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

Suppl.
2.

OA 1361/2016
Ex JWO Harvinder Singh ..... Applicant
VERSUS
Union of India and Ors. ..... Respondents

For Applicant : Mr. Praveen Kumar, Advocate
For Respondents : Mr. YP Singh, Advocate

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

ORDER
08.02.2024

Vide our detailed order of even date, we have allowed the OA 1361/2016. 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)

Pooja

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For Applicant : Mr. Praveen Kumar, Advocate

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O R D E R

1. The applicant vide the present O.A 1361/2016 has made the following prayers:-

> ***"(a) Quash and set aside the impugned letters dated 14 Sep 2016.***
> ***(b) Direct Respondents to grant Disability Pension@ 15-19% and also Rounding off it to 50% for life to the applicant with effect from 17 Oct 2008 i.e. the date of discharged from service with interest @12% p.a. till final payment is made.***
> ***(c)Any other relief which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."***

2. The applicant Ex JWO Harvinder Singh was enrolled in the Indian Air Force on 10.09.1986 and discharged from service on 16.10.2008 under the clause "On fulfilling the conditions of enrolment" after rendering total 22 years and 37 days of regular

service. The applicant was detected to have urine sugar during annual medical examination and his blood sugar level was found F-190mg/dl, PP-300 mm/dl. He was investigated and was referred to medical specialist for opinion at BHDC on 21 Feb 2002. He was diagnosed as a case of Diabetic Mellitus Type-2. He was recommended for LMC CEE (T-24) vide AFMSF-15 dated 12 Mar 2003 for the disability: Type 2 Diabetes Mellitus. During periodical review he was recommended to be upgraded to low med cat BEE (P) vide AFMSF-15 dated 05 Apr 2004 for the disability Type 2 Diabetes Mellitus. He was reviewed on 24 Oct 05 and recommended low medical category A4G2 (P) vide AFMSF-15 dated 24 Oct 05 for disability Type 2 DM and was continued in the same med cat A4G2 (P) till he was released from service.

3. The Release medical board not solely on medical grounds was held at No 2 Wing, AF vide AFMSF-16 dated 20 Oct 2008 and he was found fit to be released in low medical category A4G4 (P) for the disability Type 2 Diabetes Mellitus. RMB has considered his disability Type-2 Diabetes Mellitus as neither attributable to nor aggravated by service reasoning it to be a Metabolic disorder with its onset in peace station at Delhi and observing that there was no close time association with strain/stress of Field/HAA/Clops/service, and

that it was thus NANA in terms of Para 26, Chapter VI of GMO 2008 with the percentage of disablement being assessed at 15 - 19% for life of the disability Type-2 Diabetes Mellitus. The RMB was approved by Dy PMO HQ MC, IAF, dated 03 Dec 2008. A legal notice dated 29.08.2016 sent on behalf of the applicant was responded to by the respondents vide the impugned letter dated 14.09.2016 stating to the effect that in as much as the RMB had opined the disability of the applicant to be neither attributable to nor aggravated by service in terms of Rule-153 of the Pension Regulations for IAF, 1961(Part-I), the primary conditions for the grant of disability pension of the disability being either attributable to or aggravated by service and the degree of disablement being assessed at 20% or more did not stand fulfilled. In terms of Rule-153 of the Pension Regulations for IAF, 1961 (Part-I), the primary conditions for grant of disability pension are as under:-

> ***"(i) Disability must be either attributable to or aggravated by service.***
> ***(ii) Degree of disablement should be assessed at 20% or more."***

with it having been stated through the said letter as under:-

> ***"Since, RMB recommended his disability as neither attributable to nor aggravated by AF Service that caused non-fulfilment of the criteria(a) as above, therefore, it is regretted to inform that your client is not***

entitled for grant of disability element as per rules mentioned above."

4. The applicant submits that the disability of the applicant has been wrongly assessed @15-19% for life qua the disability of Type-II Diabetes Mellitus and placed reliance on the Ministry of Defence letter no. 16036/DGAFMS/MA(Pens)/Policy dated 20.07.2012 which states therein to the effect:-

"GUIDE TO MEDICAL OFFICERS: ASSESSMENT OF DISABILITY PERCENTAGE IN DIABETES MELLITUS AND EPILEPSY CASES

1. There are no laid down guidelines for assessment of disablity percentage in regard to Diabetes Mellitus and Epilepsy cases in Guide to Medical Officers (Military Pension) 2008. Due to lack of clear policy, problems are being faced in final adjudication and it is difficult to maintain uniformity. It is even more difficult to file reply in court cases.

