

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

A.

OA 1137/2019

Cdr Sudesh Kumar Sharma (Retd) Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Ved Prakash, Advocate
For Respondents : Mr. Arvind Patel, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
16.01.2024

Vide our detailed order of even date, we have allowed the OA 1137/2019. 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)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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For Applicant : Mr. Ved Prakash, Advocate
For Respondents : Mr. Y P Singh, Advocate

CORAM :

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HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

OA 1137/2019

The applicant vide the present OA had made the following prayers:-

“(a) Quash Impugned Orders No. PN/7551/DP/17 dated 11.07.2019, PN/7551/DP/17 dated 31.08.2018 and PN/7551/DP/17 dated 15.01.2018.

(b) Direct respondents to grant disability element of pension duly rounded off to 50% to the applicant w.e.f. his date of discharge i.e 01.04.2018.

(c) Direct respondents to pay the due arrears of disability element of pension with interest @ 12% p.a from the date of retirement with all the consequential benefits.

(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the

case with cost of the application in favour of the applicant and against the respondents.”

2. The applicant CDR Sudhesh Kumar Sharma (Retd.) No. 89123-A was enrolled in the Indian Navy on 13.01.1982 and was discharged from service on 31.03.2018. Prior to his discharge, the applicant was found to be suffering from the disabilities of Primary Hypertension and Type II Diabetes Mellitus. The RMB held on 07.12.2017 considered both the IDs as being neither attributable to nor aggravated by military service. The degree of disablement for the IDs has been assessed at 30% and 20% respectively for life. The net percentage qualifying for disability pension was assessed at Nil for life. The initial claim of the applicant was rejected by the Competent Authority vide PN/7551/DP/18 dated 15.01.2018. The applicant preferred a First Appeal vide 242/SKS/DP/18 dated 31.08.2018. The applicant has preferred his second appeal against the rejection of the disability pension vide letter number Nil dated 10.09.2018 and the same was rejected by the Competent Authority vide letter No. PN/7551/DP/17 dated 11.07.2019.

CONTENTIONS OF THE PARTIES

3. The applicant submits that he joined the Indian Navy on 13.01.1982 in a fit medical condition without any note of any disability recorded on the service record of the applicant at the time

of enrolment. *Inter alia* the applicant submits that he had also been subjected to a thorough medical examination conducted by the Board of Doctors even at the training center after selection. *Inter alia* the applicant submits that he served the Indian Navy at various places and different environmental and service conditions in his prolonged service and any disability suffered by him during his service has to be held to be attributable to and aggravated by service in the Indian Navy. The applicant further submitted to the effect that the disabilities of Primary Hypertension and Type II Diabetes Mellitus had their onset on 29.03.2006 and 17.06.2011 respectively that is after 24 years and after 29 years respectively and submits that he remained fit for a long period of time that is of about 24 years before the onset of the disability of Primary Hypertension. *Inter alia*, the applicant places reliance on the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel 1982 with specific reliance on Rules 4, 5, 8 thereof to contend to the effect that in as much as the applicant had joined the Indian Navy in a fit medical condition, his subsequent discharge in LMC and the subsequent deterioration in his health has to be held to be attributable to and aggravated by military service. *Inter alia* the applicant submits that in terms of Rule 9 of

the said Rules, the claimant cannot be called upon to prove the condition of entitlement.

4. The applicant further places reliance on Regulation 423 of the Regulations for the Medical Services to the Armed Forces Personnel 2010 to submit to the effect that it has been stipulated thereby that it is immaterial whether the cause giving rise to the disability or death occurs in an area declared to be a field service area/active service area/CI Ops or high altitude area or under normal conditions and all that is required to be established essentially is whether the disability or death bore a causal connection with service conditions. The applicant further submits that all evidence both direct and circumstantial has to be taken into account and the benefit of a reasonable doubt has to be given to the individual.

5. Reliance was also placed on behalf of the applicant on Para 43 of the GMO (Military Pensions) 2008 to submit to the effect that in terms thereof itself, the duration of military service is to be taken into account for ascertainment of the attributability or aggravation of the disability in question as being due to military service.

