

COURT No. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. 548/2022 with MA 677/2022

Ex JWO Atar Singh

... **Applicant**

Versus

Union of India and Ors.

... **Respondents**

For Applicant : Mr. Ved Prakash, Advocate

For Respondents : Mr. Rajeev Kumar, Advocate

CORAM

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

ORDER

MA 677/2022

Keeping in view the averments made in this application seeking condonation of delay of 373 days in filing the OA and finding the same to be bonafide, in the light of the decision in **Union of India and others** Vs. **Tarsem Singh** [2008 (8) SCC 648], the same is allowed condoning the delay in filing the OA.

O.A. 548/2022

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant filed this OA praying

to direct the respondents to accept the disabilities of the applicant as being attributable to/aggravated by military service and grant disability element of pension @60% rounded of to 75% with effect from the date of discharge of the applicant; along with all consequential benefits.

3. The applicant was enrolled in the Indian Air Force on 25.10.1984 and was discharged from service on superannuation on 31.08.2020 after serving for 35 years, 10 months and 05 days of regular service. The Release Medical Board dated 23.12.2019 held that the applicant was fit to be discharged from service in low medical category A4G4(P) for the disability- (i) PRIMARY HYPERTENSION @30%, (ii) DM TYPE II @20% (iii) CATARACT LEFT EYE (OPTD) @15% (iv) IRON DEFICIENCY ANAEMIA (old) @5% with composite 60% for life and recommended all four ID's as neither attributable to nor aggravated (NANA) by Air Force Service.

4. The claim of the applicant for grant of disability pension was rejected vide letter no. **RO/3305/3/Med dated** 29.10.2020 stating that the aforesaid disabilities were neither attributable to nor aggravated by military service. Aggrieved by the aforesaid rejection,

the applicant has approached this Tribunal.

5. Placing reliance on the judgement of the Hon'ble Supreme Court in ***Dharamvir Singh v. UOI & Ors [2013 (7) SCC 36]***, Learned Counsel for the applicant argued that no note of any disability was recorded in the service documents of the applicant at the time of the entry into the service, and that he served in the Air Force at various places in different environmental and service conditions in his prolonged service, thereby, any disability at the time of his service is deemed to be attributable to or aggravated by military service.

6. Per contra, Learned Counsel for the respondents submitted that under the provisions of Rule 153 of the Pension Regulations for the Indian Air Force, 1961 (Part-I), the primary condition for the grant of disability pension is invalidation out of service on account of a disability which is attributable to or aggravated by Air Force service and is assessed @ 20% or more.

7. Relying on the aforesaid provision, Learned Counsel for respondents further submitted that the aforesaid disabilities of the applicant were assessed as "neither attributable to nor aggravated"

by Air Force service and was therefore not connected with the Air Force service and thus, his claim was rejected.

8. We have perused the materials available on record and also heard the submissions made on behalf of the parties.

9. It is not in dispute that the applicant was enrolled in the Indian Air Force on 25.10.1984 and was discharged from service on 31.08.2020. The Release Medical Board dated 23.12.2019 found that the applicant was fit to be released from service in the low medical category A4G4 (P) for four disabilities all of which were held as neither attributable nor aggravated by military service.

10. In the instant case the applicant suffers from the following disabilities; ID (i) PRIMARY HYPERTENSION assessed @ 30% fo life; ID (ii) DM TYPE II assessed @ 20% for life; ID (iii) CATARACT LEFT EYE (optd) assessed @15% and ID (iv) IRON DEFICIENCY ANAEMIA (old) assessed @5% with composite assessment for all four disabilities @ 60% for life which has been classified as NANA and net assessment qualifying for disability pension as nil for life. The said disability ID (i) and ID (ii) finds however, mention under

the Chapter VI of 'Guide to Medical Officers (Military Pensions), 2008, at Para 43 and 26, and its nature is explained as follows-

43. Hypertension. The first consideration should be to determine whether the hypertension is primary or secondary. If secondary, entitlement considerations should be directed to the underlying disease process (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.

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.

11. We have also perused the medical records of the applicant produced before us depicting the weight chart of the applicant along with the remarks of the authorities which is reproduced as under-

DATE	TYPE OF MED. EXAM	ACTUAL BODY WEIGHT (in kg)	IDEAL BODY WEIGHT (in kg)	ADVICE
20.09.1984	PRIMARY	56	-	-
10.11.2000	Initial	76	64.5	Fresh detected primary hypertension, obesity Grade II hyperlipidaemia & splenomegaly <u>advise to reduce weight 5-6 kg gradually. Salt restriction, to avoid saturated fat. Daily 5 km walk.</u>
27.11.2001	Recategorisation	75	65	<u>Reduce weight by 1-2 kg/month to achieve ideal body weight.</u>

