

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

OA 8/2021 with MA 1/2021

HFO Gajendra Nath Tiwari (Retd)

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Manoj Kr Gupta, Advocate
For Respondents : Mr. K K Tyagi, Sr CGSC

CORAM :

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

ORDER

MA 1/2021

This is an application filed under section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 2895 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 1/2021 is allowed and the delay of 2895 days in filing the OA 8/2021 is thus condoned. The MA is disposed of accordingly.

OA 8/2021

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant vide the present OA makes the following prayers:-

- (a) To direct the respondents to grant disability pension @ 19% broad banded to 50% alongwith arrears by treating the onset as attributable and aggravated by the ministry service.*
- (b) To direct the respondents to call the record of all the similarly placed veterans, whose disability of DM Type-2 were accessed @ 20% but similar disability in the applicant case is accessed @ 15-19% (refer ground-I for particulars of other veterans)*
- (c) Direct the respondents to pay the due arrears of disability pension with interest @ 10% p.a. with effect from the date of retirement.*
- (d) To pass such further order or orders, directions/directions as this Hon'ble Tribunal may deem fit and proper in accordance with law.*

BRIEF FACTS

2. The applicant was enrolled in the Indian Air Force on 16.11.1973 and discharged from the Air Force on 30.04.2012 under the clause on "On attaining the age of superannuation" after rendering total 38 years and 165 days of regular service in low medical category A4G2 (P). The Release Medical Board dated 23.05.2011 held that the applicant was fit to be discharged from service in low medical category A4G2 (P) for the disability of Diabetes Mellitus Type-II (Old) @15-19% for life while the qualifying

element for disability was recorded as NIL for life on account of the disability being treated as neither attributable to nor aggravated by military service.

3. On adjudication, AOC AFRO has upheld the recommendations of RMB and rejected the disability pension claim of the applicant vide letter no. RO/3305/3A/Med Cat(D) dated 27.07.2011. The outcome was communicated to the applicant vide letter No. RO/2703/632406/04/12/P&W(DP /RMB) dated 20.08.2011 with an advice that he may prefer an appeal to the appellate committee with six months from the date of receipt of the letter.

4. The applicant had preferred his first appeal on 14.09.2020 which was not considered by the respondents in terms of MoD letter no 1(3)/2008/D(Pen/Pol.) dated 17.05.2016 being a time barred case and this fact was intimated to the applicant vide letter no. Air HQ/99798/632406/TBS/Appeal/AV-III dated 25.11.2020. Thereafter, the applicant has filed the present OA. In the interest of justice thus, in terms of Section 21(2) of the AFT Act 2007, it is considered appropriate to take up the present OA for consideration.

CONTENTIONS OF THE PARTIES

5. Placing reliance on the judgment of the Hon'ble Supreme Court in ***Dharamvir Singh v. UOI & Ors [2013 (7) SCC 36]***, the learned counsel for the applicant submitted that no note of any disability was recorded in the

service documents of the applicant at the time of the entry into the service, and that he served in the Air Force at various places in different environmental and service conditions in his prolonged service, thereby, any disability at the time of his service is deemed to be attributable to or aggravated by military service.

6. The learned counsel for the applicant also placed reliance on the verdicts of the Hon'ble Supreme Court in the case of CA-5605/2010 titled *Sukhvinder Singh vs UOI* 2014(14) SCC 364, dated 25.06.2014, Civil Appeal No 2904/2011 titled as *UOI & Ors vs Rajbir* decided on 13.02.2015, Civil Appeal No 4949/2013 titled *Dharamvir Singh Vs. Union of India & Ors* decided on 21.02.2012. The learned counsel of the applicant also placed reliance on the verdict of the AFT, Principal Bench, New Delhi in OA No. 1479/2018 titled *Maj Gen AK Singh vs UOI* dated 09.05.2019, OA No. 225/2017 titled *Brig PK Narula, VSM(Retd.) vs UOI & Ors* dated 04.04.2019, and in OA No. 426/2016 titled *Re Ex Sigmn Vinod Singh Rawat vs. UOI & Ors* dated 23.05.2019 wherein similarly situated personnel were given relief.