6. Reliance was also placed on behalf of the applicant on Para 26 of Chapter VI of the GMO (Military Pensions) 2008 to submit to the effect that in terms thereof, stress and strain of military service is a factor which causes the aggravation of the disability.

7. Reliance was placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in *Dharamvir Singh Vs. Union Of India & Ors* (Civil Appeal No. 4949/2013) on Para 28 thereof which lays down 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."

8. Reliance was also placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in *UOI & Ors. vs. Angad Singh Titaria* (AIR 2015 SC 1898) and on the verdict of the

Hon'ble Supreme Court in *UOI & Ors. Vs. Rajbir Singh* (2015) 12 SCC 264 *Sukhvinder Singh vs. Union of India* in Civil Appeal No. 5605/2010 to contend to the effect that in the absence of any note of any disability recorded on the records of the respondent for the applicant, the disability that the applicant suffers from has to be held to be attributable to and aggravated by military service in the absence of reasons spelt out by the Medical Board as to why it could not be ascertained that the applicant suffered from the disability before induction into military service.

9. *Inter alia* it was submitted on behalf of the applicant that in terms of the verdict of the Hon'ble Supreme Court in *Union of India vs. Ram Avtar* in Civil Appeal No. 418 of 2012 and para 7.2 of Govt of India, Ministry of Defence letter no. 1(2)/97/D(Pen-C) dated 31.01.2001 to contend to the effect that the percentage of disablement in the instant case which has been assessed by the RMB compositely at 40% for life is required to be broad banded to 50% for life.

10. On behalf of the respondents, it is submitted that the applicant retired on superannuation and had not been invalided out of service. It is submitted further that the disabilities occurred whilst in service at peace stations. The respondents further submit

through their counter affidavit dated 11.09.2019 that the GMO is a reference book and cannot be taken to be Govt. Order and provides broader views to the Medical Officers to decide the conditions of the Officers/sailors at the time of release/retirement from service. The respondents also submit that the disabilities that the applicant suffers from are lifestyle diseases and have rightly been opined by the RMB to be neither attributable to nor aggravated by military service. Reliance was placed on behalf of the respondents on the order dated 11.09.2023 of the AFT, RB, Chennai in the case of *Ex Sub M Vijayakannan vs. UoI & Ors.* with specific reliance on observations on para 20 thereof which reads to the effect:-

“20. In fine, we are of the considered opinion that the plea of the applicant lacks merit and claiming Disability Benefits on account of the ailment, Diabetes Mellitus Type II which primarily is a life style disorder with genetic disposition without evidence of any link whatsoever to military service, is clearly not sustainable and merits dismissal.”

11. On behalf of the applicant in response it was submitted that the applicant was posted in the logistics Branch and was responsible for the Accounts of the Indian Navy which resulted into incumbent stress and strain on him. Reliance was also placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in *UOI & Ors. Vs. Rajbir Singh* (2015) 12 SCC 264 with

specific reliance on the aspect that as detailed in Para 5 thereof in the case CA 5840/2011, the Armed Force Personnel on **Hony Flt Lt P S Rohilla** who was suffering from Primary Hypertension with the percentage of disablement of 30% was held entitled to the grant to the disability element of pension. Reliance was also placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in **Rajbir Singh (Supra)** in para 5 qua the aspect that in relation to Civil Appeal 7368/2011, the Armed Forces personnel therein **Ex. Power Satyaveer Singh** was held entitled to the grant of the disability element of pension for the disability of Diabetes Mellitus which had there been assessed with the percentage of the disablement of 40%.

12. Reliance was also placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in the case of **Commander Rakesh Pande vs UOI & Ors.** in Civil Appeal no. 5970/2019 to contend to the effect that in the said case the grant of the disability element of pension for the disability of NIDDM (Non Insulin Dependent Diabetes Mellitus) was upheld.

ANALYSIS

13. 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)* that, 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*.

14. 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 thereof to the effect:-

“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 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),__

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.

