

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

J..

OA 17/2020

Ex MWO Gawali Ganesh Keshavrao ..... Applicant

VERSUS

Union of India and Ors. .... Respondents

For Applicant : Mr. Praveen Kumar, Advocate

For Respondents : Dr. Vijendra Singh Mahndiyani, Advocate

CORAM

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

ORDER  
06.02.2024

Vide our detailed order of even date we have allowed the OA 17/2020. 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)

(REAR ADMIRAL DHIREN VIG)  
MEMBER (A)

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**Ex MWO Gawali Ganesh Keshavrao** **... Applicant**

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**For Applicant** : Mr. Praveen Kumar, Advocate

**For Respondents** : Dr. Vijendra Singh Mahndiyan, Advocate

**CORAM :**

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

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

**ORDER**

1. The applicant vide the present O.A 17/2020 has made the following prayers:-

*“(a) Quash and set aside the impugned letter dated 17 Aug 2018.*

*(b) Direct Respondents to grant the disability Pension@40% and rounding off the same to 50% for life to the applicant with effect from 01 Jun 2018 i.e. the date of discharge 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 fact and circumstances of the case.”*

2. The applicant Ex MWO Gawali Ganesh Keshavrao was enrolled in the Indian Air Force on 09.05.1986 and was discharged on 31.05.2018 under the clause “On attaining the age of superannuation”

after rendering total 32 years and 23 days of service. As averred in the counter affidavit dated 31.08.2020 of the respondents, he underwent the initial medical examination at the time of his enrolment and was declared fit in medical category 'AYE' vide AFMSF-2A dated 07.05.1986, but, he was later found to be overweight [Actual Weight: 76 Kg, SD: 6.8, Over Weight- 2SD] during Annual Medical Examination and was advised to reduce weight by regular exercises and diet control vide AFMSF-3B dated 24.02.2014. The applicant was initially placed in low medical category A4G4 (T-24) for the ID: CAD (IWMI) POST PCI RCA PTCA TO RCA DONE vide AFMSF-15 dated 18 Nov 2014. He was also detected to have Type-II Diabetes Mellitus and was placed in low medical category A4G4 (T-24) vide AFMSF-15 dated 07 Oct 2015. He was reviewed regularly for the disabilities. Subsequently, the air veteran was placed in composite low medical category A4G4 (T-24) vide AFMSF- 15 dated 25 Jan 2017. - That RMB dated 02.01.2018 assessed his disability ID (i) CAD (IWMI) Post PCI + Sent to RCA done) @ 30% and DM T-2 @ 20% (Compositely @ 40% for life and recommended it as being neither attributable to nor aggravated by AF Services.

5. The applicant was found fit to be released in low medical category, the RMB has considered his disabilities as neither

attributable to nor aggravated by service "[Reason: Dis-(i) Onset is on 29 Sep 2014 while serving in 43 Sqn AF, Jorhat while on T/D to Air HQ (VB) a peace Station. The disability is neither attributable nor aggravated by service vide 14 days charter of duties dated 17 Nov 2014. Dis-(ii) Onset is in Sep 2015 while serving in 43 Sqn AF, Jorhat a peace Station. There is no close time association with stress/strain of service. Hence, disability is neither attributable, nor aggravated by service in terms of Para 26 of Chapter VI of GMO 2002 (amended in 2008)]." The percentage of disablement was assessed as Dis-(i) 30% and Dis-(ii) 20% for life, with the composite assessment for both the disabilities assessed as 40% for life, and the disability qualifying element for disability pension was assessed as NIL% for life. The RMB was approved by JDMS (MB), Air HQ (RKP) dated 22 Jan 2018. On adjudication, AOC, the AFRO has also upheld the recommendations of RMB and rejected the disability pension claim vide letter No. RO/3305/3/Med dated 06 Apr 2018. The outcome was also communicated to the air veteran vide letter No. Air HQ/99798/1/697669/05/18/DAV/DP/RMB dated 17 Aug 2018 with an advice that he may prefer an appeal to the Appellate Committee within six months from the date of receipt of the letter. It is indicated through averments made in the OA that the first appeal dated



25.03.2019 was filed by the applicant with the respondents which had not been disposed of till the institution of the OA on 17.12.2019, and thus the same had not been disposed within a period of six months from the date of institution thereof and significantly as averred in response to Para 4.15 of the OA vide the counter affidavit dated 31.08.2020 the said first appeal was even then pending for decision. In terms of Section-21(2)(b) of the AFT Act, 2007, we consider it appropriate to take up the OA for consideration.