2. Guidelines on assessment of disability percentage in Diabetes and Epilepsy cases in consultation with Senior Consultant (Medicine) have been framed. The details are as under:

(a). Diabetes Mellitus (DM):

(i). DM Type II, on Oral Hypoglycemic agents(OHA)	***:20%***
(ii) DM Type II, on insulin without target	***: 30%***
(iii) DM Type 1/ Type II with TOD	***:40% and above***
(iv) Impaired Fasting Glucose / Impaired Glucose tolerance*	***As per clinical status : less than 20%***

(b) Epilepsy:

.

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3. These guidelines on assessment of Diabetes and Epilepsy are already in vogue at the level of Appeal medical board and assessment on the basis of these guidelines has already been accepted by the Appellate committee and Pension Sanctioning Authority.

4. This has the approval of DGAFMS.

5. Submitted for concurrence please."

5. It has been further submitted on behalf of the applicant that the contents of this letter dated 20.07.2012 have been granted concurrence on MoD Letter no. AirHQ/99801/4/DAV(Med) dated 12.05.2023 to contend to similar effect.

6. Inter alia, it is also submitted on behalf of the applicant to the effect that in as much as the disability of the applicant had its onset on 21.02.2003 as per the Statement of the Case in Part-IV of the RMB dated 20.10.2008 which onset was soon after the posting of the applicant at 11 Wg, Tezpur from 10.10.1994 to 16.12.1998 in his previous posting which was a stressful posting. The applicant has further submitted that stress causes and precipitates Diabetes Mellitus Type-II. Inter alia, the applicant submits that he joined the Indian Air Force in a fit medical category after having undergone thorough Medical Examination without any note of any disability recorded on the records of the respondents qua the applicant and that in the absence of any cogent reasons having been given by the medical authorities as to why the said disability could not have been ascertained to have been in existence at the time of induction of the applicant in the Indian Air Force, the said disability has to be presumed to have arisen due to the stress and strain of military service.

7. The applicant also submits that the nature of his duties of working in the MT R&S section required servicing and maintenance of a large number of vehicles as an electrical technician to meet the emergent requirements. Inter alia, the applicant submits that whilst deployed at 11 Wing, Tezpur at Assam, he was working in the Air Field Lighting system and used to work in shifts in day and nights on round the clock basis and used to carry out the Defect Investigation of CCR(Constant current regulators) and arrester barriers and was posted for around four years prior to his next posting at AFND New Delhi and had also been deployed for PAD/GD and exercises. Inter alia, reliance was placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in CA No. 4949/2013 in ***Dharamvir Singh Vs. UOI & Ors.*** with specific observations in 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."

8. Likewise, reliance was 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 decided on 13.02.2015 in Civil Appeal No. 2904/2011 to contend to similar effect. Furthermore, in terms of the verdict of the Hon'ble Supreme Court in ***UOI & Ors. vs Ramavtar*** in Civil Appeal No. 418/2012 decided on 10.12.2014, the applicant

sought the rounding off the disability element of pension from 20% to 50% for life with effect from the date of discharge.

9. On behalf of the respondents, it was submitted to the effect that the disability that the applicant suffers from Diabetes Mellitus Type-II as averred in the Counter Affidavit of the respondents was a metabolic disease of unknown origin and environmental factors with genetic susceptibility to determine the onset of Type II Diabetes Mellitus and that epidemiological studies show that Type II Diabetes Mellitus was associated with overweight specially when combined with obesity and under activity with reference having been made on behalf of the respondents to Para-26 of Chapter-VI of the GMO(MP), 2008 and Davidson Principles and Practice of medicine 22nd Edition. The respondents thus submit that the disability that the applicant suffers from was neither attributable to nor aggravated by military service. Inter alia, the respondents placed reliance on the verdict of the Hon'ble Supreme Court in ***UOI & Ors. Vs. Wing Commander S.P. Rathore*** in Civil appeal no. 10870/2018 dated 11.12.2019 to submit to the effect that the disability of Type-II Diabetes Mellitus assessed by the RMB at less than 20% i.e. 15-19%, in terms of Regulation-37(a) of the Defence Service Regulations Pension Regulations for the Air Force, 1961, the applicant is not entitled to the grant of disability

element of pension. Inter alia, the respondents submitted to the effect that as held in OA 121/2021 vide order 11.09.2023 by the AFT(RB), Chennai in the case of ***Ex Sub M Vijaykannan vs. UOI & Ors.***, the disability of the applicant of Type-II Diabetes Mellitus primarily is a lifestyle disorder with genetic disposition without evidence of any link whatsoever to military service and was not sustainable and thus the OA ought to be dismissed.