15. In relation to the same it is essential to advert to Regulation 423 of the Regulations for the Medical Services of the Armed Forces 2010 which relates to 'Attributability to Service' and 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),

and has not been obliterated.

16. Reliance was also placed on behalf of the applicant on Para 33 of the verdict of the Hon'ble Supreme Court in the case of *Dharamvir Singh Vs. Union Of India & Ors* (Civil Appeal No. 4949/2013) wherein it has been observed to the effect :-

“33. As per Rule 423(a) of General Rules for the purpose of determining a question whether the cause of a disability or death resulting from disease is or is 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 service/active service area or under normal peace conditions. "Classification of diseases" have been prescribed at Chapter IV of Annexure I; under paragraph 4 post traumatic epilepsy and other mental changes resulting from head injuries have been shown as one of the diseases affected by training, marching,

prolonged standing etc. Therefore, the presumption would be that the disability of the appellant bore a casual connection with the service conditions."

17. It is also essential to advert to the posting profile of the applicant which is reflected through the RMB dated 07.12.2017 and is as under:-

“

S No.	From	To	Place/Ship	P/F	S No.	From	To	Place/Ship	P/F
01	13 Jan 82	Dec 82	Mumbai/INS Hamla	P	10	25 Dec 1994	04 Mar 1997	Vizag/INS Satavahana	P
02	Jan 83	May 83	Mumbai/INS Rana	F	11	05 Mar 1997	02 Sep 1998	Mumbai/ INS Viraat	F
03	Jun 83	Jan 85	Mumbai COMCOS(W)	P	12	03 Sep 1998	10 Apr 2002	Mumbai/NPO	P
04	Feb 85	Dec 85	New Delhi/INS India	P	13	11 Apr 2002	31 Jul 2005	Vizag/INS Circars	P
05	Jan 86	Dec 86	Mumbai/INS Hamla	P	14	01 Aug 2005	10 Jul 2011	New Delhi/DPA	P
06	Jan 87	Aug 88	Vizag/ INS Anjadip (For FOCEF Staff)	F	15	11 Jul 2011	14 Aug 2012	Mumbai/NPO	P
07	Sep 88	Oct 92	Lagos (Nigeria/High Commission of India)	P	16	15 Aug 2012	31 Jun 2013	New Delhi/DCP	P
08	Oct 92	Sep 93	Mumbai/CABS	P	17	01 Jul 2013	26 Feb 2015	New Delhi/PCC(N)	P
09	01 Oct 94	24 Dec 94	Mumbai/INS Hamla	P	18	27 Feb 2015	To date	New Delhi/DPA	P

”

18. The same indicates that the applicant was posted from January 1983 to May 1983 onboard INS Rana, from January 1987 to August 1988 onboard INS Anjadip (For FOCEF Staff), and from

05.03.1997 to 02.09.1998 onboard INS Viraat with all these three postings being field postings.

19. The onset of the disability is reflected in part IV of the Statement of the case in the said RMB is as under:-

“

PART IV
STATEMENT OF CASE

1. Chronological list of the disabilities.

Disabilities	Date of Origin	Rank of Indl	Place and unit where serving at the time
(a) Primary Hypertension	Mar 06	Lt Cdr	NHQ/DPA
(b) Type II DM	Jun 2011	Cdr	IHQ of MoD (Navy)/DPA, New Delhi

”

20. The opinion of the Medical Board in Part V thereof is to the effect :-

PART V
OPINION OF THE MEDICAL BOARD

Medical board having examined the individual and after perusing all available documents is of the consensus opinion as under:-

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)	Reasons/ cause/ specific conditions and period in service.
(a) Primary Hypertension	NO	NO	YES	Onset of ID was in Mar 2006 while serving at Delhi (Peace stn). There is no close time association of the onset with Fd/HAA/CI Ops tenure or any other service related aggravating factors. Hence ID conceded as neither attributable nor aggravated by mil service as per Para 43, Chapter VI, GMO's (Mil Pension), 2008 amended.

