

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

**O.A. No. 1522 of 2018**  
**with**  
**M.A. No. 1593 of 2018**

**In the matter of :**

**Ex Hony Nb Sub Dinesh  
Kumar Sharma**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant : Shri V.S. Kadian, Advocate**

**For Respondents : Shri Rajesh Kumar Das, Sr. CGSC**

**CORAM :**

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

**ORDER**

**M.A. No. 1593 of 2018 :**

Vide this application, the applicant seeks condonation of delay of 5015 days in filing the OA. In view of the law laid down by the Hon'ble Supreme Court in the case of **Deokinandan Prasad Vs. State of Bihar [AIR 1971 SC 1409]** and in **Union of India & Ors. Vs. Tarsem Singh [2009 (1) AISLJ 371]**, delay in filing the OA is condoned.

MA stands disposed of accordingly.

**O.A. No. 1522 of 2018 :**

Invoking the jurisdiction of the Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 read as under :

- (a) Quash and set aside the Impugned letter No. 14676187y/sp-4/Pen dated 15.06.2018. And/or**
- (b) Direct respondents to treat the disabilities ID (i) NIDDM, ID (ii) HYPERTENSION ID (iii) HYPERLIPEDEMIA of the applicant as attributable to or aggravated by military service and grant him disability element of pension along with benefits of rounding off. And/or**
- (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. And/or**
- (d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case along with cost of the**

***application in favour of the applicant and against the respondents.***

2. Briefly stated, the facts of the case are that the applicant was enrolled in the Indian Army on 28.09.1977 and was discharged from service on 30.11.2004 in low medical category P3(P). Thereafter, the applicant was granted two years' extension of service upto 30.09.2005, however, due to being in low medical category, the applicant was discharged on 30.11.2004 i.e. before commencement of extension. Before his discharge, the applicant was brought before the Release Medical Board (RMB) held on 14.10.2004. The RMB assessed his disabilities, (a) NIDDM @ 20% (b) OBESITY @ 1-5% (c) HYPERLIPEDEMIA @ 1-5% and (d) HYPERTENSION @ 30%, with composite degree of disablement @ 40% for life. While the disabilities IDs (a), (b) and (c) were held as 'neither attributable to nor aggravated by military service (NANA), the disability ID (d) Hypertension was conceded as 'aggravated due to stress and strain of military service'.

3. The claim of the applicant for grant of disability pension was rejected by the PCDA (P) Allahabad vide letter dated

04.04.2005 as the Medical Advisor (P) attached with the PCDA had opined that all four disabilities were metabolic/constitutional disorders not related to military service and the onset of the disabilities was in peace area and hence all the disabilities were considered as 'neither attributable to nor aggravated by military service'. The said decision was communicated to the applicant vide EME Records letter dated 26.04.2005 with an advice to file an appeal within six months. However, the applicant did not file an appeal, instead he filed a petition dated 01.11.2006 for grant of disability pension. The said petition was treated to be an appeal and was processed to AG/PS-4 vide EME Records letter dated 13.01.2007. The IHQ, MoD (Army) (AG/PS-4) forwarded sanction of DGAFMS for conducting of Appeal Medical Board (AMB) of the applicant and accordingly all the medical documents of the applicant were forwarded to Base Hospital, Delhi Cantt for AMB, however, since the applicant was unwilling to appear before the AMB and tendered an unwillingness certificate, all the documents were returned

along with the unwillingness certificate of the applicant dated 26.11.2007.

4. The applicant had then submitted a petition dated 24.02.2018 for grant of disability pension which was rejected vide letter dated 22.03.2018. Thereafter, an Appeal-cum-Legal Notice dated 11.05.2018 was served on the respondents on behalf of the applicant which was also rejected by the respondents and legal notice replied. Aggrieved by this, the applicant has filed the present OA.

5. Learned counsel for the applicant submitted that the applicant, at the time of joining the service, was declared medically and physically fully fit and no note was made in his medical record that the applicant was suffering from any disease at that time and that any medical disability contracted by him during the course of his service should be treated as attributable to/aggravated by the stresses and strains of his service. Learned counsel submitted that the applicant was diagnosed with NIDDM on 24.08.2002 when he was posted at Gudaspur and thereafter the applicant was diagnosed with

NIDDM along with Obesity, Hyperlipidemia and Hypertension on 21.03.2003 while the applicant was posted at Jalandhar and thus all these disabilities were a consequence of the duties performed by the applicant while in military service. Learned counsel further added that during his entire service tenure, the applicant was posted to various peace/field stations and submitted that the applicant had served in extremely stressful and strenuous conditions with challenging climatic conditions and environment, that all this had put tremendous mental and physical pressure on the applicant and this took a toll on his health causing the disabilities in question.

