

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

Supplementary
3.

OA 1345/2019 with MA 2494/2023

Ex MCPO LOG(F&A) I(H/SLT) Anil Kumar Yadav Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Ajit Kakkar, Advocate
For Respondents : Mr. R.S. Chillar, proxy for
Mr. Waize Ali Noor, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE LT. GEN C.P. MOHANTY, MEMBER (A)

ORDER
09.02.2024

Vide our detailed order of even date we have allowed the OA 1345/2019. 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 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, the prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(LT. GEN C.P. MOHANTY)
MEMBER (A)

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Anil Kumar Yadav

... Applicant

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For Applicant : Ms Chhavi Yadav, proxy for Mr Ajit Kakkar
Advocate

For Respondents : Mr. Waize Ali Noor, Advocate

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HON'BLE LT. GEN. C.P. MOHANTY, MEMBER (A)

ORDER

The applicant vide the present OA 1345/2019 makes the following prayers:

“(a) To Quash the letter dated 13./02.2018 by which respondents have rejected the disability pension of the applicant.

(b) Direct the respondents to produce all service and medical records of the applicant relating to his disease.

(c) Direct the respondents to grant disability pension to the applicant from the date of discharge from i.e. 01.02.2018

(d) To direct the respondents to grant benefit of rounding off the disability pension from the date of discharge.

(e) To direct the respondents to issue a corrigendum PPO with the necessary changes pertaining to the disability and broad banding of the disability pension

(f) To direct the respondents to pay arrears of disability pension and broad banded disability pension alongwith interest @12%

(g) To grant such other relief appropriate to the facts and circumstances of the case as deemed fit and proper.”

2. The applicant had joined the Indian Navy on 09.01.1981 and was discharged from service on 31.01.2018 on expiry of engagement with 37 years and 23 days of qualifying service and subsequently service pension vide PPO No.248201800495 dated 22.01.2018 was sanctioned to the applicant. At the time of discharge, the applicant was placed in Low Medical Category S2A2(P) PMT for the IDs TYPE-II DIABETES MELLITUS(E11.9) and the Primary Hypertension ICD No.110 and the Release Medical Board assessed the disablement of the applicant @20% for life and @30% for life respectively with composite assessment for both the disabilities @44% rounded off to 40%. However, the disabilities qualifying for disability pension were recorded as nil for life as per Chapter VI of Para 26 and Para 43 of the GMO(MP)-2008 respectively stating that the onset of both the diseases of the applicant was in peace area as being ‘neither attributable to nor aggravated by service(NANA). The Release Medical Board also opined to the effect that both the

disabilities were life style diseases and there is no connection to military service in terms of Para 26 and Para 43 of Chapter VI of the GMO(MP) 2008 and as such the disabilities were opined to be neither attributable to nor aggravated by military service. The disability claim of the applicant was rejected by the Competent Authority of respondents vide letter No.PEN/600/D/LRDO 1:01/2018/110497F dated 13.02.2018 and the applicant was apprised that he could, if so desired, prefer an appeal against rejection of his disability pension within six months from the date of receipt of intimation. The applicant submitted his first appeal dated 28.02.2018 and the same was also rejected by the respondents vide IHQ Mod(N) letter NO.PEN/0134/DP/1116/18 dated 13.12.2018 with liberty to prefer second appeal. The applicant preferred his second appeal dated 31.01.2019 which however was not responded to by the respondents till the date of the institution of the present OA filed on 07.08.2019 as is also so indicated vide the averments made in the counter affidavit dated 23.03.2023 filed by the respondents which indicate that the applicant's second appeal was even till the said date under process and thus in the circumstances, it is considered essential to take up the present OA for consideration under Section 21(2)(b) of the Armed Forces Tribunal Act, 2007.

CONTENTIONS OF THE PARTIES

3. The applicant submits that he joined the Indian Navy on 09.01.1981 in SHAPE I medical category and was not suffering from any disability at the time of enrolment and was deputed in the Logistics Branch of the Indian Navy and that in as much as he joined the Indian Navy in a fit medical condition with no disability on the records of the respondents as brought forth through para 2 and 3 of the RMB proceedings dated 16.10.2017 which read to the effect:

“2. Did the disability exist before entering service? (Y/N)/could be

-NO

3. In case the disability existed at the time of entry, is it possible that it could not be detected during the routine medical examination carried out at the time of entry.