(b) Type II DM	NO	NO	YES	Onset of ID was in June 2011 while serving at Delhi (Peace stn). There is no close time association of the onset with Fd/HAA/CI Ops tenure or any other service related aggravating factors. Hence ID conceded as neither attributable nor aggravated by mil service as per Para 26, Chapter VI, GMO's (Mil Pension), 2008 amended.
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21. The percentage of the disablement was put forth in the RMB is as under :-

“

6. What is present degree of disablement as compared with a healthy person of the same age and sex? (Percentage will be expressed as Nil or as follows) 1.5%, 6-10%, 11-14%, 15-19% and thereafter in multiples of ten from 20% to 100%.				
Disabilities (as numbered in Para 1 Part IV)	Percentage of disabilities with duration	Composite assessment for all disabilities with duration (Max 100%) with duration	Disability qualifying for disability pension with duration	Net assessment qualifying for disability pension (Max 100%) with duration
1	2	3	4	5
(a) Primary Hypertension	30% for life	40% for life	NIL for life	NIL for life
(b) Type II DM	20% for life		NIL for life	

”

22. Para 2, 3 and 5(a), (b), (c) in Part V of the RMB are to the effect:-

“

2. Did the disability exist before entering service (Y/N)	NO for both disabilities
3. In case the disability existed at the time of entry, is it possible that it	NA for both

could not be detected during the routine medical examination carried out at the time of the entry?	disabilities
5. (a) Was the disability attributed to the individuals own negligence or misconduct? If yes, in what way?	NA for both disabilities
(b) If not attributable, was it aggravated by negligence or misconduct? If so, in what way and to what percentage to the total disablement?	NA for both disabilities
(c) Has the individual refused to undergo operation/treatment? If so, individual's reasons will be recorded.	NO/NA for both disabilities
Note: In case of refusal of operation/treatment a certificate from the individual will be attached.	

”

23. The case summary qua the applicant as detailed in the summary and opinion of the graded specialist (medicine) dated 27.11.2017 is as under:-

“ **PART-II: CURRENT EVALUATION**

CASE SUMMARY: The above named officer was detected with Type 2 Diabetes Mellitus during evaluation for giddiness. He was detected with hypertension during an episode of giddiness on Mar 06. There is family history of CAD. He consumes alcohol 40-60g twice a month and does not consume tobacco. He has been stable on OHAs and anti hypertensive medications. He is presently due for release from service wef 31 Mar 18 and is asymptomatic.”

29. Vide letter dated 31.08.2018, the First Appeal dated 16.01.2018 of the applicant was rejected only on the grounds that at the time of the RMB, it had been opined that the disabilities that the applicant suffered from were neither attributable to nor aggravated by military service. Likewise to similar effect was the reasoning in the rejection dated 11.07.2019 of the second appeal dated 10.09.2018 of the applicant.

30. As regards the disability of Primary Hypertension it is essential to advert to Para 43 of the Chapter VI of the 'Guide to Medical Officers GMO (Military Pensions) 2008 which is as under:-

"43. Hypertension – The first consideration should be to determine whether the hypertension is primary or secondary. If (e.g. Nephritis), and it is unnecessary to notify hypertension separately.

As in the case of atherosclerosis, entitlement of attributability is never appropriate, but where disablement for essential hypertension appears to have arisen or become worse in service, the question whether service compulsions have caused aggravation must be considered. However, in certain cases the disease has been reported after long and frequent spells of service in field/HAA/active operational area. Such cases can be explained

by variable response exhibited by different individuals to stressful situations. Primary hypertension will be considered aggravated if it occurs while serving in Field areas, HAA, CIOPS areas or prolonged afloat service."

31. As has been observed hereinabove the onset of the disability of Primary Hypertension was after 24 years of service of the applicant in the Indian Navy. The existence of stress and strain and rigours of military service even in peace stations has been accepted in a catena of orders of this Tribunal and as observed hereinabove in para16, vide Para 33 of the Hon'ble Supreme Court in **Dharamvir Singh** (Supra). In terms of Para 423(a) of the

Regulations for the Medical Services for the Armed Force itself, it has been specifically stipulated that for the purpose of determining whether the cause of disability or death is or is not attributable to service, it is *immaterial* whether the case giving rise to the disability or death occurred in an area declared to be field service/active service area or under normal peace conditions though what is essentially to be established is whether the disability or death bore a causal connection with the service conditions in relation to which all evidence both direct circumstantial has to be taken into account and the benefit of a reasonable doubt has to be given to the individual.