ANALYSIS

10. During the course of hearing on 10.10.2023 in view of assertions made in Para 4.4 of the Counter Affidavit of the respondents dated 27.04.2017 which is to the effect:-

> ***"That in reply to Para 4.4 it is accepted to extent that he was medically fit at the time of enrolment, however mere occurrence of any disease in service does not mean that has happened due to service. There are certain other factors also which instigate the occurrence of disease. RMB has considered his disability Type 2 DM as neither attributable to nor aggravated by service "(Reason Metabolic disorder with onset in peace station (Delhi). No close time association with strain/stress of Field/HAA/ Clops/ service. Hence NANA in terms of para 26, chapter VI of GMO 2008). The percentage of disablement was assessed as 15-19% for disability Type 2 DM. Composite assessment was assessed as 15-19% for lifelong. His RMB was approved by Dy PMO HQ MC, IAF, dated 03 December 2008."***

which reasons were not reflected in the original RMB produced by the respondents, in as much as the only reasons for opining the disability of Diabetes Mellitus Type-II to be neither attributable to nor aggravated by military service was stated to be that the disability was a constitutional disorder as stated in the said RMB as under:-

"

PART-V

OPINION OF THE MEDICAL BOARD

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)	Reason/Cause/Specific Condition & period in Service
DM TYPE-II(OLD)	**NO**	**NO**	**YES**	Constitutional Disorder
Note: A Disability "Not Connected with Service" would be neither Attributable nor aggravated by Service.				

"

the respondents were directed to produce the RMB on which they relied vide the averments made in Para 4.4 of their Counter affidavit. In relation thereto, on behalf of the respondents had submitted a copy of the comments dated 16.11.2023 of Sqn Ldr AV(Med) which reads to the effect:-

> ***"2. As per the medical records i/r/o Ex-716090 JWO Harvinder Singh available at this sub-dte, the RMB (AFMSF-16) dated 20 Oct 2008 assessed his disability @ 15- 19% and considered as neither attributable to nor aggravated by service. The reason at Part V of AFMSF-16 has been mentioned as "Constitutional Disorder. The constitutional diseases are those diseases***

which has no causal connection with the military service conditions and which occurs commonly in civil population also.
3. In this instant, the same reason has been elaborated in counter affidavit as "metabolic disorder with onset in peace station (Delhi). No close time association with strain/ stress of Field/ HAA/CI Ops/service. Hence, NANA in terms of Para 26, Chapter VI of GMO 2008"."

thus stating to the effect that there has been elaboration made in the counter affidavit as "metabolic disorder with onset in peace station (Delhi) and no close time association with strain/stress of Field/HAA /CI Ops/Service and apparently the reasons for the same had not been detailed even in the submission of the document dated 16.11.2023 on behalf of the respondents. **The reasoning put forth by the RMB thus is only to the effect that the disability that the applicant suffers from was a constitutional disorder without stating the reason as to why it was so.**

11. The posting profile of the applicant submitted by the respondents pursuant to order dated 10.10.2023 is to the effect:-

"

PART II
POSTING PROFILE 716090 EX JWO HARVINDER SINGH

1. Give details of the service (P=Peace OR F= Field/Operational/Sea Service) (Copy of paramount card and Part-II orders for service in Fd/Mod Fd/CI Ops/HAA/ sea service/operational area/Others for the indl undergoing RMB to be att)					
Sl. NO	From	To	Unit	Place/Ship	P/F(HAA/Ops/ Sea service/)/Mod Fd
(a)	10 Sep 86	02 Mar 89	CTI(U)	Bangalore	Peace

(b)	03 Mar 89	09 Oct 94	AFS HAKIMPET	Hyderabad	Peace
(c)	10 Oct 94	06 Dec 98	11 Wg	Tezpur	Modified Field
(d)	07 Dec 98	12 Oct 03	AFS New Delhi	New Delhi	Peace
(e)	13 Oct 03	27 May 07	815 SU	Mount Abu	Peace
(f)	28 May 07	16 Oct 08	9 BRD	Pune	Peace

"

12. The onset of the disability was on 21.02.2003 as already observed herein above in the 4th posting of the applicant and after more than 16 years 4 months with it being apparent from the RMB proceedings itself as indicated vide response to Paras-2,3,5(a),(b) thereof to the effect:-

> ***"2. Did the disability exist before entering service?(Y/N/ could be) NO***
> ***3. In case the disability exist 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.***
> ***5.(a) Was the disability attributable to individuals own negligence or misconduct(If yes, in what way?) No, N/A***
> ***(b) If not attributable, was it aggravated by negligence or misconduct? No, NA",-***

that there is nothing to indicate that the disability was in existence before the applicant joined the military service, nor as to why the Medical Board could not have ascertained the existence of the disability before induction of the applicant into military service, nor is

there anything to indicate that the applicant was responsible for any contributory factors for the onset of the disability. The Medical Case sheet annexed with the RMB also does not show any contributory factor of any kind against the applicant. The applicant is also not indicated to be overweight on the medical examination in Part-II in relation to his physical capacity qua weight states as under:-