NO”

the disabilities, the applicant suffered from of Type II Diabetes Mellitus with percentage of disablement @20% for life and of Primary Hypertension with percentage of disablement assessed @30% for life with their onset on 18.02.2015 and 08.09.2017 respectively after the period of 34 years in relation of ID(i) Type II Diabetes Mellitus and 36 years in relation to the ID(ii) Primary Hypertension with composite assessment @44% rounded off to 40% have essentially to be held to be attributable to and aggravated by military service. The applicant has

placed reliance on his posting profile in Part-I of the Personal Statement in the RMB which is to the effect:

"PART -1

PERSONAL STATEMENT

1. Give details of service(P-Peace OR F-Field/Operation/Sea Service

S. No.	From	To	Place/ Ship	P/ F	S. No.	From	To	Place Shit	P/F
(i)	09.01.81	11.7.81	MANDOVI	P	(ii)	12.7.81	16.1.82	HAMLA	P
(iii)	17.1.82	25.5.84	B'PUTRA	F	(iv)	26.5.84	02.7.85	ADYAR	P
(v)	03.7.85	1.12.85	HAMLA	P	(vi)	2.12.85	20.12.86	TIR	F
(vii)	21.12.86	14.1.88	NHQ	P	(viii)	15.1.88	21.2.91	NA SWEDEN	P
(ix)	22.2.81	30.6.94	CABS	P	(x)	1.7.94	15.8.96	FOCWF	F
(xi)	16.8.96	09.6.99	NOIC(GJ)	P	(xii)	10.6.99	19.4.02	MANDOVI	P
(xiii)	20.4.02	31.7.02	BLO(V)	P	(xiv)	1.8.02	15.12.02	DEGA	P
(xv)	16.12.02	15.6.05	RANJIT	F	(xvi)	16.6.05	21.11.06	HQENC	P
(xvii)	22.11.06	1.10.09	CNS SECTT	P	(xvii)	6.10.09	05.4.11	INDIA	P
(xviii)	6.4.11	5.7.14	ZAMORIN	P	(xiv)	6.7.14	22.6.16	ANGRE	P
(XV)	23.6.16	TILL DATE	VAJRABAHU						

”

to submit that the he was deployed on four field postings prior to the onset of the disabilities for more than 08 years and that the disabilities in the instant case have to be held to be attributable to and aggravated by military service. *Inter alia*, it has been submitted on behalf of the applicant that though the disabilities in question had their onset in peace area the same did not suffice to negate the grant of the disability element

of pension to the applicant in as much as it is well settled vide a catena of orders of this Tribunal that the rigours of military service and stress and strain are equally contributory factors applicable to the personnel of the armed forces even whilst posted at peace areas.

4. The applicant places reliance on the verdict of the Hon'ble Supreme Court in *Dharamvir Singh Vs Union of India & Ors* (Civil Appeal No.4949 of 2013) 2013(7) SCC 36 and *Union of India & Anr Vs Rajbir Singh* Civil Appeal No.2904/2-011, 2015(2) Scale 371 to submit to the effect that in terms of the Entitlement Rules for Casualty Pensionary Awards, 1982 as shown in Appendix-II, the Government of India, Ministry of Defence Letter No.1(1)/81/D(Pen-C) dated 20.06.1996 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, 2010, it is well settled that where there is no note in the service record of the applicant at the time of entry into service and there is nothing opined by the Medical Board to indicate as to why the applicant was suffering from the disability, a presumption has to be drawn in favour of the applicant who was discharged in low medical category that he suffered from the disease due to the service conditions of military service and the disability from which the applicant suffers is attributable to and aggravated by military service and that thus the applicant is entitled to the grant of the disability element of pension as claimed by him.