### **CONTENTIONS OF THE PARTIES**

3. The applicant places reliance on the posting profile as depicted in Part-I of his Personal Statement in the RMB dated 02.01.2018 which is as under:-

#### **PART I PERSONAL STATEMENT**

1. Give details of the service (P=Pease OR F= Field/Operational/Sea Service)									
SL. NO	FROM	TO	PLACE/SHIP	P/F	SL. NO	FROM	TO	PLACE/SHIP	P/F
(i)	09 May 86	15 Sep 87	WTI/MTI/Tambaram	P	(ii)	16 Sep 87	14 Jun 89	17 Wg/ Gorakhpur	P
(iii)	15 Jun 89	16 Jun 90	MTI/Tambaram	P	(iv)	17 Jun 90	21 Dec 92	8 FBSU/ Awantipur	F
(v)	22 Dec 92	16 Dec 94	28 Sqn AF/Pune	P	(vi)	17 Dec 94	15 Jul 97	112 HU/ Yelahanka	P
(vii)	16 Jul 97	21 Jul 02	12 Sqn AF/ Agra	P	(vii i)	22 Jul 02	14 Jun 07	33 Sqn AF/ Sulur	P
(ix)	15 Jun 07	24 Jul 11	48 Sqn/ Chandigarh	P	(x)	25 Jul 11	14 Nov 15	43 Sqn AF/ Jorhat	P

(xi)	15 Nov	Till date	Delhi/ AHQ(VB)	P	--	---	---	--	--
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4. The onset of the said disabilities is indicated in Part-IV in the Statement of the Case as under:-

“

**PART-IV**  
**STATEMENT OF CASE**

1. Chronological list of the disabilities
2. Clinical details : Attach clinical summary here giving the salient facts of
  - (a) Personal and relevant family history
  - (b) Specialist report **Opinions of Gp Capt G Keshavmurthy, Sr Adv(Medicine) & Cardiologist at AFCME dated 09 Aug 17, Gp Capt Kavita G Bhatnagar, Cl Spl(AV Med) at AFCME dated 05 Dec 17 and Maj Ankush Gupta, Cl Spl(Med) & Cardiologist at BHDC dated 24 Nov 17- attached.**
  - (c) Treatment- **As attached**
  - (d) Present condition in detail

Sl No	Present Disabilities	Date of Origin	Rank of the Individual	Place and unit where serving at the time
(I)	(I) CAD (IWMI) POST PCI + STENT TO RCA DONE	29 SEP 14	WO	Jorhat/ 43 Sqn, AF
(II)	(II) DIABETES MELLITUS TYPE-II (OLD)	SEP 15	WO	Jorhat/ 43 Sqn, AF

”

5. The opinion of the medical board in Part-V of the RMB proceedings is 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 and period in service
(I) CAD (IWMI) POST PCI + STENT TO RCA DONE(OLD)	No	No	Yes	Onset is on 29 Sep 2014 while serving in 43 Sqn AF, Jorhat, while on T/D to Air HQ(VB) a peace Station.  Disability is Not Attributable, Not Aggravated by Service vide 14 days Charter of Duties dated 17 Nov 14.
(II) DIABETES MELLITUS TYPE-II (OLD)	No	No	Yes	Onset is in Sep 2015 while serving in 43 Sqn AF, Jorhat, a peace Station. There is no close time association with stress/strain of service.  Hence, the disability is Not Attributable, Not Aggravated by Service in terms of Para 26 to Chapter VI of GMO 2002(amended in 2008).
Note: A disability "Not Connected with service" would be neither Attributable nor Aggravated by service) (This accordance with instructions contained in "Guide to Medical Officers(Mil Pension)-2002				

”

6. The applicant submits that the onset of the disability of Coronary Artery Disease on 29.09.2014 whilst the applicant was posted at 43 Sqn, AF/ Jorhat was in his 10<sup>th</sup> posting i.e. his last posting in the Indian Air Force. The applicant submits that during the period from 17.06.1990 to 21.12.1992, he was posted at 8 FBSU/ Awantipur,