> ***"3(a) Physical Capacity***
> ***(i)Height 168 m (ii) Weight Actual 66 Kg***
> ***(iii) Ideal W 61.5 Kg (iv) Over weight Nil***
> ***(v) Waist 86 cm (vi) Chest full Expiration 90 cm (vii) Range of Expansion 05 cm"***

which indicates that the applicant was not overweight, in view thereof the contention raised by the respondents that the disability that the applicant suffers from was due to any metabolic disorder of which there is no mention in the RMB or was due to any lifestyle factors of the applicant is not brought forth even remotely. In these circumstances, the reliance that has been placed on behalf of the respondents on the order dated 11.09.2023 of the AFT(RB), Chennai in OA 121/2021 in the case of ***Ex Sub M Vijaykannan vs. UOI & Ors.,*** is wholly misplaced. This is so in much as laid down by the Hon'ble Supreme Court in ***Ex CFN Narsingh Yadav Vs UOI & Ors.*** in Civil Appeal no. 7672/2019, each case has to be determined on its own facts in relation to the aspect as to whether the disability that the

applicant suffered from was due to the strenuous service tenure or not, and as observed in ***Ex Sub M Vijaykannan*** (Supra) vide Para- 16 thereof, it has been observed to the effect:-

> ***"16. The Tribunal finds that not even an iota of evidence linking Military Service as a cause of attributability has been brought to the fore in this OA which gives us no leeway in considering a lenient view while deciding this case.",***

thus making it apparent that facts of the said case did not bring forth any linkage of any attributability of the disability to military service.

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)*** ,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 service 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 to the effect:-

"6. Causal connection:
For award of disability pension/special faraily 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) <u>Injuries:</u>
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) <u>Disease:</u>
(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 contacted 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. Regulation 423 of the Regulations for the Medical Services of the Armed Forces 2010, provides 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."

(emphasis supplied),

has not been obliterated.

16. The verdict of the Hon'ble Supreme Court in ***Dharamvir Singh Vs. UOI & Ors***. vide Para-33 thereof, also stipulates 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 observe that the prayer for the 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*** Vs. ***Rajbir Singh*** (Civil Appeal 2904/2011) dated 13.02.2015.

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 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)

19. It is essential to observe that vide the verdict of the Hon'ble Supreme Court in Civil Appeal no. 5970/2019 titled as ***Commander Rakesh Pande vs UOI & Ors.,*** dated on 28.11.2019, wherein the applicant thereof was suffering from **Non-Insulin Dependent Diabetes Mellitus(NIDDM) and Hyperlipidaemia the grant of disability pension for life@ 20% broad banded to 50% for life was upheld by the Hon'ble Supreme Court.**

20. In the circumstances of the instant case, it is apparent that the disability which had its onset after 16 years and 4 months of the applicant having joined the military service has to be held to be attributable in the specific circumstances of the instant case where the RMB does not bring forth any contributory factors from the side of the applicant with there being no delay in relation of any facts by the respondents as to show what was the metabolic disorder in the instant case by the applicant was not even overweight, the disability that the applicant suffers from has to be held to attributable to and aggravated by military service and it is essential to observe that in terms of Para-26 of Chapter-VI of GMO(MP), 2008 itself stress and strain of military service. In the circumstances of the instant case, the disability of Diabetes Mellitus Type-II has to be held to be attributable to and aggravated by military service.

21. As regards, the contentions raised on behalf of the respondents in the instant case that the disability been assessed with a percentage of disablement at less than 20%, it is essential to observe that in terms of the MoD Letter no. AirHQ/99801/4/DAV(Med) dated 12.05.2023 and letter no. 16036/DGAFMS/MA(Pens)/Policy dated 20.07.2012, the disability of Diabetes Mellitus Type-II apparently cannot be assessed with a percentage of disablement less than 20% in terms of

guidelines laid down by the Ministry of Defence themselves. Thus, in the facts and circumstances of the instant case the reliance that has been placed on behalf of the respondents on the verdict of the Hon'ble Supreme Court in ***UOI & Ors. Vs. Wing Commander S.P. Rathore*** in Civil appeal no. 10870/2018 dated 11.12.2019 is wholly misplaced.

CONCLUSION

22. The OA 1361/2016 is allowed. The applicant is thus entitled to the grant of disability element of pension @20% for life for the disability of Diabetes Mellitus Type-2(Old) with rounding off to 50% for life, from the date of discharge, which in terms of the verdict of the Hon'ble Supreme Court in ***UOI & Ors. vs Ramavtar*** in Civil Appeal No. 418/2012. However, as the OA has been filed with much delay on 17.12.2016, the arrears of the disability element of pension shall commence to run from a period of three years prior to the institution of the present OA.

23. 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 8th day of February, 2024.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/TS/