5. 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 to 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.
6. On behalf of the respondents, it was submitted that there was no infirmity in the opinion of the Release Medical Board nor in the rejection of the first appeal of the applicant and reliance is also placed on behalf of the respondents on Para 26 and Para 43 of Chapter VI of the GMO(MP) 2008 to submit to the effect that the disabilities had arisen in peace area and the applicant served in peace area after the onset of the said diseases and the disabilities had not arisen whilst the applicant was in prolonged/afloat service and that there is no close time association in field area postings to bring forth any stress and strain on the applicant.
7. During the course of submissions that have been made on behalf of either side in reply to a specific Court query, the respondents were unable to point out any contributory factor from the side of the applicant

in relation to the onset of the disabilities to indicate that the disabilities were due to any life-style parameters of the applicant. The physical capacity of the applicant as per Medical examination in Part II of the Medical Board is stated as under:

“3(a) Physical Capacity

(i) Pulse 72/m (ii) Weight actual 87 kg (iii) Ideal wt.80.0 kg (iv) Over Weight....nil (v) Waist 88 cm (vi) Chest Full expiration 102cm (vii) Range of Expansion 05 cm.”

The Clinical Assessment conducted by the Classified Specialist (Medicine & Endocrinology, INHS Asvini, Mumbai on 22.09.2017 does not states any specific reasons for the onset of the disabilities in question.

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

“

PART IV
STATEMENT OF CASE

Chronological list of the disabilities.

Disabilities	Date of Origin	Rank of Indl	Place and unit where serving at the time
TYPE II DIABETES MELLITUS	18 Feb, 2015	MCPOLG(F&A)I	INS ANGRE AT MUMBAI
PRIMARY HYPERTENSION ICD No.-110	22 Sep 17	MCPOLG(F&A)I HON SLT	INS VAJRABAHU AT MUMBAI

”

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.
TYPE II DIABETES MELLITUS ICD NO-e11.9	NO	NO	YES	ONSET IN PEACE, SERVED IN PEACE AFTER ONSET. BOTH DISABILITIES VIDE CHAPTER VI, PARA 26 AND 43 OF GMO 2008/BOTH BEING LIFE STYLE DISEASES WITHOUT ANY CONNECTION TO SERVICE.
PRIMARY HYPERTENSION ICD No.-110	NO	NO	YES	

The percentage of the disablement was put forth in the RMB 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
TYPE II DIABETES MELLITUS ICD NO-e11.9	20% for life	Composite(20 +24)44% for life ROUND OFF 40%	NIL for life	NIL for life Onset in peace ,served in peace after onset
PRIMARY HYPERTENSION ICD No.-110	30% for life		NIL for life	

”

ANALYSIS

8. 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)*, 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*.

9. The Hon'ble Supreme Court in *Dharamvir Singh Vs. Union Of India & Ors* (Civil Appeal No. 4949/2013) vide Para 28 thereof has laid down 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."

10. It is essential to observe that the verdict of the Hon'ble Supreme Court in **Rajbir Singh** (supra) vide Paras 12 to 15 is to the effect:-

"12. Reference may also be made at this stage to the guidelines set out in Chapter-II of the Guide to Medical Officers (Military Pensions), 2002 which set out the "Entitlement: General Principles", and the approach to be adopted in such cases. Paras 7, 8 and 9 of the said guidelines reads as under:

"7. Evidentiary value is attached to the record of a member's condition at the commencement of service, and such record has, therefore, to be accepted unless any different conclusion has been reached due to the inaccuracy of the record in a particular case or otherwise. Accordingly, if the disease leading to member's invalidation out of service or death while in service, was not noted in a medical report at the commencement of service, the inference would be that the disease arose during the period of member's military service. It may be that the inaccuracy or incompleteness of service record on entry in service was due to a non-disclosure of the essential facts by the member e.g. pre-enrolment history of an injury or disease like epilepsy, mental disorder, etc. It may also be that owing to latency or obscurity of the symptoms, a disability escaped detection on enrolment. Such lack of recognition may affect the medical categorisation of the member on enrolment and/or cause him to perform duties harmful to his condition. Again, there may occasionally be direct evidence of the contraction of a disability, otherwise than by service. In all such cases, though the disease cannot be considered to have been caused by service, the question of aggravation by subsequent service conditions will need examination.

