-

> *"28. A conjoint reading of various provisions, reproduced above, makes it clear that:*
>
> *(i) Disability pension to be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The*

*question whether a disability is attributable or aggravated by military service to be determined under "Entitlement Rules for Casualty Pensionary Awards, 1982" of Appendix-II (Regulation 173).*

*(ii) A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service. [Rule 5 r/w Rule 14(b)].*

*(iii) Onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally. (Rule 9).*

*(iv) If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service. [Rule 14(c)].*

*(v) If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service. [14(b)].*

*(vi) If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons. [14(b)]; and*

*(vii) It is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II of the "Guide to Medical (Military Pension), 2002 – "Entitlement : General Principles", including paragraph 7, 8 and 9 as referred to above."*

10. Moreover, the Hon'ble Supreme Court in the case of ***Union of India & Ors.*** Vs. ***Rajbir Singh***, [(2015)12 SCC 264] and in the case of ***Commander Rakesh Pande*** Vs. ***Union of India & Ors.*** (Civil Appeal No.5970 of 2019 decided on 28.11.2019),

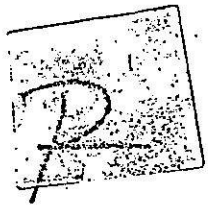
upheld the decision of the Armed Forces Tribunal granting disability pension for the disability 'NIDDM' holding the same attributable to military service, which have been followed by this Tribunal in its numerous orders. Therefore, in view of the above judgments and settled law on the point of attributability, the disability of the applicant should be held attributable to military service.

11. In so far as the assessment of the disability of DIABETES MELLITUS TYPE-II (OLD) of the applicant @ '15-19% for life' 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 MELLITUS TYPE-II read 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 As per clinical status* |
| *(iv) Impaired Fasting Glucose/ Impaired Glucose Tolerance* | *: less than 20%"* |

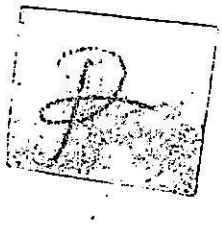
thus, as per the policy as referred to above, the disability percentage of DIABETES MELLITUS TYPE-II cannot be assessed at less than 20%. Further, it is not clear as to why the assessment of this disability was made at 15-19%, when the medical category of the applicant was held as permanent. Therefore, the



assessment of the disability DIABETES MELLITUS TYPE-II is to be taken as 20%. We, therefore, hold that the applicant is entitled to the disability element of pension in respect of the disability ID DIABETES MELLITUS TYPE-II @ 20% for life.

12. In view of the aforesaid judicial pronouncements and the parameters referred to above, the OA is allowed to the extent that the applicant is entitled for the disability element of pension in respect of the disability, i.e., DIABETES MELLITUS TYPE-II @ 20% for life.

13. Accordingly, the respondents are directed to grant disability element of pension to the applicant for the disability of DIABETES MELLITUS TYPE-II @ 20% for life which be rounded off to 50% for life from the date of retirement, i.e., 30.04.2011, in terms of the judicial pronouncement of the Hon'ble Supreme Court in the case of ***Union of India*** Vs. ***Ram Avtar*** (Civil Appeal No.418/2012 decided on 10.12.2014). However, the arrears will be restricted to three years from the date of filing of this OA in keeping with the law laid down in the case of ***Union of India and others*** Vs. ***Tarsem Singh*** [(2008) 8 SCC 648] and also directed to calculate, sanction and issue necessary PPO to the applicant within four months from the date of receipt of copy of this order, failing which, the applicant



shall be entitled to interest @ 6% per annum till the date of payment.

14. No order as to costs.

15. Pending miscellaneous application(s), if any, stands closed.

Pronounced in open Court on this 12th day of November, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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