

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

54.(Supplementary)

OA 487/2022

JWO Atma Prakash Srivastava MT/Fit (Retd) Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Rakesh Kumar Yadav, Advocate
For Respondents : Dr. V. S. Mahndiyan, Advocate

CORAM

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

ORDER
27.09.2024

Vide our orders of even date, we have allowed the application. Faced with the situation, learned counsel for the respondents makes an oral prayer for grant of leave to appeal under Section 31 of the Armed Forces Tribunal Act, 2007 to the Hon'ble Supreme Court. We find no question of law much less any question of law of general public importance involved in the matter to grant leave to appeal. Hence, the prayer for grant of leave to appeal is declined.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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

O.A. No. 487 of 2022
with
M.A. No. 1452 of 2023

In the matter of :

JWO Atma Prakash Srivastava
MT/Fit (Retd)

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri Rakesh Kumar Yadav, Advocate

For Respondents : Dr. Vijendra Singh Mahndiyan, Advocate

CORAM :

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

O R D E R

M.A. No. 1452 of 2023 :

Vide this application, the respondents seek condonation of 207 days' delay in filing the accompanying counter affidavit. In view of the averments in the application, delay is condoned and the counter affidavit is taken on record.

MA stands disposed of accordingly.

O.A. No. 487 of 2022 :

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

(a) Set aside the impugned order/letter vide letter No. their letter No. Air HQ/99798/1/677295/03/21/DAV(DP/RMB) dated 09 Nov 2021.

(b) Consider the facts and circumstances of the case in the light of above discussed Rules and Regulations as well as settled principles of law enshrined by the Hon'ble Supreme Court in Dharamvir Singh Vs. Union of India & Ors. (supra) and reiterated in Union of India & Anr. Vs. Rajbir Singh (supra) and Union of India Vs Angad Singh Titaria and award disability pension from the date of his discharge i.e. 31.03.2021, along with 10% p.a. interest on the arrears, as Applicant developed medical problems of PRIMARY HYPERTENSION with 30% disability, DIABITIESMELLITUSTYPE II (OLD)

with 20% disability and CVA.RT MCA INFARCT (OLD) with 50% disability, with composite assessment for all disabilities 70% for life time and was placed in Medical Category A4G4(P).

(c) Issue necessary orders to the respondents to consider the application for disability to be rounded off to 100% (which is rounded off from 70% to 100%), on the basis of Circular No 1(2)/97/D (Pen-C) issued by the Ministry of Defence, Government of India, dated 31.01.2001, the directions given by Hon'ble The Apex Court in the cases of K.J.S. Buttar (supra) and Ram Avtar (supra), as disability onset and caused to the Applicant, due to strain and stressful duties, during and while serving in Field Area, Operational Preparedness, Working Conditions/Environment and other secondary duties, which are wholly attributed to service, in terms of Regulation for the IAF 1961.

(d) Award Rs.50,000 towards cost of litigation, mental agony and harassment to the Applicant.

(e) Pass such other order / orders as this Hon'ble Tribunal may deem fit just & equitable in the facts and circumstances of the case.

2. The facts of the case, in brief, are that the applicant, having been found medically and physically fit after thorough medical examination, was enrolled in the Indian Air Force on 08.03.1983 and, on superannuation, he was discharged from service on 31.03.2021 in permanent low medical category A4G4 (P). The Release Medical Board (RMB) held on 26.06.2020 assessed the applicant's disabilities (a) PRIMARY HYPERTENSION (OLD) @ 30%; (b) DIABETES MELLITUS TYPE-II (OLD) @ 20% and (iii) CVA, RT MCA INFARCT (OLD) @ 50%; with composite assessment for all the disabilities @ 70% for life. However, the net assessment qualifying for disability pension was made as Nil. The RMB held all the disabilities as 'neither attributable to nor aggravated by military service' (NANA)'.