[pic] The following are some of the diseases which ordinarily escape detection on enrolment:

(a) Certain congenital abnormalities which are latent and only discoverable on full investigations e.g. Congenital Defect of Spine, Spina bifida, Sacralisation,

(b) Certain familial and hereditary diseases e.g. Haemophilia, Congenital Syphilis, Haemoglobinopathy.

(c) Certain diseases of the heart and blood vessels e.g. Coronary Atherosclerosis, Rheumatic Fever.

(d) Diseases which may be undetectable by physical examination on enrolment, unless adequate history is given at the time by the member e.g. Gastric and Duodenal Ulcers, Epilepsy, Mental Disorders, HIV Infections.

(e) Relapsing forms of mental disorders which have intervals of normality.

(f) Diseases which have periodic attacks e.g. Bronchial Asthma, Epilepsy, Csom, etc.

8. The question whether the invalidation or death of a member has resulted from service conditions, has to be judged in the light of the record of the member's condition on enrolment as noted in service documents and of all other available evidence both direct and indirect.

In addition to any documentary evidence relative to the member's condition to entering the service and during service, the member must be carefully and closely questioned on the circumstances which led to the advent of his disease, the duration, the family history, his pre-service history, etc. so that all evidence in support or against the claim is elucidated. Presidents of Medical Boards should make this their personal responsibility and ensure that opinions on attributability, aggravation or otherwise are supported

by cogent reasons; the approving authority should also be satisfied that this question has been dealt with in such a way as to leave no reasonable doubt.

9. On the question whether any persisting deterioration has occurred, it is to be remembered that invalidation from service does not necessarily imply that the member's health has deteriorated during service. The disability may have been discovered soon after joining and the member discharged in his own interest in order to prevent deterioration. In such cases, there may even have been a temporary worsening during service, but if the treatment given before discharge was on grounds of expediency to prevent a recurrence, no lasting damage was inflicted by service and there would be no ground for admitting entitlement. Again a member may have been invalided from service because he is found so weak mentally that it is impossible to make him an efficient soldier. This would not mean that his condition has worsened during service, but only that it is worse than was realised on enrolment in the army. To sum up, in each case the question whether any persisting deterioration on the available [pic]evidence which will vary according to the type of the disability, the consensus of medical opinion relating to the particular condition and the clinical history."

13. In Dharamvir Singh's case (supra) this Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words:

"29.1. Disability pension to be granted to an individual who is invalided 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 to or aggravated by military service to be determined under the Entitlement Rules for Casualty

Pensionary Awards, 1982 of Appendix II (Regulation 173).

29.2. 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 read with Rule 14(b)].

29.3. The 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).

29.4. 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)]. [pic] 29.5. 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 [Rule 14(b)].

29.6. 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 [Rule 14(b)]; and 29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 - "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."

14. Applying the above principles this Court in Dharamvir Singh's case (supra) found that no note of any disease had been recorded at the time of his

acceptance into military service. This Court also held that Union of India had failed to bring on record any document to suggest that Dharamvir was under treatment for the disease at the time of his recruitment or that the disease was hereditary in nature. This Court, on that basis, declared Dharamvir to be entitled to claim disability pension in the absence of any note in his service record at the time of his acceptance into military service. This Court observed:

"33. In spite of the aforesaid provisions, the Pension Sanctioning Authority failed to notice that the Medical Board had not given any reason in support of its opinion, particularly when there is no note of such disease or disability available in the service record of the appellant at the time of acceptance for military service. Without going through the aforesaid facts the Pension Sanctioning Authority mechanically passed the impugned order of rejection based on the report of the Medical Board. As per Rules 5 and 9 of the Entitlement Rules for Casualty Pensionary Awards, 1982, the appellant is entitled for presumption and benefit of presumption in his favour. In the absence of any evidence on record to show that the appellant was suffering from "generalised seizure (epilepsy)" at the time of acceptance of his service, it will be presumed that the appellant was in sound physical and mental condition at the time of entering the service and deterioration in his health has taken place due to service."

