

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

18.

OA 1035/2022

Raj Kumar Jha (Ex MWO) Applicant
Versus
Union of India & Ors. Respondents

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

CORAM

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

ORDER
17.09.2024

Vide our orders of even date, we have dismissed the application. Faced with the situation, learned counsel for the applicant makes an oral prayer for grant of leave to appeal under Section 31 of the Armed Forces Tribunal Act, 2007 to the Hon'ble Supreme Court. We find no question of law much less any question of law of general public importance involved in the matter to grant leave to appeal. Hence, the prayer for grant of leave to appeal is declined.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

/Priya/

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HON'BLE LT. GEN. P. M. HARIZ, MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal; under Section 14, the applicant has filed this application and the reliefs claimed in Para 8 read as under:

(a) To direct the respondents to grant disability pension for the disabilities of the applicant i.e. Primary Hypothyroidism and DM Type-II (Old) and the disability be rounded 50%;

(b) To direct the respondents to grant the applicant with the 50% disability pension (rounding off) from the date of discharge i.e. with effect from 31.01.2021;

(c) To direct the respondents to pay arrears from the date of discharge along with interest @ 12% per annum till its payment to the applicant;

(d) Pass any other or such further order or orders as deemed fit to this Hon'ble Tribunal in order to secure the ends of justice in favour of the applicant.

2. The applicant was enrolled in the Indian Air Force on 07.03.1983 and was discharged from the service on 31.01.2021 after rendering total 37 years 10 months and 24 days of service. The Release Medical Board dated 06.05.2020 found the applicant fit to be released from service in medical classification A4G3 (Permanent) with the disability ID (i) Primary Hypothyroidism (Old) E-03.9 assessed @ 10% for life and ID (ii) DM Type-II E 11.0, Z 09.0 assessed @ 20% for life, compositely assessed @ 30% for life. However, the qualifying percentage for disability pension was nil on account of all the disabilities being neither attributable to nor aggravated by the service. Further, the medical board proceedings were approved by DPMO (s) HQ WAC, IAF on 18.08.2020.

3. On adjudication, AOC AFRO had also upheld the recommendations of the RMB and rejected the disability pension claim vide letter No. RO/3305/3/Med dated 28.04.2021 and the outcome was communicated to the applicant vide letter no. Air HQ/99798/1/682966/01/21/DAV(DP/RMB) dated 19.07.2021 with an advice that he may prefer an appeal to the appellate committee within six months from the date of receipt of letter. The applicant accordingly preferred his first appeal dated 29.09.2021 but the same has been rejected vide Air HQ letter no. Air HQ/99798/5/682966/AV-III (appeals) dated 20.09.2022. Aggrieved by the decision of the respondents, the applicant has filed the instant OA.

4. The applicant submitted that at the time of entry into service, he had been subjected to a thorough medical examination and was in SHAPE-I. The applicant further submitted that it is a settled preposition that if an individual was medically fit at the time of joining the service and subsequently develops a disability during the course of employment, the responsibility rests with the employer. Therefore, the service conditions are solely liable for the said disability and any aggravation thereof.

5. Reliance was placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in ***Dharamvir Singh Vs UOI & Ors*** (2013) 7 SCC

316 with specific reference to the verdict of the Hon'ble Supreme Court in

Dharamvir Singh (Supra) vide Para 28 thereof 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

(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.

6. The applicant also placed reliance on the following judgements:

(i) **UOI & Ors Vs Chander Pal** (Civil Appeal No. 2337 of 2009),

(ii) **UOI & Ors Vs. Rajbir Singh** (2015) 12 SCC 264,

(iii) **UOI & Ors Vs. Angad Singh Titaria** (2015) 12 SCC 257
(Civil Appeal No. 11208 of 2011),

(iv) **UOI & Ors Vs Manjeet Singh** (2015) 12 SCC 275

(v) **Ex-Gnr Laxman Ram Poonia Vs UOI & Ors** (2017) 4
SCC 697.