28.05.2002	Recategorisation	75	65	Salt restricted saturated fat free, low cholesterol diet. <u>Reduce body weight by diet and exercise.</u>
18.09.2003	Recategorisation	75	65	Salt restricted diet.
15.03.2004	Recategorisation	75	63.7	-
04.04.2005	Initial	72		Fresh detected diabetes mellitus 1800 kcal diabetic diet.
16.03.2006	Recategorisation	75	64.5	-
12.03.2007	Recategorisation	72	64.5	-
28.03.2008	Annual	68	64.5	-
19.03.2009	Annual	68	64.5	-
10.03.2010	Annual	71	65	S/R diabetic diet.
18.03.2011	Recategorisation	71	65	Salt free, low fat, low cholesterol & 1800 kcal diabetic diet. Daily long brisk walk at least 45 min/day followed by aerobic exercise. No ghee, butter, deep fried & junk food, table salt, cooking salt, refined sugar, animal meat, alcohol, smoking etc.
15.06.2012	Recategorisation	71	65	Salt free, low fat, low cholesterol & 1800 kcal diabetic diet. Daily long brisk walk at least 45 min/day followed by aerobic exercise. No ghee, butter, deep fried & junk food, table salt, cooking salt, refined sugar, animal meat, alcohol, smoking etc.
13.06.2013	Recategorisation	75	65	Diabetic diet & moderate exercise.

26.06.2014	Recategorisation	75	65	Daily walk/exercise 45 min day.
18.06.2015	Recategorisation	72	65	Diabetic diet & moderate exercise.
21.01.2016 1	Initial	70	65	Freshly detected iron Deficiency Anaemia. Diabetic diet % moderate.
04.07.2017 2	Initial	75	65	Freshly detected cataract (LE) (optd). Regular aerobic exercise 150 min, 5/7 days.
10.10.2018	Recategorisation	72	65	1800 kcal diabetic. Daily brisk walk for 30 minutes.
27.03.2019 T	Recategorisation	72	65	1800 kcal diabetic. Daily brisk walk for 30 minutes.
23.12.2019	Release	78	66	-

Therefore, Therefore, in lieu of the aforementioned facts the pertinent issues which arose for our consideration in this particular case are as follows :-

- (a) Whether disabilities suffered by the applicant were attributable to or aggravated by military service?
- (b) Whether disability pension can be granted in cases where the disease/disability is a result of sedentary lifestyle on part of the applicant despite regular advice/warnings by the authorities to reduce weight?

12. Before proceeding with the analysis of the matter in hand, it is pertinent to reproduce the fundamental provisions of the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 1982 regarding grant of disability pension. The relevant Paras 5, 7, 8, 9 & 14 of Entitlement Rules for Grant of Casualty Pensionary Awards, 1982 are reproduced as under :

Para 5 : The approach to the question of entitlement to Casualty Pensionary Awards and evaluation of disabilities shall be based on the following presumptions:

(a) A member is 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.

(b) In the event of his subsequently being discharged from service on medical grounds any deterioration in his health which has taken place is due to service.

Para 7 : Where there is no note in contemporary official records of a material fact on which the claim is based, other reliable corroborative evidence of that fact may be accepted.

Para 8 : Attributability/aggravation shall be conceded if causal connection between death/disablement and military service is certified by appropriate medical authority.

Para 9 : The claimant shall not be called upon to prove the conditions of entitlements. He/She will receive the benefit of any reasonable doubt. This benefit will be given more liberally to the claimants in field/afloat service cases.

Para 14 : In respect of diseases, the following rule will be observed:

(a) Cases in which it is established that conditions of Military Service did not determine or contribute to the

onset of the disease but influenced the subsequent courses of the disease will fall for acceptance on the basis of aggravation.

(b) 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 military service. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examinations prior to acceptance for service, the disease will not be deemed to have arisen during service.

(c) If a disease is accepted 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.

13. Since the applicant was discharged from service on 31.08.2020, Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008, issued as Appendix to Ministry of Defence Letter No.1(3)/2002/D(Pen/Pol) dated 18.1.2010, are applicable in the present case. The amended paras 5 & 6 of the Entitlement Rules, 2008 are also reproduced as under:

Para 5 : Medical Test at Entry Stage

The medical test at the time of entry is not exhaustive. But its scope is limited to broad physical examination. Therefore, it may not detect some dormant diseases. Besides, certain hereditary, constitutional and congenital diseases may manifest later in life, irrespective of service conditions. The mere fact that a disease has manifested during military services does not per se establish attributability to or aggravation by military service.

Para 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.

14. The aforesaid amendments in para 5 and 6 of the Entitlement Rules 2008 were primarily made to highlight the aspect of attributability and aggravation by military service and to carve out an exception in the general principle, which provides that any undetected disease shall be rendered attributable or aggravated by the military service just because it was earlier not detected. The amendment therefore, vividly canvasses the requirement of a causal connection between the disability and military service which further has to be established by appropriate authorities.