15. The legal position as stated in Dharamvir Singh's case (supra) is, in our opinion, in tune with the Pension Regulations, the Entitlement Rules and the Guidelines issued to the Medical Officers. The essence of the rules, as seen earlier, is that a member of the armed forces is presumed to be in sound physical and mental condition at the time of his entry into service if there is no note or record to the contrary made at the time of such entry. More importantly, in the event of his subsequent discharge from service on medical ground, any deterioration in his health is presumed to be due to military service. This necessarily implies that

no sooner a member of the force is discharged on medical ground his entitlement to claim disability pension will arise unless of course the employer is in a position to rebut the presumption that the disability which he suffered was neither attributable to nor aggravated by military service. From Rule 14(b) of the Entitlement Rules it is further clear that if the medical opinion were to hold that the disease suffered by the member of the armed forces could not have been detected prior to acceptance for service, the Medical Board must state the reasons for saying so. Last but not the least is the fact that the provision for payment of disability pension is a beneficial provision which ought to be interpreted liberally so as to benefit those who have been sent home with a disability at times even before they completed their tenure in the armed forces. There may indeed be cases, where the disease was wholly unrelated to military service, but, in order that denial of disability pension can be justified on that ground, it must be affirmatively proved that the disease had nothing to do with such service. The burden to establish such a disconnect would lie heavily upon the employer for otherwise the rules raise a presumption that the deterioration in the health of the member of the service is on account of military service or aggravated by it. A soldier cannot be asked to prove that the disease was contracted by him on account of military service or was aggravated by the same. The very fact that he was upon proper physical and other tests found fit to serve in the army should rise as indeed the rules do provide for a presumption that he was disease-free at the time of his entry into service. That presumption continues till it is proved by the employer that the disease was neither attributable to nor aggravated by military service. For the employer to say so, the least that is required is a statement of reasons supporting that view. That we feel is the true essence of the rules which ought to be kept in view all the time while dealing with cases of disability pension."

(emphasis supplied)

11. On a consideration of the submissions that have been made on behalf of either side, it is essential to observe that the aspect of determination of the disability resulting from the disease being attributable to service apart from being governed by the 'Entitlement Rules for Casual Pensionary Awards to the Armed Forces Personnel, 2008 is also governed by Regulation 423 of the Regulations for the Medical Services of the Armed Forces, 2010 which is still in operation. Regulation 423 (a) thereof specifically provides that it is immaterial for the purpose of determining whether the cause of a disability or death resulting from disease is or is not attributable to service, *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.*

(emphasis supplied)

12. As per Regulation 423 of Chapter 8 of the Regulations for the Medical Services of the Armed Forces, 2010, the revised version which is in force, it has been regulated to the effect:-

"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.”

13. It is also essential to observe that 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 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),*

14. 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 within a period of 15 years of discharge/retirement/release/invalidment, the applicant is entitled to the grant of the benefit and initial presumption is 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 and medical category and 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.

15. On a consideration of the submissions that have been made on behalf of either side as has already been observed hereinabove despite the 'Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 1982' having been superseded by the 'Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008' which have been made effective from 01.01.2008 as per letter dated 18.01.2010 F.No.1(3)/2002/Vol-1/D(Pen/) of the Government of India, Ministry of Defence Department of Ex-Servicemen Welfare, the factum that the ratio of the verdicts in *Dharamvir Singh (supra)*, *Sukhvinder Singh (supra)*, *Rajbir Singh (supra)* and *Manjeet Singh (supra)* form the fulcrum of the 'Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008' cannot be overlooked.

16. That peace stations have their own pressure of rigorous military training and associated stress and strain of service and that most of the personnel of the Armed Forces have to work in stressful and hostile environment, difficult weather conditions and under strict disciplinary norms has already been taken into consideration by this Tribunal in a catena of cases at the time of consideration of the prayers made for grant of disability pension.

17. As per the amendment to Chapter VI of 'Guide to Medical Officers(Military Pensions), 2008, Para 26 thereof, Type-II Diabetes Mellitus is to be conceded as aggravated if the onset occurs while serving in Field/ CIOPS/HAA/prolonged afloat service and having been diagnosed as 'Type II Diabetes Mellitus' who are required to serve in these areas. Furthermore, inter alia stress and strain because of service reasons are stated therein to be known factors which can precipitate diabetes or cause uncontrolled diabetic state.