(vi) AFT (RB) Chennai order dated 09.02.2018 in **Ex-Hony Nb
Sub J Sylus Vs UOI & Ors** (OA 145 of 2016)

(vii) AFT (RB) Guwhati order dated 27.01.2016 in **Ex-Hav
Jhunu Kumar Das Vs UOI & Ors.** (OA 31 of 2014)

(viii) AFT (PB) order dated 09.07.2015 in **Gp Capt D.P.S.
Tomar Vs UOI & Ors** (OA 482/2014)

7. Per contra, Learned Counsel for the Respondents submitted that it is a well-documented fact that being overweight or obese is an independent,

modifiable risk factor for developing diabetes mellitus. Lack of exercise, a sedentary lifestyle, and poor dietary habits contribute to an individual becoming overweight. As is evident from successive medical examinations, the applicant/Air Veteran had modifiable risk factors under his control, which he failed to address despite repeated medical advice. Hence, the respondents contended that the the applicant/Air Veteran, through his own actions, contributed to the potential development of Type II Diabetes Mellitus. Therefore, his disabilities cannot be considered as attributable to, or aggravated by, service conditions. The disability arose solely due to the applicant's/Air Veteran's weight gain, as he was not overweight at the time of enrolment and was euglycemic (a condition or state in which the blood glucose level is within the normal range). It is likely that he would not have developed the condition had he maintained his initial weight. Consequently, the disability could not have been detected at the time of enrolment.

8. The respondents further placed reliance on Rule 5 of the Entitlement Rules, 2008 and submitted that mere manifestation of a disease during military service does not automatically establish a connection with or aggravation by military service. The medical examination conducted at the time of entry is not exhaustive but is limited to a broad physical

assessment, meaning it may not detect certain dormant conditions. Additionally, some hereditary and congenital diseases may manifest later in life, irrespective of service conditions.

9. The respondents further submitted that as per Regulation 153 of the Pension Regulations for the Indian Air Force, 1961 (Part I), the primary conditions for the grant of a disability pension are that "*Unless otherwise specifically provided, a disability pension may be granted to an individual who is invalidated from service due to a disability that is attributable to or aggravated by Air Force service and is assessed at 20% or more.*" Hence, in the instant case the applicant was not entitled to disability element of pension.

10. Furthermore, the respondents placed reliance on the following judgements:

(i) Hon'ble Supreme Court judgement in the case of **Secretary, Ministry of Defence and Others vs. A.V. Damodaran (dead) through LRs. and Others**, (2009) 9 SCC 140.

(ii) Hon'ble Supreme Court judgement dated 11.12.2019 in **UOI & Ors Vs Wing Commander S.P. Rathore** (Civil Appeal No. 10870 of 2018)

(iii) Hon'ble Kerala High Court judgement in **UOI Vs Sreekumar P**

[WA No. 1071 of 1997 (OP No. 18002 of 1993)].

(iv) AFT (PB) order dated 06.03.2018 in **Ex MWO Munni Lal Ram**

Vs UOI & Ors (OA No. 619/2017)

ANALYSIS

11. We have heard the Ld. Counsel for the parties and perused the material available on record. Therefore, in view of the above facts the pertinent issues which arose for our consideration in this particular case are as follows :-

(a) Whether disabilities suffered by the applicant were attributable to, or aggravated by military service?

(b) Whether disability pension can be granted in cases where the disease/disability is a result of sedentary lifestyle on part of the applicant despite regular advice/warnings by the authorities to reduce weight?