a field area and further submits to the effect that he had been inducted in the trade duties of Flt/Eng and was exposed to various health hazards working near engines of aircraft and was exposed to very loud sound for long periods. Inter alia, the applicant submits that he worked under hazardous conditions throughout his tenure i.e. noise of aircraft/diesel engines, radiation of radio/radar/ice detector equipments, fumes of aviation fuels/commercial fuels/ oils/ lubricants/ acid electrolyte/ alkali electrolyte, high pressure compressed gas cylinders. The applicant also submits that he was also deployed on hectic duties and participated in PAD/GD and exercises. Inter alia, the applicant submits that he had also participated in firing range in war like situation with aircraft with live ammunition during his posting at 12 Sqn, Agra, Uttar Pradesh. The applicant also submits that in the year 2011 when he was posted to 43 Sqn, Jorhat, Assam where he continued to be posted till his discharge, his life was unstable due to frequent movement to other units. The applicant submits that his disabilities after 27 years of service in the Indian Air Force have to be held to be attributable to and aggravated by military service. The applicant also submits that his disability of Type-II Diabetes Mellitus (Old) which had its onset in September, 2015 also has to be held to be

attributable to and aggravated by military service which had its onset after 28 years of his service.

7. The applicant places reliance on the verdict of the Hon'ble Supreme Court in CA No. 4949/2013 in *Dharamvir Singh Vs. UOI & Ors.*, with specific reliance on observations in Para-28 thereof which reads 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. Reliance was also placed on behalf of the applicant on behalf of the applicant on the verdict of the Hon'ble Supreme Court in ***UOI & Ors. Vs. Rajbir Singh*** (2015) 12 SCC 264 to contend to similar effect, to submit that in as much as the applicant suffers from no disability before he was inducted into the Indian Air Force, the disabilities of Coronary Artery Disease(CAD) which had its onset after 27 years of service and Type-II Diabetes Mellitus which had its onset after 28 years of service without any contributory factors from the side of the applicant have to be held to be attributable to and aggravated by military service. A prayer was also made on behalf of the applicant seeking the broadbanding of the disability element of pension compositely assessed by the RMB @40% to @50% for life in terms of verdict of the Hon'ble Supreme Court in ***UOI & Ors. vs Ramavtar*** in Civil Appeal No. 418/2012.



9. On behalf of the respondents, it has been submitted to the effect that the applicant was found to be overweight during an Annual Medical Examination and was advised to reduce weight by regular exercises and diet control vide AFMSF-3B dated 24.02.2014 and had been found to be overweight by 2SD. The respondents thus submit that in the instant case the disability of Coronary Artery Disease (CAD) was rightly opined by the RMB was neither attributable to nor aggravated by military service in view of the 14 days Charter of duties of the applicant and in as much as the applicant had been found to be overweight, the disability of Type-II Diabetes Mellitus cannot also be held to be attributable to and aggravated by military service.

#### **ANALYSIS**

10. 16. 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 .0relation 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*.



11. 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 farailly 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 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.

12. 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.

13. 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."-*

14. In terms of directions dated 11.09.2023, the respondents produced the original RMB proceedings qua the applicant. It is essential to advert to Para-47 of the GMO(MP),2008 provides to the effect:-

*"47. Ischaemic Heart Disease (IHD)- IHD is a constitutional disease. It is almost always due to occlusive thrombus at the site of rupture of an atheromatous plaque in the coronary artery. Prolonged stress and strain hastens atherosclerosis by triggering of neurohormonal mechanism and autonomic storms. It is now well established that autonomic nervous system disturbances precipitated by emotions, stress and strain, through the agency of catecholamines affect the lipid response, blood pressure, increased platelet aggregation, heartrate and produce ECG abnormality and arrhythmias. Therefore where exceptional and prolonged stress and strain of service can reasonably be established, aggravation can be conceded. On the other hand acute and severe mental and physical stress of very short duration may precipitate acute cardiovascular catastrophe by suddenly creating marked reduction of blood supply relative to its demand and favours coronary spasm, resulting in ischaemia. Therefore intimate causal relationship must be accepted and attributability can be conceded.*

*The service in field and high altitude areas apart from physical hardship imposes considerable mental stress of solitude and separation from family leaving the individual tense and anxious as quite often separation entails running of separate establishment, financial*

crisis, disturbance of child education and lack of security for family. Apart from this, compulsory group living restricts his freedom of activity. These factors jointly and severally can become a chronic source of mental stress and strain precipitating an attack of IHD.

Severe regimentation in the day to day service life, working to deadlines, prolonged hours of uncongenial duties as inherent in the working of services. In addition, severe mental trauma associated with operations of high pressure planning and similar other duties in three services, severe physical stress and strain of field service and active operational areas, stresses of multitude of duties and responsibility must be given consideration while establishing causal relation between acute cardiovascular catastrophe and service.