18. Para 26, Chapter VI of the Guide to Medical Officers (Military Pensions), 2008, is as under:-

"26. Diabetes Mellitus

This is a metabolic disease characterized 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."

It is thus held that the presumption that the disability of Diabetes Mellitus in the instant case was attributable to and aggravated to military services has not been rebutted.

19. As has been observed hereinabove the onset of the disability of Primary Hypertension was after 36 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. Even though, Type II Diabetes Mellitus 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.

20. 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.”

21. 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."

22. In view of the ratio of the verdicts in *Dharamvir Singh vs UIO & Ors* (Civil Appeal No. 4949/2013) (2013) 7 SCC 316, *Sukhvinder Singh vs UIO & Ors*, dated 25.06.2014 reported in 2014 STPL (Web) 468 SC, *UIO & Ors. vs Rajbir Singh* (2015) 12 SCC 264 and *UIO & Ors* versus *Manjeet Singh* dated 12.05.2015, Civil Appeal no. 4357-4358 of 2015, as laid down by the Hon'ble Supreme Court which are the fulcrum of the Entitlement Rules for Casualty Pensionary Awards for the Armed Forces-2008 as already observed hereinabove thus, in the absence of any disability recorded by the medical board at the time of induction of the applicant into military service

of any disease that he suffered from, with the onset of the disabilities being in service in February, 2015 and September, 2017, after induction of the applicant in the Indian Navy on 09.01.1981 i.e. after 34 and 36 years of induction into the Indian Navy and the disabilities that the applicant suffer from have to be held to be attributable to and aggravated by military service.

23. It is also essential to observe that the prayer for grant of the disability element of pension for the disability of 'Diabetes Mellitus' in C.A. 7368/2011 in the case of *Ex. Power Satyaveer Singh* has been upheld by the Hon'ble Supreme Court vide the verdict in *UOI & Anr versus Rajbir Singh* (Civil Appeal 2904/2011) dated 13.02.2015.

24. In terms of the verdict of the Hon'ble Supreme Court in Civil Appeal No.5970/2019 titled as *Commander Rakesh Pande Vs Union of India & Ors* dated 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% broadbanded to 50% for life was upheld.

CONCLUSION

25. The OA 1345/2019 is thus allowed and the applicant is held entitled to the grant of the disability element of pension qua the disability of 'Diabetes Mellitus Type II' assessed @ 20% for life and the ID Primary Hypertension assessed @30% for life compositely for the both disabilities @40% 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 *Union of India vs Ram Avtar* decided on 10.12.2014 in Civil Appeal no. 418 of 2012 with effect from the date of his discharge and the respondents are directed to issue the corrigendum PPO with directions to the respondents to pay the arrears within a period of three months from the date of receipt of a copy of this order, *failing which*, the respondents would be liable to pay interest @6% p.a. on the arrears due from the date of this order.

26. No order as to costs.

Pronounced in the open court on this

9th day of February, 2024.

[LT GEN C.P. MOHANTY]
MEMBER(A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/chanana/

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

2.

OA 1345/2019 with MA 2494/2023

Ex MCPO LOG (F&A) I (H/SLT)

Anil Kumar Yadav

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Mr. Ajit Kakkar, Advocate with

Mr. Rajat, Advocate

For Respondents : Mr. Waize Ali Noor, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)

HON'BLE LT GEN C. P. MOHANTY, MEMBER (A)

ORDER

06.05.2024

Vide the detailed order dated 09.02.2024 in OA 1345/2019, the OA had been disposed of and vide a separate order dated 09.02.2024 the prayer made on behalf of the respondents seeking grant of leave to appeal in terms of Section 31(1) of the AFT Act, 2007 has been declined. The matter has been taken up *suo-moto*, in the interest of justice, in as much as, in Para 21 of the order the first sentence reads to the effect :-

"21. The contentions that the respondents have sought to raise through the counter affidavit that the GMO (MPs) 2008 is only 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, 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”,

therein the said word **code word** is erroneously typed and ought to read as **fore word** and the proceedings dated 09.02.2024 in OA 1345/2019 are rectified, accordingly.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(LT GEN C. P. MOHANTY)
MEMBER (A)

Yogita