32. In terms of Para 43 of the GMO (Military Pensions) 2008 itself, it has been expressly provided to the effect that where the disablement for essential Hypertension appears to have arisen and become worsened in service, the question whether service compulsions have caused aggravation must be considered and that in certain cases the disease has been reported after long and frequent spells of service in Field/HAA/active operational area and that such cases can be explained by variable response exhibited by different individuals to stressful situations. As has been observed hereinabove, the applicant in the instant case was posted in field

areas in the year 1983, from 1987 to 1988 and from 1997 to 1998 and that thus factum that the disability of Primary Hypertension had its onset after 24 years of military service cannot be overlooked nor can the stress and strain of the applicant's posting and work in the Accounts Department of the Indian Navy be overlooked. In the circumstances the disability of the applicant of Primary Hypertension has to be held to be both attributable to and aggravated by military service.

33. As regards the disability of **Diabetes Mellitus Type II**, it is essential to advert to Para 26 of the GMO (Military Pensions) 2008 which 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)

34. The same itself reflects categorically that stress and strain apart from improper diet, non compliance to therapeutic measures because of service conditions are inter alia the causative factors which can precipitate diabetes or cause an uncontrolled diabetic state. Even though, Type II Diabetes is considered a life style disease, that stress and strain and improper diet, non compliance due to service reasons are known factors which can precipitate

diabetes or uncontrolled diabetic state as provided as in Para 26 of the GMO (Military Pensions) 2008 itself cannot be overlooked. The contentions that the respondents have sought to raise through the counter affidavit that the GMO (MPs) 2008 is only a guide and not Govt. order is undoubtedly true but the code word that is prescribed by the DGAFMS, MoD itself stipulates to the effect that the contents of the GMO (MP) 2008 reflects the close cooperation between the Ministry of Defence and Ministry of Finance (Defence) and concerned officers of the Directorate of the DGAFMS, MoD and that the said publication is intended to be a general guide for assessment of individual disabilities and their causal relationship to military service and the same has taken into account also the directions of the High Court of Delhi of June 2006 where the directions were given to the High Level Committee to look into the disability pension disputes and to reform the procedure. The said foreword of the GMO (MPs) 2008 reads to the effect:-

“This publication is intended as a general guide for assessment of individual disabilities and their causal relationship to military service. In this publication the amendments to chapters VI and VII of the Guide to Medical officers Military Pensions (2002) has been incorporated. The two chapters have been revised

with a view to include the recent advances in medical sciences so that the causal relationship of other relevant factors is brought up to date in accordance with the latest scientific opinions. This has also been done taking into consideration the Hon'ble Delhi High Court Order of Jun 2006 which had directed a High level committee to look into the disability pension disputes and reform the procedure. The complete revised Guide will be published when the Entitlement Rules amendments are completed by the Ministry of Defence. In the amended chapter VI of the current edition, the Paras on Appendicitis, Colonic Polyp and diverticulosis, Diabetes Mellitus, Hernia, Hypertension, Ischemic Heart Disease, Low back - ache, Mental & Behavioural (Psychiatric) disorders and Neurological disorders etc. have been revised. Similarly in chapter VII, assessment of AIDS, defective hearing, diseases of the circulatory system, pulmonary tuberculosis, mental and behavioural disorders, skin diseases and neurological disorders etc. have been revised. This amendment should be carefully studied by members of the medical boards and all others concerned so as to apply the guidelines in an unbiased manner. The contents of the manual reflect the close cooperation between Ministry of Defence, Ministry of Finance (Defence) and concerned officers of my directorate. I would like to express my appreciation to all those involved in the preparation of this manual."