The magnitude of physical activity and emotional stress is no less in peace area. Tough work schedules and mounting pressure of work during peace time compounded by pressure of duties, maintenance of law and order, fighting counter insurgency and low intensity war in deceptively peaceful areas and aid to civilians in the event of natural calamities have increased the stress and strain of service manifold. Hence no clear cut distinction can be drawn between service in peace areas and field areas taking into account quantum of work, mental stress and responsibility involved. In such cases, aggravation due to service should be examined in favour of the individual.

It is concluded that a myocardial infarction may be attributable to or aggravated by service or unrelated to service factors as follows:-

(a) Attributability will be conceded where: A myocardial infarction arises during service in close time relationship to a service compulsion involving severe trauma GE exceptional mental, emotional or physical strain, provided that the interval between the incident and the development of symptoms is approximately 24 to 48 hours. Attributability will be conceded in cases related to activities like high pressure planning for/in operation or extreme physical strain, but not in cases of stress and strain in office or extra/work duties which are matters of normal official life. Attributability can also be conceded when the underlying disease is either embolus or thrombus arising out of trauma in case of boxers and

surgery, infectious diseases. e.g. SBE, vaccinia, exposure to HAA, extreme heat. However, occurring in a setting of hypertension, diabetes vasculitis, entitlement can be judged on its own merits. IND and occurring in a setting of hypertension, diabetes vasculitis, entitlement can be judged on its own merits.

b) Aggravation will be conceded in cases in which there is evidence of:-

(i) Severe mental and/or emotional stress due to participation in operation or high pressure planning for operation or other similar activities involving equivalent stress and strain.

[ii] Severe physical stress in the field or other similar activities involving stress in peace or training during the preceding two weeks.

(iii) Atheroma manifesting itself clinically as angina, myocardial infarction, sudden death and abnormalities of the electrocardiogram.

In such cases aggravation will be conceded if an individual known to be suffering from ischaemic heart disease, or one in whom it can be otherwise established that there has been a failure to make a diagnosis of ischaemic heart disease, as a result of which he was not given suitable duties in a lower medical observation, but allowed to continue to perform duties in a category and kept under higher medical category with its connected stress and strain, resulting in illness of critical or catastrophic proportions leading to death.

There would be cases where neither immediate nor prolonged exceptional stress and strain of service is evident. In such cases the disease may be assumed to be the result of constitutional factors, heredity and way of life such as indulging in risk factors e.g. smoking. Neither attributability nor aggravation can be conceded in such cases. (emphasis supplied)"

15. Though, the respondents seek to contend that the applicant had been advised to reduce weight vide AFMSF-3B dated 24.02.2014, he was nevertheless as per the said Annual Medical

**Examination placed in medical category A1G1.** Significantly, the Charter of duties placed on the original records for the applicant dated 17.11.2014 reads to the effect:-

***“II Charter of Duties***

Day of week	Date	Hours		Duties performing On call/Off Duty
		Active Duty	Rest Period	
01	15 Sep 14	12	12	
02	16 Sep 14	12	12	
03	17 Sep 14	12	12	
04	18 Sep 14	12	12	
05	19 Sep 14	10	14	
06	20 Sep 14	10	14	
07	21 Sep 14	--	24	
08	22 Sep 14	8	16	
09	23 Sep 14	8	16	
10	24 Sep 14	8	16	
11	25 Sep 14	8	16	
12	26 Sep 14	10	14	
13	27 Sep 14	--	24	
14	28 Sep 14	--	24	

”

with the remarks of the Commanding officer to the effect that it is stated therein that the duty period in previous 15 days prior to the incident that is in relation to CAD was within laid down norms and **may not be the contributing factor** which is itself indicative to the

effect that the probability of the duties assigned to the applicant being contributory factors for the onset of the disability cannot be ignored.

16. **At the time of release, the applicant weighed 65 Kgs with the ideal body weight being 64 Kgs.** The Re-categorization medical board proceedings conducted vide AFMSF-15 dated 21.04.2015 depicts in the general examination as under:-

*“(d) GENERAL EXAMINATION:*

*Height-168 cm, Weight-70 Kg, IBW-65 Kg, SD-7.1 kg, BMI-24.80 Kg/ m<sup>2</sup>, Over Weight-> 1SD, Chest full expiration-92 cm, With deep inspiration - 97cm , Range of Expansion-05 cm. Waist-88 cm. Hip - 99 cm, WHR - 0.88Kg/m<sup>2</sup>, Pulse-84 /min regular, BP - 124/86 mm of Hg*

*No Pallor / Icterus / cyanosis / edema / clubbing / lymphadenopathy*

*No Xanthema / Xanthelesma.”*

which shows the weight of the applicant to be 70 Kgs with the ideal body weight being 65 Kgs with its being overweight to 1 SD falling within the marginally overweight with the opinion and recommendations of the medical board which was stated to the effect:-

