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

O.A. No. 298 of 2019

In the matter of :

Lt Col Balakrishnan C Pillay (Retd) ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Shri I.S. Singh, Advocate

For Respondents : Shri Shyam Narayan, 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, seeking 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 was commissioned in the Indian Army on 22.12.1979 and retired prematurely from service on 30.06.2003 being in low medical category S1H1A1P2E1. While in service, in March, 1981, the

applicant, while coming back to JL Wing on cycle after completing 16 Km speed march, met with an accident where he had head-on collision with his course-mate and sustained severe head injury and was admitted to Military Hopsital, Belgaum. As a result of the injury sustained, the applicant then suffered Grand Mal seizures twice within a span of two hours. He was transferred to Command Hospital (SC) Pune for neurosurgeon's treatment and was placed in low medical category. Thereafter, in March, 2001, the applicant was diagnosed with DM Type-II and hence he was placed in low medical category P2 (Permanent) till his retirement. The Release Medical Board (RMB) held on 26.06.2003 assessed the applicant's disabilities (a) HEAD INJURY EFFECTS OF (ICD 209.0) @ 30% and (b) DM TYPE – II (ICD No.-25.0) @ 15-19%, with composite assessment of disablement @ 40% for life. While the first disability i.e. Head Injury was conceded as 'attributable to service', however, the second disability i.e. DM Type-II was held as 'neither attributable to nor aggravated by service' (NANA).

3. The initial claim for disability pension of the applicant was not processed as the applicant had retired prematurely

prior to 01.01.2006. Later, the applicant submitted an appeal dated 11.06.2018 for grant of disability pension in accordance with the GoI MoD letter No. 16(05)/2008/D(Pension/Policy) dated 19.05.2017 vide which the benefit of disability pension had been extended to all premature retirees even to those who retire before 01.01.2006. The applicant, aggrieved by non-grant of disability pension, 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 fully fit medically and physically, 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 explained about the accident and the severe head injury sustained by the applicant and the treatments for the same. He further submitted that the 23 years long spell of stressful and challenging conditions of service undertaken by the applicant and due to the during his service tenure in difficult climates and terrains which tremendous mental and physical pressure on the applicant had impacted adversely on the

health of the applicant and thus, in March, 2001, the applicant suffered from Diabetes Mellitus Type-II and due to the health conditions, the applicant took premature retirement from service in June, 2003.

5. Learned counsel for the applicant further 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]*** and the orders passed by the Tribunal and submitted 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 were caused due to stress and strain of service. Learned counsel referred to Rules 5 and 14(b) of the Entitlement Rules, 1982 to submit that the deterioration of health while in service is to be presumed to be due to service conditions if no note was made at the time of joining the service; 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.

6. Learned counsel for the applicant further placed reliance on the judgment of the Hon'ble Supreme Court in ***Union of India & Ors. Vs. Ram Avtar [Civil Appeal No. 418/2012]*** decided on 10.12.2014, wherein the Apex Court extended the benefit of broad-banding of the disability pension to all armed forces personnel as laid down in GoI MoD Policy dated 31.01.2001.

7. The respondents have filed their counter affidavit on 09.12.2019 wherein it was stated that on the petition submitted by the applicant, in accordance with the GoI MoD Policy letter dated 19.05.2017, the disability claim was adjudicated upon by the competent authority and vide AG's Branch letter dated 09.05.2019, the disability element of pension in respect of the disability ID (i) Head Injury, being held as attributable to service', was approved @ 30% w.e.f. 01.01.2006 to 31.12.2015 and broad-banded to 50% w.e.f.

01.01.2016 in terms of MoD Policy dated 05.09.2017 and necessary PPO was ordered to be issued accordingly. However, the claim for the disability ID (ii) DM Type-II was rejected because the same was held as neither attributable to nor aggravated by service. Learned counsel for the respondents contended that the applicant has approached the Tribunal after a delay of about 16 years from the date of retirement and pleaded dismissal of the present OA placing reliance on the judgment of Hon'ble Supreme Court in ***Union of India & Ors. Vs. Rajwanti*** and the orders of the Tribunal whereby the relief asked by the petitioners in the aforesaid cases was dismissed on the ground of delay.

8. Learned counsel further submitted that as the applicant's disability of DM Type-II does not fulfil the necessary condition for being eligible to get disability pension in terms of Regulation 53 of the Pension Regulations for the Army, 2008 (Part-I) of being assessed at 20% or more and being attributable to or aggravated by military service, thus the applicant is not entitled to disability pension for DM Type-II.

9. We have heard the learned counsel for the parties and have gone through the records. We find that the issues which need to be considered in this case are :

(i) Whether the applicant is entitled to disability pension for DM Type-II when it is held as NANA and also assessed at less than 20% ?

(ii) Whether the disability pension and broad-banding benefits are admissible from the date of retirement of the applicant ?

10. As regards Issue No. (i), it is an undisputed fact that at the time of joining the Indian Army on 22.12.1979, the applicant was found medically and physically fully fit and the applicant was diagnosed with the disability 'DM Type-II' in March, 2001, and at the time of retirement, the applicant was placed in low medical category P2 (Permanent).

