

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

O.A. No. 2041 of 2022

In the matter of :

Ex Nk (MACP Hav) Varinder Kumar ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Shri Ravi Kumar, Advocate

For Respondents : Shri D.K. Sabat, Advocate

CORAM :

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

O R D E R

The present application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, by the applicant, who is aggrieved by the denial of the disability pension for the disability DM Type-II suffered by him, and seeks disability pension along with rounding-off benefit to 50% along with arrears and interest.

2. Briefly, the facts of the case are that the applicant, having been found medically and physically fit, was commissioned in the Indian Army on 08.10.1999 and discharged from service on 31.03.2021 being in low medical

category S1H1A1P2E1(P). The Release Medical Board (RMB) held in February, 2021 assessed the applicant's disability 'TYPE II DIABETES MELLITUS' @ 20% for life and the same was held as 'neither attributable to nor aggravated by service' (NANA).

3. The initial claim for disability pension of the applicant was rejected by the Records The Dogra Regiment and the said decision was communicated to the applicant vide letter dated 20.07.2021. Against the rejection of his claim for disability pension, the applicant preferred the first appeal dated 20.09.2021 which was processed for consideration to the Records The Dogra Regiment and after rectification of certain observations raised by MoD vide letter dated 05.11.2021, the first appeal was re-submitted to the IHQ MoD (Army)/ADG (PS-4) vide Records The Dogra Regiment letter dated 02.12.2021, however, the same was not replied to. Aggrieved by the same, the applicant has filed the present OA for grant of disability pension.

4. 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 to the effect that the applicant was suffering from any disease at that time. Learned counsel submitted that the onset of the disability was on 09.07.2017 while the applicant was posted to Udhampur (J&K) a field area and that the posting of the applicant was changed. It is also submitted that in May, 2017, the applicant was transferred from Hyderabad to 62 RR Dogra (Behibag) J&K (Field Area) and that during his service to 62 RR, the applicant had to stay in Transit Camp, and while staying at Udhampur Transit Camp, he developed the disease in question and was admitted to MH, Udhampur for treatment. Learned counsel further submitted that after discharge from hospital, the applicant was again posted to Hasimara (WB), a Modified Field Area, however, in the RMB, the onset of the disease has been recorded in peace area, which is incorrect.

5. Learned counsel further submitted that the respondents committed an error in not considering the opinion of the initial medical board dated 13.09.2017 and all Re-Categorisation Medical Boards held on 25.05.2018, 15.11.2018 and 29.12.2020, wherein the disability of the applicant was conceded as 'Aggravated by service', however,

the RMB ignoring the opinion of the aforesaid medical boards, held the disability as neither attributable to nor aggravated by service. Learned counsel further submitted that about 22 years' long spell of stressful and challenging conditions of service with longer working hours without any relaxation in duties, little time to rest etc. undertaken by the applicant during his service tenure in difficult climates and terrains caused tremendous mental and physical pressure on the applicant and had impacted adversely on the health of the applicant and thus, in July, 2017, the applicant suffered from Type II Diabetes Mellitus. It is submitted on behalf of the applicant that even after having been diagnosed with the disability, the applicant continued to perform difficult and challenging tasks as above and which further aggravated the medical condition of the applicant.

6. Learned counsel for the applicant submitted that the instant matter is squarely covered by a catena of judgments of the Hon'ble Supreme Court including **Dharamvir Singh Vs. Union of India & Ors. [2013 (7) SCC 316]**, **Union of India & Anr. Vs. Rajbir Singh [2015 (2) SCALE 371]**, **Union of India & Ors. Vs. Angad Singh Titaria [(2015) 12**

SCC 257] along with various orders of the Tribunal (PB and RBs) and submitted that the respondents' action in denying the disability pension is unjustified and unlawful, when the disability recorded by the RMB occurred during the military service in field area and was caused due to stress and strain of service. In *Dharamvir Singh (supra)*, the Hon'ble Supreme 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 and the General Rules of Guidance to Medical Officers 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 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. 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. Learned counsel referred to Rules 5 and 14(b) of the Entitlement Rules, 1982 to submit that the deterioration of health is to be presumed to be due to service conditions; Rule 19 thereof to contend that if the worsening of a condition persists till the time of discharge, aggravation is to be accepted and also referred to various rules and regulations in support of the case of the applicant. Learned counsel, therefore, prayed that the disabilities in question may be held as attributable to and aggravated by military service and that the disability pension may be granted to the applicant.

7. *Per contra*, the learned counsel for the respondents contended that the applicant is not entitled to the relief claimed since the RMB, being an expert body, found the disability as "Neither Attributable to Nor Aggravated by Military Service" as the same occurred in peace station and that the applicant was managed promptly and appropriately. Learned counsel submitted that since the applicant's disability does not fulfil one of the twin conditions in terms of Regulation 53(a) of the Pension Regulations for the Army, 1961 (Part-I) (amendment 2008) as the same were assessed

as neither attributable to nor aggravated by military service, the applicant is not entitled to disability pension and, therefore, the OA deserved to be dismissed.

8. We have heard the learned counsel for the parties and have gone through the records produced before us.

9. It is an undisputed fact that at the time of joining the Indian Army on 08.10.1999, the applicant was found medically and physically fully fit and in SHAPE-1, and the applicant was diagnosed with disability 'Type II Diabetes Mellitus' in July, 2017, and, therefore, at the time of discharge from service, the applicant was placed in low medical category S1H1A1P2E1(P).

10. The law on the issue of attributability 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."

11. 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 judgement 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.....”

12. As per the amendment to Chapter VI of ‘Guide to Medical Officers (Military Pensions), 2008, Para 26 thereof, Type 2 Diabetes Mellitus is to be conceded as aggravated if the onset occurs while serving in Field/CIOPS/HAA/prolonged afloat service and having been diagnosed as ‘Type II Diabetes Mellitus’ are required to serve in these areas. Furthermore, *inter- alia*, stress and strain because of service reasons are stated therein to be known factors which can precipitate diabetes or cause uncontrolled diabetic state. 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 diabetes to the applicant.

13. In the present case, although the applicant has stated that at the time of onset, he was posted to Udampur in J&K, a field area, however, in the RMB proceedings, the disability of the applicant was indicated to have occurred in a peace area. Be that as it may, it has already been observed by the Tribunal in large number of cases that the armed 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 puts tremendous mental and physical stress and strain on the armed forces personnel. In the present case, there is no record to show that the applicant has suffered from diabetes due to hereditary and unhealthy life style. Thus, we hold that the disability ID Type-II Diabetes Mellitus is attributable to and aggravated by military service.

14. 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 disability 'Type II Diabetes Mellitus' @ 20% for life along with benefit of its rounding off from the date of discharge.

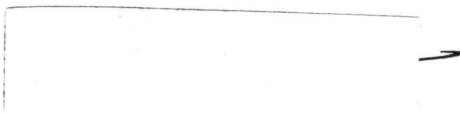
15. With the aforesaid, OA 2041 of 2022 is allowed. The respondents are directed to grant the disability element of pension to the applicant @ 20% for life, which is directed to be rounded off to 50% for life from the date of discharge in terms of the judicial pronouncement of the Hon'ble Supreme Court in the case of ***Union of India Vs. Ram Avtar (Civil Appeal No. 418/2012)*** decided on 10.12.2014.

16. 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.

17. In view of the above, pending MAs, if any, also stand closed. There is no order as to costs.

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


[JUSTICE RAJENDRA MENON]
CHAIRPERSON


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

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