12. We have also perused the medical records of the applicant produced before us including the weight chart of the applicant along with the remarks of the authorities. This is reproduced as under:

DATE	TYPE OF MED. EXAM	ACTUAL BODY WEIGHT (in kg)	IDEAL BODY WEIGHT (in kg)	BMI	ADVICE
11.09.1982	PRIMARY	52	-	-	-
13.08.2001	Extn Of Service	67	61	-	-
28.04.2003	Annual	67	61	-	-
28.04.2004	Annual	76	63	27.25	To Reduce weight by regular exercise and diet control
06.09.2005	Annual	70	61	25.73	-
28.08.2008	Annual	73	61.5	26.81	To Reduce weight by regular exercise and diet control
16.07.2010	Med Board	76	61.5	27.94	-
03.03.2011	Recategorisation	80	64	29.4	To Reduce weight by regular exercise and diet control
13.11.2014	Initial Med Board	78	62	28.65	-
22.04.2015	Recategorisation	78	62	28.65	-
08.04.2016	Recategorisation	90	62	33.05	To Reduce weight by regular exercise, placed in low med classification for Obesity.
05.01.2017	Recategorisation	80	62	29.38	Regular exercise to maintain ideal body weight upgraded for Obesity
01.05.2018	Recategorisation	91	62	33.43	To reduce weight by regular exercise and diet control, placed in low med classification for Diabetes Mellitus & Obesity.
20.03.2019	Recategorisation	90	62	32.32	To reduce weight by daily walking and diet control

13.03.2020	Recategorisation	81	62	29.77	To reduce weight by daily walking and diet control, upgraded for Obesity.
06.05.2020	Recategorisation	81	62	-	-

13. Before proceeding further with the observation, it became pertinent to mention Army Order 16036/ RMB/ IMB/ DGAFMS/ MA (Pens) dated 20.05.2019, dealing with Award Of Entitlement And Assessment Of Hypothyroidism And Obesity, the relevant portion of which is produced as under:

Xxxx

a) Hypothyroidism:

(i) Attributability and Aggravation:

- **Hypothyroidism may be considered attributable if due to post therapeutic or post diagnostic intervention.**
- **Aggravation may be conceded in all cases of Primary Autoimmune Hypothyroidism.**

(ii) Assessment of Disability Percentage:

- **Subclinical Hypothyroidism not on any treatment - 5%**
- **Subclinical Hypothyroidism on treatment - 10%**
- **Post therapeutic or post diagnostic - 15%**
- **Primary Autoimmune Hypothyroidism - 51%**
- **Hypothyroidism associated with Pericardial or pleural effusion/ Encephalopathy/ Carpal tunnel syndrome likely due to hypothyroidism - 20%**

14. The disability ID (ii) 'Diabetes Mellitus Type II' finds however, mention under the Chapter VI of 'Guide to Medical Officers (Military Pensions), 2008, at Para 26, and its nature is explained as follows-

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.

15. Since the applicant was discharged from service on 31.01.2021, Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008, issued as Appendix to Ministry of Defence Letter No.1(3)/2002/D(Pen/Pol) dated 18.1.2010, are applicable in the present case. The amended paras 5, 6, 7, 10 & 11 of the Entitlement Rules, 2008 are also reproduced as under:

5. *Medical Test at Entry Stage*

The medical test at the time of entry is not exhaustive. But its scope is limited to broad physical examination. Therefore, it may not detect some dormant diseases. Besides, certain hereditary, constitutional and congenital diseases may manifest later in life, irrespective of service conditions. The mere fact that a disease has manifested during military services does not per se establish attributability to or aggravation by military service.

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) Diseases:

(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."

The aforesaid amendments in para 5 and 6 of the Entitlement Rules were primarily made to highlight the aspect of attributability and aggravation by the military service and to carve out an exception in the general principle, which provides that any undetected disease shall be rendered attributable or aggravated by the military service just because it was earlier not detected. The amendment therefore, vividly canvasses the requirement of a causal connection between the disability and military service which further has to be established by appropriate authorities.