**“(1) Opinion and Recommendations of the Medical Board:**

*This 47 yrs old serving air warrior of Fit Engr trade reported at SMC AF Stn New Delhi(while on 7/t) on 29 Sep 2014 with C/O Chest pain since morning. His ECG revealed Inferior wall MI. On the same day he was referred to BH Delhi Cant for further management by cardiologist Primary*



*angioplasty was done on 29 Sep 14. Post procedure recovery was uneventful. His 20 Echo shows Normal LV Function Categorization Medical Board was held at SMC 10 wing and individual placed in low medical category A4G4 (T-24) wef 18 Nov 14 and subsequently he was reviewed at MEC(East) and recommended to continue in LMC A4G4(T-24).*

*During current evaluation air warrior was found to have deranged blood sugar level. He was evaluated by Sr Adv(Cardio & Med) at 5 AFH and diagnosed as a case of Type II Diabetes Mellitus Started on oral hypoglycemic agents.*

*In view of the above medical board is recommends the individual to continue in LMC A4G4 (T-2-1) for CAD (IWMI) and placed in LMC A4G4 (T-24) for Type II Diabetes Mellitus."*

Thus there nothing on the record to indicate any further recommendation for reduction of body weight to the applicant.

17. Vide AFMSF-15 dated 07.10.2015 the applicant was found to suffering from disabilities of CAD (IWMI) POST PCI + STENT TO RCA DONE and DIABETES MELLITUS TYPE-II. There is nothing therein to indicate that the applicant was advised any further reduction in weight nor is anything to indicate that the applicant before the onset of disability of Diabetes Mellitus Type-II in September, 2015 was overweight. In as much as the general examination indicates to the effect:-

*“(d) GENERAL EXAMINATION:*

*Height-168 cm, Weight-70 Kg, IBW-65 Kg, SD-7.1 kg, BMI-24.80 Kg/ m<sup>2</sup>, Over Weight-> 1SD, Chest*



*full expiration-92 cm, With deep inspiration - 97cm ,  
Range of Expansion-05 cm. Waist-88 cm. Hip - 99  
cm, WHR - 0.88Kg/m<sup>2</sup>, Pulse-84 /min regular, BP -  
124/86 mm of Hg  
No Pallor / Icterus / cyanosis / edema / clubbing /  
lymphadenopathy  
No Xanthema / Xanthelesma.”,*

Thus indicating that the weight of the applicant was 70 Kgs, with the ideal body weight weighs 65 kgs, and the applicant being found marginally overweight.

18. In the circumstances of the instant case, there is nothing on the record to indicate that the disability that the applicant suffers from of the disability of Coronary Artery Disease(CAD) which had its onset in 27 years of service and the disability of Type-II Diabetes Mellitus which had its onset in 28 years of service in the Indian Air Force were due to any contributory factors from the side of the applicant.

19. Merely because the 14 days Charter of duties prior to the onset of the disability on 29.09.2014 did not reflect any excessive stress or strain does not detract from the cumulative stress and strain that the applicant had undergone for 27 years during his service with the Indian Air Force inclusive of the posting at 8 FBSU, Awantipur, a field area from 17.06.1990 to 21.12.1992. The disability of Coronary Artery Disease that the applicant suffers from in the instant case is thus held to be attributable to and aggravated by military service.

20. Qua the disability of Diabetes Mellitus Type II, 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.

21. 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.

22. Para-26 of Chapter VI the GMO (Military Pension), 2008 provides 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)*

As the said disability arose after 28 years of service with there being no contributory factors from the said of the applicant as per the original records produced by the respondents, the disability of Diabetes Mellitus Type-II in the instant case has to be considered as

being attributable to and aggravated by military service and thus the applicant is entitled to the grant of disability pension for the disability of Type-II Diabetes Mellitus and entitled to broadbanding of this disability element of pension @40% to @50% in terms of the verdict of the Hon'ble Supreme Court in **UOI & Ors. vs Ramavtar** in Civil Appeal No. 418/2012.

### **CONCLUSION**

23. The OA 17/2020 is allowed. The applicant is thus entitled to the grant of disability element of pension for the disability of CAD (IWMI) POST PCI + STENT TO RCA DONE and DIABETES MELLITUS TYPE-II (OLD) both compositely assessed @40% for life which is broadbanded @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, 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.

24. 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 6 day of February, 2024.

[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)

[JUSTICE ANU MALHOTRA]  
MEMBER (J)

/TS/