

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

**O.A. No. 2142 of 2022**  
**with**  
**M.A. No. 4711 of 2023**

**In the matter of :**

**JWO Parmanand Singh (Retd.)** ... Applicant

**Versus**

**Union of India & Ors.** ... Respondents

**For Applicant** : Shri Ramniwas Bansal, Advocate

**For Respondents** : Ms. Jyotsna Kaushik, Advocate

**CORAM :**

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

**ORDER**

**M.A. No. 4711 of 2023 :**

Vide this application, the respondents sought for condonation of 31 days' delay in filing the accompanying counter affidavit. In view of the averments made in the application, the delay is condoned and the counter affidavit is taken on record. MA stands disposed of accordingly.

**O.A. No. 2142 of 2022 :**

Invoking the jurisdiction of this 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) To quash and set aside the applicant's impugned RMB proceedings to the extent the order denies grant of disability element of pension to the applicant.**

**(b) To direct the respondents to grant the disability element of pension @ 50%, broad-banded to 75%, along with all consequential benefits, with arrears and interest @12% p.a. w.e.f. date of discharge, by treating disease as attributable to and aggravated by military service, in view of the Hon'ble Apex Court Judgment in Rajbir Singh (Supra) & Dharamvir Singh (Supra), or**

**(c) To pass such orders, direction/directions as this Hon'ble Tribunal may deem fit and proper in accordance with law.**

2. The facts of the case, in brief, are that the applicant was enrolled in the Indian Air Force on 16.08.1985 and was discharged from service on 31.08.2021 in permanent low medical category A4G4(P). The Release Medical Board (RMB) held on 22.12.2020 assessed his disabilities, (a) TYPE II

DIABETES MELLITUS @ 30% for life; (b) ANAEMIA @ 5% for life and (c) PRIMARY HYPERTENSION @ 30% for life, with composite degree of disablement @ 50% for life and the same were held as 'neither attributable to nor aggravated by military service (NANA)'.

3. The AOC AFRO upheld the recommendations of RMB and rejected the disability pension claim vide letter No. RO/3305/3/Med dated 17.08.2021. The outcome of the same was communicated to the applicant vide letter No. Air HQ/ 99798/1/700696/11/21/DAV (DP/RMB) dated 11.11.2021 with an advice that he may prefer an appeal to the Appellate Committee within six months from the date of receipt of the letter. The applicant preferred Appeal-cum-Legal Notice dated 11.02.2022 against the rejection of the disability pension claim. Aggrieved by the non-disposal of his Appeal-cum-Legal Notice, the applicant has filed the instant OA for grant of disability pension.

4. Learned counsel for the applicant submitted that at the time of enrolment, the applicant was found mentally and physically fit for service and there is no note in the service documents that he was suffering from any disease

at that time and the disabilities of the applicant were detected during the service, hence the same are attributable to and aggravated by military service, and the respondents erred in rejecting the claim of disability pension stating that the RMB held the disabilities as neither attributable to nor aggravated by military service as the onset of the diseases was in peace stations. Learned counsel submitted in detail about the duties performed by the applicant in extremely stressful and strenuous conditions at various combat/field units with challenging and different geographical and climatic/environmental conditions during his prolonged service tenure; that the applicant had to perform rigorous trade duties as Clerk Accounts, including night shifts, at different locations of India including Air Force Station Ambala which is a frontline fighter base and in August, 2003 at Bagdogra, a fighter base; that the applicant used to perform stressful and strenuous tasks related to accounting, which are time bound work, such as processing bills/vouchers, updating salary details, preparation/scrutiny/updating expenditures of station along with additional duties as Night Guard Commander,

PAD, GD etc. and had to work beyond working hours on routine basis, and all this put tremendous mental and physical pressure on the applicant resulting into onset of the diseases in question.

5. 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. The learned counsel 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 service and worsening of the same during service would be treated as aggravated by military service and onus to prove otherwise lies with the respondents only; Rule 9 to submit that the onus of proof of condition of non-entitlement is not on the claimant but on the respondents; 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 submits that the first and second Appeal Medical Boards have wrongly considered the disabilities as NANA and he, therefore, prayed that the disabilities in question may be held as attributable to and aggravated by military service.

6. The 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]**, which has been considered and taken note of by the Hon'ble Apex Court in many judgments including **Union of India and Ors. Vs. Rajbir Singh (2015) 12 SCC 264** and **Union of India & Ors. Vs. Angad Singh Titaria [(2015) 12 SCC 257]** along with various orders of the Tribunal and submitted that the respondents' action in denying the disability pension is unjustified and unlawful, when the disability recorded by the RMB occurred during 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 a service 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.