16. The requirement of establishment of relationship between military service and disability was also emphasised by the Hon'ble Apex Court in the case of ***Narsingh Yadav vs UoI*** (Civil Appeal No. 7672 of 2019) decided on 3.10.2019. In this case the court approved the verdict delivered by the AFT (RB), Lucknow, on 23.09.2011 and the applicant was denied Disability Pension even when he was Invalided out of Service with less than 4 years of service on account of Schizophrenia. The Apex Court in this case also analysed the verdict of **Dharamvir Singh (supra)** and

Rajbir Singh (supra) before arriving at a considered conclusion. The relevant portion of the Hon'ble Apex Court's order are extracted below:

Para 20: In the present case, clause 14(d) as amended in the year 1996 and reproduced above, would be applicable as entitlement to disability pension shall not be considered unless it is clearly established that the cause of such disease was adversely affected due to factors related to conditions of military service. Though, the provision of grant of disability pension is a beneficial provision but mental disorder at the time of recruitment cannot normally be detected when a person behaves normally. Since there is a possibility of non-detection of mental disorder, therefore, it cannot be said that Schizophrenia is presumed to be attributed to or aggravated by military service.

(emphasis supplied)

17. The above analysis therefore, clearly highlights the point that the applicant's claim for entitlement of disability pension cannot be considered unless it is clearly established that the disease was squarely attributable to factors related to conditions of military service.

18. On perusal of the records of the applicant, this Tribunal has not been satisfied that there exists a causal connection between military service and the disability ID (i) 'Primary Hypothyroidism' and ID (ii) 'Diabetes Mellitus Type II' of the applicant. As is evident from the records the applicant was initially detected to have 'Primary Hypothyroidism' and was placed in low medical classification A4G3 (Temp) (T-24) vide AFMSF-

15 dated 13.11.2014, while posted at 37 Sqn (Uttarlai). Thereafter the applicant was detected to have 'Obesity' in April, 2016 and placed in low medical classification A4G4 (Temp) (T-24) vide AFMSF-15 dated 08.04.2016. Further the applicant was upgraded for 'Obesity' vide AFMSF-15 dated 05.01.2017. Subsequently, the applicant was detected to have 'Diabetes Mellitus Type II' and 'Obesity' in April 2018 and placed in low medical classification A4G4 (Temp) (T-24) for both disabilities, while posted at 01 Tetra (Chandigarh). The applicant was thereafter, reviewed for the disabilities and he was upgraded for disability 'Obesity' to A4G1 and composite for disabilities 'Primary Hypothyroidism' and 'Diabetes Mellitus Type II' to A4G3 (Permanent) vide AFMSF-15 dated 13.03.2020. Moreover, from the service profile of the applicant as in evident from the RMB (Annexure R-2, Pg 88) that out of the 14 postings that he had in his service career, he was posted in peace areas 10 times, and thrice in field areas and deployed once on a UN Mission (Congo).

19. The disability of the applicant, as apparent from the records, was the result of the sedentary lifestyle of the applicant as the applicant was overweight since **2001**. It is pertinent to note that the applicant has constantly been overweight ranging between 12.5-28 kgs during the

period from 28.08.2008 to 06.05.2020, with his actual weight ranging between 73-90 kgs as against the ideal weight of 61-64 Kgs.

20. It is well settled that a litigant cannot take advantage of his own wrong. This is based on the Latin maxim '*Commodum ex injuria sua nemo habere debet*'. The Hon'ble Supreme Court in ***Kusheshwar Prasad Singh vs State of Bihar & Ors. (2007) 11 SCC 447*** has held that, "*it is settled principle of law that a man cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, 'a wrong doer ought not to be permitted to make a profit out of his own wrong'.*" In the instant case, the applicant, despite repeated caution and advice from the medical authorities, had not taken any steps towards reducing the excess weight as is evident from the weight chart reproduced above and therefore, has become personally accountable for the disability. The applicant cannot be permitted to take advantage of his own inaction in reducing his excess weight and thereafter claim disability pension.