3. The initial claim of the applicant for disability pension was rejected by the AOC AFRO upholding the recommendations of the RMB, vide letter No. RO/3305/3/Med dated 22.06.2021. The decision was communicated to the applicant vide letter No. Air HQ/99798/1/677295/03/21/DAV (DP/RMB) dated 09.11.2021 with an option that he may prefer an appeal to

the Appellate Committee within six months from the date of receipt of the letter. Against the rejection of the claim, the applicant preferred the first appeal dated 09.08.2021. When the first appeal was not decided, the applicant also preferred second appeal dated 08.11.2021. Aggrieved by the non-disposal of the first and second appeal, the applicant has filed the instant OA seeking 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 that the applicant was suffering from any disease at that time and any disability contracted during service should be presumed to be due to service conditions. Learned counsel explained about various postings at various places including Nallya, Pathankot, Bagdogra, Madh Island, Nashik, Allahabad and Digaru from the service period between 1984 and March, 2021, where the applicant had performed various duties involving servicing and maintenance of all vehicles and additional duties such Guard duties, QRT on 24 hours basis from time to time, responsibilities to work in power house for operation and

maintenance of DG sets etc. Learned counsel further submitted that while the applicant was posted to Borgad (Nashik) from 20.04.2009 to 06.03.2012, he had to work 24x7 hrs while looking after and managing staff, handling inventory and installations, periodical servicing and maintenance of all vehicles of unit, duties of Manager CSD canteen with stressful duties of handling cash, account and inventory and that during the year 2010, the applicant was detailed for unit orderly officer's duties and night duties in addition to regular duties. It is submitted by the learned counsel that all this took a heavy toll on his physical and mental health and resultantly, the applicant was diagnosed with Primary hypertension and Type II DM on 12.11.2010 and later on 31.12.2010, the applicant suffered brain stroke; that even after having been diagnosed with the disabilities, the applicant continued to perform stressful and strenuous military duties till his discharge from service in March, 2021 due to which the medical condition of the applicant got worsened further and, therefore, the respondents committed grave error in denying disability pension.

7. Learned counsel further submitted that while denying the disability pension, the respondents failed to appreciate the provisions contemplated under 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. 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.

8. 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 various orders of the Tribunal, wherein 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 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 to be 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.

9. Learned counsel further placed reliance on the judgment of Hon'ble Supreme Court in **Union of India & Ors. Vs. Keshar Singh [Appeal (Civil) No. 762 of 2001]** decided on 20.04.2007 wherein it was observed that ordinarily if a disease has led to the discharge of an

individual, it shall ordinarily be deemed to have arisen in service if no note of it was made at the time of the individual's acceptance for military service. Learned counsel further contended that the Tribunal has already granted disability pension to similarly situated persons and thus this OA may be allowed.

10. *Per contra*, learned counsel for the respondents submitted that the applicant is not entitled to the relief claimed since the RMB, being an expert body, found all the disabilities "Neither Attributable to Nor Aggravated by Military Service" for the reasons mentioned therein. Learned counsel further submitted that the applicant was reported to be smoking 5-10 cigarettes a day which is a risk factor for the disabilities suffered by the applicant. Learned counsel submitted that as the applicant's disabilities do not fulfil one of the twin conditions in terms of Regulation 153 of the Pension Regulations for the Air Force, 1961 (Part-I) of being held attributable to or aggravated by military service, the applicant is not entitled to disability pension and, therefore, the OA deserved to be dismissed.

11. We have heard the learned counsel for the parties and have gone through the records produced before us. We find that the disabilities Primary Hypertension, Type II DM and CVA Rt were assessed @ 30%, 20% and 50%, respectively, and, therefore, the issue which needs to be considered in this case is as to whether the disabilities of the applicant are attributable to or aggravated by military service or not.

12. It is an undisputed fact that at the time of joining the Indian Air Force on 08.03.1983, the applicant was found medically and physically fit and was in medical category 'AYE' and the dates of onset of the present disabilities are given as under :

Sl. No.	Disabilities	Date of origin of the disease
1.	Primary Hypertension (Old)	12.11.2010
2.	TYPE II DM (Old)	12.11.2010
3.	CVA RT MCA INFARCT (Old)	31.12.2010

which go to show that all the disabilities have occurred during the applicant's active service, of which onset of the first two disabilities was in November, 2010 i.e. after about 27 years of military service and the onset of the third disability was just within a month thereof i.e. in December,

2010, and due to all these disabilities, the applicant was placed in low medical category A4G4 (P) at the time of discharge from service on 31.03.2021.

13. 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 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 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 to be 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."

14. The Hon'ble Supreme Court in the case of **Union of India & Ors. Vs. Rajbir Singh [Civil Appeal Nos. 2904 of 2011]** decided on 13.02.2015, after considering the case in *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....."