11. 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."

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 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....."***

13. 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 'Diabetes Mellitus Type-II' 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. Specific relevant portions of Para 26, Chapter VI of the GMO (MP), 2008, read 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 .....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 ..... 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.

14. In the present case, although the disability was held as constitutional disorder, however, the probability of the long spell of service in different climatic and environmental

conditions and difficult terrain having contributed to mental stress and strain resulting in diabetes cannot be overlooked. Moreover, it has already been observed by the Tribunal in large number of cases that the armed force services 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. 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 DM Type-II is attributable to and aggravated by military service. As regards the assessment of the disability at less than 20%, we may refer to MoD Policy letter No. 16036/DGAFMS/MA (Pens)/Policy dated 20.07.2012 which lays down guidelines on assessment of disability percentage in Diabetes as under :

> ***"(a) Diabetes Mellitus (DM) :***
>
> ***(i) DM Type II, on Oral Hypoglycemic agents (OHA) without Target Organ Damage (TOD) : 20%***
>
> ***(ii) DM Type II, on insulin without organ damage : 30%***
>
> ***(iii) DM Type II/Type II with TOD : 40% and above As per clinical status***

(iv) Impaired Fasting Glucose/ Impaired Glucose Tolerance ***: less than 20%"***

15. Thus, as per the policy as referred to above, the disability percentage of DM Type-II cannot be assessed less than 20%. Therefore, in view of the above, the Issue No. (i) is answered in affirmative and in favour of the applicant.

16. As far as the Issue No. (ii) is concerned, as the applicant took premature retirement on 30.06.2003, we may refer to the order passed by the Tribunal in ***Maj (Retd.) Rajesh Kumar Bhardwaj Vs. Union of India & Ors. [O.A. No. 336 of 2011]*** **decided on 07.02.2012**, vide which all premature retiree armed forces personnel were allowed disability element of pension. Further, on the basis of the aforesaid order of the Tribunal, the respondents issued a policy in May, 2017 being GoI MoD letter No. 16(06)/2008/D(Pension/Policy) dated 19.05.2017 and the disability element of pension was allowed to the all pre-2006 Armed Forces personnel who were retained in service despite disability which is accepted as attributable to service and retired voluntarily or otherwise. However, the provisions of the said policy letter were made effective with effect from 01.01.2006. Hence, since we have held the disability DM

Type-II as attributable to and aggravated by service hereinabove, in view of the order of the Tribunal in *Maj (Retd) Rajesh Kumar Bhardwaj (supra)* and the policy letter dated 19.05.2017, the applicant is entitled to grant of disability element of pension with effect from 01.01.2006.

17. As regards the broad-banding of the disability pension, the initial order for broad-banding was issued vide MoD letter dated 31.01.2001 (Para 7.2). Subsequently, vide MoD letter dated 19.01.2010, the benefit was extended to armed forces personnel who were invalided out of service prior to 01.01.1996 and were in receipt of disability/war injury pension as on 01.07.2009. Thereafter, MoD vide letter dated 15.09.2014 extended the benefit of broad banding percentage of pension/war injury to armed forces personnel who were invalided out of service prior to 01.01.1996 and were in receipt of disability element/war injury pension as on 01.01.1996.

18. However, the issue of broad-banding was dealt with by the Hon'ble Supreme Court in its judgement dated 10.12.2014 in the case ***Union of India Vs. Ram Avtar (Civil Appeal No. 418/2012)*** and connected cases, wherein the

Apex Court has held that army personnel are entitled to the benefit of broad-banding of disability war injury portion of pension irrespective of being invalided out or discharged on their completion of term of engagement/or for any other reason. The Apex Court in its judgement dated 31.03.2011 in the case of ***Capt. K J S Buttar Vs. Union of India and Ors. [Civil Appeal No. 5591/2006]*** also held that the benefit of broad-banding is to be extended to all personnel irrespective of being invalided out of service or retired in low medical category on completion of service before or after 1996. Accordingly, the Issue No. (ii) is answered to the effect that the applicant is entitled to disability element of pension with regard to both the disabilities, compositely assessed @ 40% from the date of retirement with broad-banding of the same to 50% for life with effect from 01.01.2006.

19. 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 both the disabilities i.e. Head Injury Effects @ 30% and DM Type-II @ 20% 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 (1) = 30% (the disability with maximum percentage)
> Disability (2) (100-30) = 70 x 20/100 = 14%
> Composite Assessment = 30 + 14 = **44%**
> The rounding off composite assessment of 44% will be 50%.

20. Therefore, the OA is allowed. We hold that the applicant is now entitled to the disability element of pension with regard to both the above disabilities @ 44% for life with effect from 01.01.2006 which is to be further rounded off to 50% for life with effect from that date. Accordingly, the respondents are directed to grant the disability element of pension to the applicant @ 44% from 01.01.2006 rounded off to 50% for life from that date, after adjusting the amount qua the disability element of pension already paid to the applicant.

21. 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.

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

Pronounced in open Court on this 12th day of July, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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