6. Learned counsel further submitted that while denying the disability pension, the respondents failed to appreciate that as per Rules 5 and 14(b) of the Entitlement Rules for Casualty Pensionary Awards, 1982 (hereinafter referred to as 'Entitlement Rules, 1982'), which provide that in case of discharge from service in low medical category, if no note is on record at the time of joining of service, the deterioration in health is to be presumed due to service conditions. He further

relied on various provisions of the Entitlement Rules, 1982 to submit that any disease contracted during service, would be presumed to be attributable to military service.

7. Learned counsel placed reliance on the judgments of the Hon'ble Supreme Court in **Dharamvir Singh Vs. Union of India and Ors.** [(2013) 7 SCC 316], **Union of India & Anr. Vs. Rajbir Singh** [2015 (2) SCALE 371], **Union of India and others Vs. Manjit Singh** [AIR 2015 SC 2114], **UoI & Ors. Vs Angad Singh Titaria** [AIR 2015 SC 1898] and **Sukhvinder Singh Vs. UoI & Ors.** [2014 STPL (web) 468 SC] wherein based on the ruling in *Dharamvir Singh (supra)*, disability pension was allowed to the claimants, and the orders passed by the Tribunal. It has been submitted on behalf of the applicant that that the respondents' action in denying the disability pension is unjustified and unlawful, when the disabilities recorded by the RMB occurred during the military service and got worsened while performing military duties and it was held by the Hon'ble Supreme Court that an Army personnel shall be presumed to have been in sound physical and mental condition

upon entering service except as to physical disability noted or recorded at the time of entrance and in the event of his being discharged from service on medical grounds, any deterioration in his health, which may have taken place, shall be presumed due to service conditions. Learned counsel further contended that when the individual was found medically fit at the time of joining the army but subsequently detected with a disability during service, the respondents have to provide cogent reasons for denying the disability pension and without giving any sufficient cause for denying the disability pension would be unjustified and hence in view of the law laid down by the Hon'ble Apex Court, the opinion of the RMB, and the decision of the respondents may be set aside and the applicant may be granted disability pension.

8. *Per contra*, learned counsel for the respondents contended that the applicant is not entitled to the relief claimed since the disabilities of the applicant were considered as "Neither Attributable to Nor Aggravated by Military Service" by the MA (P) attached to the pension sanctioning authority being

metabolic/constitutional disorders and not related to military service and onset of the same was in peace area and, therefore, the disabilities do not fulfill the twin conditions in terms of Regulation 173 of the Pension Regulations for the Army, 1961 (Part-I) of being assessed as 'attributable to or aggravated by military service' and assessed at 20% or more, as the case may be, and, therefore, the applicant is not entitled to disability pension. He prayed that the OA may be dismissed.

9. We have heard the learned counsel for the parties and have perused the record.

10. It is an undisputed fact that at the time of joining the Indian Army in September, 1977, the applicant was found medically and physically fully fit, and that the disability 'NIDDM' was first diagnosed in August, 2002 while the applicant was posted at Gurdaspur. Thereafter, the applicant was found to be suffering from NIDDM along with obesity, hyperlipidemia and hypertension in March, 2003. It is also not controverted that at the time of discharge from service on

30.11.2004, the applicant was placed in low medical category P2(P).

11. The law on the issue of attributability/aggravation of a disability is already settled by the Hon'ble Supreme Court in the case of **Dharamvir Singh Vs. Union of India [(2013) 7 SCC 316]**, which has been followed in subsequent decisions of the Hon'ble Supreme Court and in a catena of orders of this Tribunal, wherein the Apex Court had considered the question with regard to grant of disability pension and after taking note of the provisions of the Pension Regulations, Entitlement Rules for Casualty Pensionary Awards, 1982 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, it was held by the Hon'ble Supreme Court that an Army personnel shall be presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance and in the event of his being discharged from service on medical grounds, any deterioration in his health, which may have taken

place, shall be presumed due to service conditions. The Apex Court further held that the onus of proof shall be on the respondents to prove that the disease from which the incumbent is suffering is neither attributable to nor aggravated by military service. The guidelines laid down vide the verdict in *Dharamavir Singh (supra)* are 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."*

12. The Hon'ble Supreme Court in the case of **Union of India & Ors. Vs. Rajbir Singh [2015 (2) SCALE 371]** decided on 13.02.2015, after taking note of its judgment in the case of *Dharamvir Singh (supra)* upheld the decision of this Tribunal granting disability pension and observed as under :

**"15. .... 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....."**

13. As per the amendment to Chapter VI of 'Guide to Medical Officers (Military Pensions), 2008, Para 26 thereof, Type 2 Diabetes Mellitus (also known as NIDDM) 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' 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. The said Para 26, Chapter VI of the GMO (MP), 2008, reads 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.”*

Further, the Hon'ble Supreme Court also in the case of **Commander Rakesh Pande Vs. Union of India & Ors. [Civil Appeal No. 5970 of 2019]** decided on 28.11.2019, has upheld the decision of the Armed Forces Tribunal granting disability pension in respect of NIDDM to the applicant therein. In the case at hand thereafter, the applicant was diagnosed with obesity, hyperlipidemia and hypertension along with NIDDM. As per the common knowledge and the information available in open domain, NIDDM can be linked to obesity, high cholesterol (hyperlipidemia), and hypertension.