21. At this juncture it is also pertinent to refer to the policies adopted and steps taken by the military forces, including the Air Force to tackle obesity through a comprehensive approach that combines prevention, fitness promotion, and disincentives. The forces address various causative factors, such as lifestyle and psychological issues, recognizing the increased risk of serious health conditions like heart disease and diabetes. Fitness is promoted through a holistic approach that includes medical, physical, and mental aspects, with commanders responsible for maintaining personnel fitness. To manage obesity, disincentives are applied, including restrictions on overseas postings, merit-based selections, awards, and extensions of service. Policies are implemented through performance evaluations, encouraging personnel to meet health standards and remain fit for duty. Since the organization lays great emphasis on physical fitness and the need to guard against obesity, it's imperative for all ranks to ensure that they do not fall prey to obesity. In the case at hand, in spite of elaborate instructions in general to prevent obesity and in the applicant's case, repeated medical advice to reduce weight, details indicate that the applicant has not paid adequate attention and efforts to ensure weight reduction. Thus the applicant's obesity is due to his lifestyle condition and

thus he cannot now claim disability pension. Therefore, as in the present case, since the applicant's obesity is due to his lifestyle condition, he cannot be held eligible for disability pension.

22. Now with respect to the disability ID (ii) 'Diabetes Mellitus Type II' of the applicant we find that it is evident from successive medical examinations that the applicant had a risk factor which was well within his control but he did not address the concerns despite repeated advice from the medical authority and therefore, he has contributed towards the possible development of the said disability. It is also likely that the applicant would not have contracted the disability if he had not gained weight. Hence, the disability of the applicant cannot be held to be aggravated or attributable to service conditions and is a result of his own neglect. Furthermore as per para 26 of GMO (MP) 2008 it is clearly stated that Type 2 diabetes is a life style disease and sedentary life style is a known factor which can precipitate diabetes or cause uncontrolled diabetic state. Furthermore, it states that Type 2 Diabetes Mellitus will be conceded aggravated if onset occurs while serving in Field, CIOPS, HAA and prolonged afloat service but in the case of the applicant it is evident that onset of the disability was in a peace area and the applicant continued to

serve in peace area even after the onset, till retirement. Hence, the disability is to be conceded NANA.

23. The issue of lifestyle diseases and attributability to military service was brought to the fore wherein the AFT (RB) Jaipur vide its Order dated 9.12.2021 in OA No.102/2011 in the case of **Cdr Birbal Singh (Retd) vs UoI & Ors** denied Disability Pension benefits to a Naval Officer who superannuated from the Indian Navy after nearly 28 years of Service and who had claimed Disability on account of (i) Overweight, (ii) Dyslipidemia, (iii) Coronary Artery Disease. The Hon'ble Apex Court upheld the Order of the AFT (RB), Jaipur vide its order dated 12.7.2022 in Civil Appeal No.4699 of 2022 wherein it found no grounds to interfere with the AFT Order dated 9.12.2021. Extracts of the AFT Order (supra) is given below:

Para 7 : On perusal of Release Medical Board (Annexure R/5), it is found that the the Applicants disabilities, viz (i) Coronary Artery Disease (Antistemi, DVD, Pamilad, PCI-Ramus), (ii) Dyslipidaemia, and (iii) Obesity were assessed at 50%, 6-10% and 1-5% respectively and Composite Disability was assessed at 60% for life and Disability Qualifying for Pension was assessed as NIL. In the Medical Case Sheet, at Page No 93 of Release Medical Board, in the Personal History it is clearly mentioned "53 year old Serving Officer a case of CAD-ANT STEMI, DVD, PAMI-LAD, PCI-RAMUS (26/04/2010) has come after 4 weeks of Sick Leave. He is also in LMC for Obesity and Dyslipidemia (Since Sep 2001)"..... "Chronic Smoker x 38 years (10 Cig/day), Chronic Alcoholic (twice a week 2 pegs) x 38 years"..... weight 92 kg....".