35. In these circumstances the contention that is sought to be raised on behalf of the respondents that the parameters put forth through the GMO (Military Pensions) 2008 ought not to be considered as guiding factors to ascertain the aspect of the disabilities from which the applicant suffers from, as being both attributable to or aggravated by military service, cannot be accepted.

36. The contention that is sought to be raised on behalf of the respondents placing reliance *Ex Sub M Vijayakannan vs. UoI & Ors.* to the effect that it is laid down therein that Diabetes Mellitus is a lifestyle disorder with genetic disposition and has no evidence or any link whatsoever to military service, it is essential to observe that though even in terms of para 26 of the GMO (Military Pensions) 2008 has adverted hereinabove, it is expressly stipulated to the effect that Diabetes Mellitus Type II is a lifestyle disorder it has nevertheless been stated therein to the effect that it has already been observed by this Tribunal in a catena of cases that peace stations have their own pressure of rigorous military training and associated stress and strain of the service. It may also be taken into consideration that most of the personnel of the Armed Forces have

to work in the stressful and hostile environment, difficult weather conditions and under strict disciplinary norms.

37. In these circumstances as already by the Hon'ble Supreme Court in *Ex Cfn Narsingh Yadav vs. Union of India & Ors.* in 7672/2019 each case has to be determined, on its own facts and circumstance it is also essential to observe in OA 121/2021 relied upon on behalf of the respondents itself, it is stipulated to the effect in Para 20 thereof to the effect :-

“20. In fine, we are of the considered opinion that the plea of the Applicant lacks merit and claiming Disability Benefits on account of the ailment, Diabetes Mellitus Type II which primarily is a life style disorder with genetic disposition *without evidence of any link whatsoever to military service, is clearly not sustainable and merits dismissal.*”,-

which itself thus indicates that in that case it had been observed to the effect that there was no evidence of any link of attributable to a military service as a cause for the said disability that had been brought forth in that case. It is also essential to observe that the circumstances the facts of the case relied upon on behalf of the respondents in *Ex Sub M Vijayakannan vs. UoI & Ors.* are wholly distinguishable from the facts of the instant case and are not in *pari-materia* with the facts of the instant case.

38. It is further essential to observe that in terms of Para 7 of the Entitlement Rules for the Casualty Pensionary Awards to Armed Forces 2008 already adverted to hereinabove, it has been expressly stipulated to the effect that the applicant is not required to establish his entitlement and rather if the relief has been claimed for within a period of 15 years, the applicant is entitled to the grant of the benefit of the initial presumption in his favour that the disability has been caused due to military service. Likewise, in terms of Para 10(b)(iii) of the said Entitlement Rules for Casualty Pensionary Awards to Armed Forces 2008, it has been specifically stipulated therein to the effect that in cases where nothing is known for the cause of disability and where the initial presumption (as in the instant case) of entitlement in favour of the applicant has not been dislodged, it has to be presumed that the applicant has joined military service in a fit physical condition and medical category, the disability has to be held to be attributable and aggravated by military service and the applicant is thus entitled to the grant of the disability element of pension in relation to the said disability.

CONCLUSION

39. The OA 1137/2019 is thus allowed, the applicant is held entitled to the disability ^{element of pension} of the applicant rounded off to 30% for life

for the disability of “**Primary Hypertension**” and 20% for life for the disability of “**Type-II Diabetes Mellitus**” and compositely assessed at 44% for life which is directed to be broad banded to 50% for life in terms of the verdict of the Hon’ble Supreme Court in Civil No. 418/2012 dated 10.12.2014 titled as *Union of India & Ors. vs. Ram Avtar* w.e.f. the date of his discharge.

40. The respondents are thus directed to calculate, sanction and issue the necessary PPO to the applicant within a period of three months from the date of receipt of copy of this order and the amount of arrears shall be paid by the respondents, failing which the applicant will be entitled for interest @6% p.a. from the date of receipt of copy of the order by the respondents.

Pronounced in the open Court on the 16 day of January, 2024.

[REAR ADMIRAL/DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/yogita/