14. As regards the disability ID 'Hypertension' is concerned, the same has already been conceded as 'aggravated due to stress and strain of military service' by the RMB. However, the opinion of the RMB was interfered with by the pension sanctioning authority and this disability along with other disabilities were held as neither attributable to nor aggravated by military service.

15. In this regard, it would be pertinent to refer to the judgment of the Hon'ble Supreme Court in the case of **Ex Sapper Mohinder Singh Vs. Union of India & Ors.** [Civil Appeal No. 104 of 1993] decided on 14.01.1993, wherein the Hon'ble Apex Court has observed that the administrative authority cannot sit over the opinion of a medical board while dealing with the case of grant of disability pension. The observations made in the judgment in the case of *Ex Sapper Mohinder Singh (supra)* being relevant is quoted below :

***"From the above narrated facts and the stand taken by the parties before us, the controversy that falls for determination by us is in a very narrow compass viz. whether the Chief Controller of Defence Accounts (Pension) has any jurisdiction to sit over the opinion of the experts (Medical Board) while dealing with the case of grant of disability pension, in regard to the percentage of the disability pension or not. In the present case, it is***

***nowhere stated that the petitioner was subjected to any higher medical Board before the Chief Controller of Defence Accounts (Pension) decided to decline the disability pension to the petitioner. We are unable to see as to how the accounts branch dealing with the pension can sit over the judgment of the experts in the medical line without making any reference to a detailed or higher Medical Board which can be constituted under the relevant instructions and rules by the Director General of Army Medical Core."***

16. In view of the decision of the Hon'ble Supreme Court in *Ex Sapper Mohinder Singh (Supra)*, we are of the considered view that the opinion of the RMB in respect of the disability hypertension was wrongly interfered with by the administrative authority and thus is unsustainable in law in view of the fact that the said disability was conceded as 'aggravated due to stress and strain of military service'.

17. In the present case, one of the grounds taken by the respondents for rejecting the claim of disability pension is that the disabilities were indicated to have occurred in peace area. Be that as it may, it has already been observed by the Tribunal in large number of cases that the peace area postings have their own pressure of rigorous military training and associated stress and strain of the service. It may also be taken into consideration that the most of the personnel of the armed

forces live without their family, work in the stressful and hostile environment, difficult weather conditions and under strict disciplinary norms, which put tremendous mental and physical stress and strain on the armed forces personnel. Therefore, in view of the discussion made in preceding paragraphs, all the disabilities of the applicant are held to be attributable to and aggravated by military service. However, as the disability obesity and hyperlipidemia have been assessed at less than 20% i.e. 1-5% each, these two disabilities do not qualify for the purpose of grant of disability pension in view of Para 173 of the Pension Regulations for the Army, 1961. As far as the other two disabilities i.e. NIDDM and Hypertension are concerned, the said disabilities were assessed by the RMB @ 20% and 30% for life, respectively. Hence, the applicant is entitled to disability element of pension in respect of these two disabilities along with benefit of rounding off.

18. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is held entitled for the disability element of pension in respect of the two

disabilities i.e. NIDDM @ 20% and Hypertension @ 30% for life, the composite assessment of which is being calculated as per MoD letter No. 16036/RMB/IMB/DGAFMS/MA (pens) dated 14.12.2009 as under :

Disability-NIDDM = 30% (disability with maximum percentage)

Disability-Hypertension (100-30) = 70 x 20/100 = 14%

Composite Assessment = 30 + 14 = **44%**

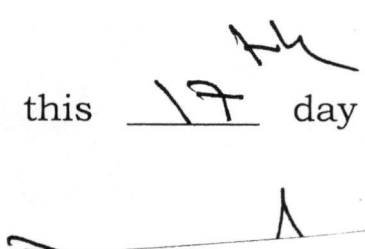
19. Therefore, the OA 1522 of 2018 is allowed. The respondents are directed to grant the disability element of pension to the applicant @ 44% for life which is directed to be rounded off to 50% for life, with effect from the date of discharge in terms of the judicial pronouncement of the Hon'ble Supreme Court in the case of **Union of India Vs. Ram Avtar (Civil Appeal No. 418/2012)** decided on 10.12.2014. However, as the applicant approached the Tribunal belatedly, in view of the law laid down by the Hon'ble Apex Court in *Tarsem Singh's case (supra)*, arrears will be restricted to three years prior to the date of filing of this OA i.e. 06.09.2018.

20. Accordingly, the respondents are directed to calculate, sanction and issue necessary PPO to the applicant within three

months from the date of receipt of copy of this order, *failing which*, the applicant shall be entitled to interest @ 6% per annum till the date of payment.

21. There is no order as to costs.

Pronounced in open Court on this 17 day of September, 2024.

  
[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

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

/ng/