7. Per contra, the learned counsel for the respondents submits that under the provisions of Rule 153 of the Pension Regulations for the Indian Air Force, 1961 (Part-I), the primary condition for the grant of disability pension is invalidation out of service on account of a disability which is attributable

to or aggravated by Air Force service and is assessed @ 20% or more. In other words, disability pension is granted to those who fulfill the following two criteria simultaneously:-

(i) Disability must be either attributable to or aggravated by service.

(ii) Degree of disablement should be assessed at 20% or more.

The learned counsel further submits that the RMB has assessed the applicant's disability as neither attributable to nor aggravated by service which thus does not fulfill the criteria (i) as above and hence the applicant is not entitled for the grant of disability pension in accordance with prevailing rules and policies.

ANALYSIS

8. 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) :

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|--|-------------------------------|
| (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 (Old) 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 (Old) is to be taken as 20%.

9. The issue of attributability of the disease is no longer *res integra* in view of the verdict of the Hon'ble Apex Court in *Dharamvir Singh v. Union of India (supra)*, wherein it is clearly spelt out that any disease contracted during service is presumed to be attributable to military service, if there is no record of any ailment at the time of commission into the Military Service.

10. Applying the above parameters to the case at hand, we are of the view that the applicant has been discharged from service in low medical category on account of a medical disease/disability, the disability must be presumed to have arisen in the course of service which must, in the absence of any reason recorded by the Medical Board, be presumed to have been attributable to or aggravated by Air Force service. Furthermore, Regulation 423(a) 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.

(emphasis supplied),—

has not been obliterated.

11. 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."

12. 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 contracted prior to enrolment or during leave, the incubation period of the disease will be taken into consideration on the basis of clinical courses 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 Altitude etc.”

Thus, 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 are the fulcrum of these rules as well.

13. The applicant has served in the Indian Air Force for 37 years and the onset of the disability of “Diabetes Mellitus Type-II (Old)” occurred in May 2007 after 34 years of service, whilst he was posted in peace station. The applicant is from ‘Radio Fitter’ trade of the Indian Air Force and his duties in the various squadron of the Air Force involved considerable amount of stress and strain on the applicant which cannot be overlooked. The disability of the applicant is therefore held to be attributable to military service.

14. It is also 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.

15. Regarding broadbanding benefits, we find that the Hon'ble Supreme Court in its order dated 10.12.2014 in *Union of India v. Ram Avtar, Civil Appeal No. 418 of 2012* and connected cases, has observed that individuals similarly placed as the applicant are entitled to rounding off of the disability element of pension. We also find that the Government of India vide its Letter No. F.No.3(11)2010-D (Pen/Legal) Pt V, Ministry of Defence dated 18th April 2016 has issued instructions for implementation of the Hon'ble Supreme Court order dated 10.12.2014 (supra).

CONCLUSION

16. Therefore, in view of our analysis, OA 8/2021 is allowed and the Respondents are directed to **grant the benefit of the disability element of pension @20% for life** (Diabetes Mellitus Type-II (Old), rounded off to 50% for life in view of the judgment of Hon'ble Apex Court in *Union of India versus Ram Avtar (supra)* from the date of discharge i.e 31.10.2011. The arrears shall be disbursed to the applicant within three months of receipt of this order failing which it shall earn interest @ 6% p.a. till the actual date

of payment. The arrears of the pension, are however, restricted for a period of three years prior to the date of filing of the Original Application in accordance with the principle laid down in the verdict of the Hon'ble Apex Court in *UOI & Ors. vs Tarsem Singh* reported in (2008) 8 SCC 648.

17. No order as to costs.

Pronounced in the open Court on 6th day of December, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)