15. 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 and 11 thereof as under:

"6. Causal connection:

For award of disability pension/special family pension, a causal connection between disability or death and military service has to be established by appropriate authorities.

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

courses 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 Altitude etc."

Thus, the ratio of the verdicts in ***Dharamvir Singh Vs. Union of India & Ors., Union of India Vs. Rajbir Singh*** and ***Union of India & Ors. Vs. Keshar Singh***, as laid down by the Hon'ble Supreme Court are the fulcrum of these rules as well.

16. Furthermore, Regulation 423 of the Regulations for the Medical Services of the Armed Forces 2010 which relates to 'Attributability to Service' provides as under:-

"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 favour, 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.

17. We may also refer to the Para 14 of Chapter VI of the Guide to Medical Officers (Military Pensions) 2002, amended 2008 [hereinafter referred to as 'GMO (MP) 2008'], wherein various factors including stress and strain of service irrespective of service in peace or field are established have

been given which cause the brain stroke to the army personnel. The aforesaid Para 14 reads as under :

"14. Cerebrovascular Accident (Stroke). Stroke or cerebrovascular accident is a disease of acute onset leading to neurological deficit such as hemiplegia caused by intravascular events. Cerebral infarction following thrombosis and embolism accounts for a large number of cases whereas cerebral haemorrhage is the cause only in a few cases. Atherosclerotic thrombosis is of gradual onset and any permanent neurologic deficit is preceded by TIAs (Transient Ischaemic Attacks).

TIAs result mostly from embolism of thrombus or platelet material from an extra cerebral artery (Internal carotid) and some times due to stenosis of a major artery, altering hemodynamics in the event of change of posture and exertion.

Mural thrombus from the heart in IHD and SBE and ulcerated plaques of atherosclerotic arteries are the principal source of embolism.

Among other causes, physical trauma (heat) and mechanical trauma and arteritis associated with infection like TB, connective tissue disorder (PAN, SLE) can give rise to stroke. Service in HAA can precipitate stroke by virtue of hypercoagulable state.

About half of the strokes caused by cerebral haemorrhage are due to subarachnoid haemorrhage from rupture of a berry aneurysm (Circle of Willis) and less commonly due to arteriovenous malformation. Remaining cases of haemorrhage in cerebral substance are due to rupture of small perforating arteries/arterioles weakened by hypertension or atheromatous degenerations.

The majority cases exhibit greater degree of hemiparesis, dysphasia (if dominant hemisphere is involved), hemianaesthesia and hemianopia. In some cases ataxia, cranial nerve palsy, nystagmus may be the presentation depending on the territory of brain involved.

It will be appropriate to award attributability if there is sufficient evidence of infection underlying the disease and physical and mechanical trauma related to service.

Aggravation can be conceded when atherosclerosis is the underlying cause and exceptional stress and strain of service is in evidence irrespective of his service in peace or field.

It nearly takes 6 months for complete recovery. However, cases showing no sign of improvement up

to two years are unlikely to improve further and should be labelled as permanent."

18. 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.

19. The Tribunal in numerous cases itself has taken a view that the Type II Diabetes Mellitus is attributable/aggravated due to stress and strain of service. Besides, as per the Para 26 Chapter VI of GMO, 2008, Type 2 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.

20. 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.

21. Admittedly, the applicant was enrolled in the Indian Air Force on 08.03.1983 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. Although the respondents have mentioned that the applicant was smoking 5-10 cigarettes daily and that smoking is a risk factor for the disabilities, however, there is no record to submit that since when and for how long the applicant has been into smoking; there is no other detail about the

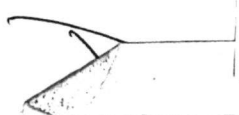
smoking aspect of the applicant, therefore, in view of the settled law on the point of attributability/aggravation, giving a benefit of doubt to the applicant, we hold that the disabilities suffered by the applicant are attributable to and aggravated by the military service.

22. In view of the aforesaid judicial pronouncements and the parameters referred to above, O.A. No. 487 of 2022 is allowed and the applicant is entitled for the disability element of pension in respect of all the disabilities i.e. Primary Hypertension @ 30%, Type II DM @ 20% and CVA-Rt MCA Infarct @ 50% for life, which was compositely assessed @ 70% 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 27th day of
September, 2024.


[JUSTICE RAJENDRA MENON]
CHAIRPERSON


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

/ng/