7. *Per contra*, the learned counsel for the respondents controverted the arguments put forth on behalf of the applicant and submitted that the applicant is not entitled to the relief claimed since the RMB, being an expert body, opined the disabilities as "Neither Attributable to Nor

Aggravated by Military Service” for the reasons stated therein. The learned counsel submitted that the disability pension cannot be granted to the applicant as the disabilities of the applicant do not fulfil the mandatory eligibility conditions laid down in Para 153 of the Pension Regulations for the Air Force, 1961 (Part-I) and the applicant was diagnosed with the disabilities and was managed without any delay. Learned counsel submitted that the applicant was rightly denied the disability pension and, therefore, prayed for dismissal of the OA.

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 Air Force on 16.08.1985, the applicant was found medically and physically fully fit, and that it is after a long span of service of more than 21 years, that the applicant was diagnosed with the first disability in the year 2007 and thereafter the applicant suffered the other two disabilities in the years 2015 and 2016. It is also not controverted that at the time of discharge from service on 31.08.2021, the

applicant was placed in permanent low medical category A4G4(P).

10. 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."*

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 regards the first disability Type II Diabetes Mellitus, in terms of the amendment to Chapter VI of 'Guide to Medical

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

13. As regards the disability 'Primary Hypertension', we may refer to Para 43 of the Chapter VI of the 'Guide to Medical Officers (Military Pensions), 2008, wherein it is provided as under :

**“43. Hypertension - The first consideration should be to determine whether the hypertension is primary or secondary. If (e.g. Nephritis), and it is unnecessary to notify hypertension separately.**

**As in the case of atherosclerosis, entitlement of attributability is never appropriate, but where disablement for essential hypertension appears to have arisen or become worse in service, the question**

*whether service compulsions have caused aggravation must be considered. However, in certain cases the disease has been reported after long and frequent spells of service in field/HAA/active operational area. Such cases can be explained by variable response exhibited by different individuals to stressful situations. Primary hypertension will be considered aggravated if it occurs while serving in Field areas, HAA, CIOPS areas or prolonged afloat service.”*

A Coordinate Bench of this Tribunal in the case of **Col R.R. Panigrahi Vs. Union of India & Ors. [O.A. No. 1825 of 2018]** decided on 01.08.2019, considered the issue with regard to the onset of the disease of Primary Hypertension was in peace area with no history of service in field/HAA/prolonged afloat service, and allowed the OA. Moreover, in a recent judgment dated 20.08.2024 in **Union of India and others Vs. Ex Gnr Dhiraj Kumar & Anr. [CWP-19136-2024 (O&M)]**, the Hon'ble High Court of Punjab and Haryana upheld the decision of the AFT granting disability pension for hypertension.

14. In so far as the onset of the disabilities of the applicant stated to have arisen in peace area/station, it has already been observed by the Tribunal in large number of cases that peace stations have their own pressure of rigorous military training and associated stress and strain of the service and

that such a discrimination between postings in peace area or field/HAA/CI Ops areas to say there is no stress and strain of service in peace area should not be considered for the purpose of granting of disability pension. It may also be taken into consideration that the most of the personnel of the armed forces, during their service, work in the stressful and hostile environment, difficult weather conditions and under strict disciplinary norms.

15. Admittedly, the applicant was enrolled in the Indian Air Force on 16.08.1985 and the disabilities have occurred after prolonged service period and even after having been diagnosed with the said disabilities, the applicant continued to serve in the Air Force for a considerable period of time. Therefore, in view of the settled law on the point of attributability/aggravation, we hold that the disabilities suffered by the applicant as attributable to and aggravated by the military service. As the disabilities Type II Diabetes Mellitus, Anaemia and Primary Hypertension have been assessed by the RMB @ 30%, 5% and 30% for life, respectively, in terms of the Para 153 of the Pension Regulations for the Air Force, 1961, the applicant is entitled

to disability element of pension in respect of the two disabilities i.e. Type II Diabetes Mellitus and Primary Hypertension only along with benefit of rounding off, with the disability of Anaemia having been assessed at less than 20% (5%).

16. In view of the aforesaid judicial pronouncements and the parameters referred to above, O.A. No. 2142 of 2022 is allowed and the applicant is entitled for the disability element of pension in respect of the two disabilities i.e. Type II Diabetes Mellitus @ 30% for life and Primary Hypertension @ 30% for life, and the composite assessment of same is being calculated as per MoD letter No. 16036/RMB/IMB/DGAFMS/MA (pens) dated 14.12.2009 as under :

Disability-Primary Hypertension = 30%

Disability-Bronchial Asthma  $(100-30) = 70 \times 30/100 = 21\%$

Composite Assessment =  $30 + 21 = 51\%$

17. The respondents are directed to grant the disability element of pension to the applicant @ 51% for life which is directed to be rounded off to 75% 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.

18. 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.

19. There is no order as to costs.

Pronounced in open Court on this 27<sup>th</sup> day of September, 2024.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

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

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