The Perusal of Medical Case Sheet clearly establishes that the Officer was Obese since 2001. Obesity is a lifestyle disease of a particular individual and it is common amongst the persons who do not exercise dietary discipline or undertake physical exercise. The disease Dyslipidemia is also a disorder of lipid metabolism and being a metabolic disorder, it is related to dietary habits and discretion and has no relationship to service conditions. Subsequently, nine years later, he was diagnosed as Coronary Artery Disease (Anti Stemi, DVD, Pamilad, PCI-Ramus) on 26.04.2010 which is offshoot of the disability of Obesity, and thus these cannot be, by any stretch of imagination, regarded due to military service. More importantly, a soldier has a special responsibility to keep himself fully fit. Being overweight to the extent of being placed in Lower Medical Category of Obesity for nine years amounts to being negligent towards one's own health and also amounts to an invitation to lifestyle disease like Coronary Artery Disease. The Applicant was repeatedly advised by the medical authorities during Re-categorisation and Annual Medical Examination to reduce weight by diet control and regular exercise due to Obesity, however, which was ignored. The fact is mentioned clearly in Medical Case Sheet that the Applicant is a Chronic Smoker and Chronic Alcoholic for 38 years which clearly establishes that the diseases suffered by the Applicant were due to sheer negligence on part of the Applicant and are clearly not Attributable to or Aggravated by Service.

Para 9 : From the above, it is clear that the Diseases suffered by the Applicant have no causal connection to the Service. The Release Medical Board has rightly considered the Disability as NANA and we find no infirmity in its proceedings. Therefore, the Applicant is not entitled for grant of Disability Element of Pension. The Application is devoid of merit, hence Dismissed.

24. Therefore, having analysed the entire case of the applicant we cannot shy away from the fact, that the disabilities of 'DM TYPE II' in this particular case is caused due to lifestyle factors and failure in maintaining the ideal body weight which should have been managed by the applicant

by regular exercise and restricting diet, and the fact that the applicant is overweight from a long time signifies that the applicant has himself invited the disability. Thus, in such a case, it would be grossly unjustified for us to ignore the aforesaid facts and grant him benefit for his own wrong doings and therefore, the applicant is not entitled to disability element of pension for the said disability.

25. Now with respect to disability ID (i) 'Primary Hypothyroidism' which has been assessed @ 10% for life by the RMB, we find it pertinent to mention Regulation 153 of the Pension Regulations for the Air Force, 1961 Part-I which lays down the Primary conditions for the grant of disability pension and states that, '*Unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by air force service and is assessed at 20 per cent or over*'. However, in the instant case as the disability of the applicant was held as NANA by the RMB and was assessed @ 10%, and as the disability has no casual connection to service, therefore we find that the applicant is not entitled to disability element of pension for the said disability as well. Furthermore, regarding the issue of primacy of the Medical Board, the Supreme Court in its

judgment in **UoI Vs. Ravinder Kumar** in Civil Appeal No. 1837/2009 decided on 23.05.2012, has explicitly viewed that :

"5. We are of the view that the opinion of the Medical Board which is an expert body must be given due weight, value and credence. Person claiming disability pension must establish that the injury suffered by him bears a causal connection with military service."

26. Upon careful analysis of the applicant's case, it is evident that both disabilities — 'Primary Hypothyroidism' and 'Diabetes Mellitus Type II' — are the result of the applicant's lifestyle choices and failure to maintain ideal body weight, rather than being attributable to military service. The applicant, despite repeated medical advisories, neglected to take corrective action, particularly in controlling his weight, which directly contributed to the development of his disabilities. As per the medical records, his conditions were not aggravated or caused by military service, nor did they arise while he was posted in field or high-altitude areas. In regard to 'Primary Hypothyroidism,' since the disability was assessed at 10% and found non-attributable and non-aggravated by military service (NANA), the applicant does not meet the eligibility criteria under Regulation 153 of the Pension Regulations, 1961, which requires a disability to be assessed as being attributable or aggravated by service and should be assessed at 20% or above for the grant of a disability pension. Furthermore, the opinion of the Release Medical Board, an expert body, is to be given due weight in determining entitlement to such pensions. In view of these findings, the applicant is not entitled to

disability pension for either condition. The application is accordingly dismissed.

27. Consequently, the O.A. 1035/2022 is disallowed.

28. No order as to costs.

Pronounced in the open Court on 12 day of September, 2024.

[RAJENDRA MENON]
CHAIRPERSON

[P.M. HARIZ]
MEMBER (A)

/ashok/