15. The requirement of establishing a relationship between military service and the disability was also emphasised by the Hon'ble Apex Court in the case of ***Narsingh Yadav vs UoI in Civil Appeal No. 7672 of 2019*** decided on 3.10.2019. In this case the court upheld the order dated 23.09.2011 of AFT (RB), Lucknow, and the applicant was denied disability pension even though he was invalided out of service with less than 4 years of service on account of Schizophrenia. The Apex Court in this case also analysed the verdict

of **Dharamvir Singh (supra)** and **Rajbir Singh (supra)** before arriving at a considered conclusion. The relevant portion of the Hon'ble Apex Court's order are extracted below:

Para 20: In the present case, clause 14(d) as amended in the year 1996 and reproduced above, would be applicable as entitlement to disability pension shall not be considered unless it is clearly established that the cause of such disease was adversely affected due to factors related to conditions of military service. Though, the provision of grant of disability pension is a beneficial provision but mental disorder at the time of recruitment cannot normally be detected when a person behaves normally. Since there is a possibility of non-detection of mental disorder, therefore, it cannot be said that Schizophrenia is presumed to be attributed to or aggravated by military service.

(emphasis supplied)

16. The above analysis therefore, clearly highlights the point that the applicant's claim for entitlement of disability pension can not be considered unless it is clearly established that the disease was squarely attributable to factors related to conditions of military service.

17. On perusal of the records of the applicant, this Tribunal has not been satisfied that there exists a causal connection between military service and the disability (i) and (ii) of the applicant. The disability of the applicant, as apparent from the records, was the

result of the sedentary lifestyle of the applicant as the applicant was overweight since **2000**. It is pertinent to note that the applicant has constantly been overweight ranging between 10-12.5 kgs. during the period from 10.11.2000 to 04.04.2005, with his actual weight ranging between 72-76 kgs. as against the ideal weight of 63.7-65 Kgs.

18. It is well settled that a litigant cannot take advantage of his own wrong. This is based on the Latin maxim '*Commodum ex injuria sua nemo habere debet*'. The Hon'ble Supreme Court in ***Kusheshwar Prasad Singh vs State of Bihar & Ors. (2007) 11 SCC 447*** has held that, "*it is settled principle of law that a man cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, 'a wrong doer ought not to be permitted to make a profit out of his own wrong'.*" In the instant case, the applicant, despite repeated caution and advice from the medical authorities, had not taken any steps towards reducing the excess weight as is evident from the

weight chart reproduced at para 11 and therefore, has become personally accountable for the disability. The applicant cannot be permitted to take advantage of his own inaction in reducing his excess weight and thereafter claim disability pension.

19. At this juncture it is also pertinent to refer to the policies adopted and steps taken by the military forces, including the Air Force to tackle obesity through a comprehensive approach that combines prevention, fitness promotion, and disincentives. The forces address various causative factors, such as lifestyle and psychological issues, recognizing the increased risk of serious health conditions like heart disease and diabetes. Fitness is promoted through a holistic approach that includes medical, physical, and mental aspects, with commanders responsible for maintaining personnel fitness. To manage obesity, disincentives are applied, including restrictions on overseas postings, merit-based selections, awards, and extensions of service. Policies are implemented through performance evaluations, encouraging personnel to meet health standards and remain fit for duty. Therefore, as in the present case, since the applicant's obesity is due to his lifestyle condition, he is ineligible to seek disability

pension. Therefore, the respondents in this case have acted in consonance with the laid down policies and guidelines and placed the applicant in low medical category. It is also evident from successive medical examinations that the applicant had a risk factor which was well within his control but he did not address the concerns despite repeated advice from the medical authority and therefore, he has contributed towards the possible development of Primary Hypertension and DM Type II in our considered opinion. It is also likely that the applicant would not have contracted the disability if he had not gained weight. Hence, the disability of the applicant cannot be held to be aggravated or attributable to service conditions and is a result of his own neglect.

20. The issue of lifestyle diseases and attributability to military service was brought to the fore wherein the AFT (RB) Jaipur vide its Order dated 9.12.2021 in OA No.102/2011 in the case of **Cdr Birbal Singh (Retd) vs UoI & Ors** denied disability pension benefits to a Naval Officer who superannuated from the Indian Navy after nearly 28 years of Service and who had claimed disability on account of (i) Overweight, (ii) Dyslipidemia, (iii) Coronary Artery

Disease. The Hon'ble Apex Court upheld the Order of the AFT (RB), Jaipur vide its order dated 12.7.2022 in Civil Appeal No.4699 of 2022 wherein it found no grounds to interfere with the AFT Order dated 9.12.2021. Extracts of the AFT Order (supra) is given below:

Para 7 : On perusal of Release Medical Board (Annexure R/5), it is found that the the Applicants disabilities, viz (i) Coronary Artery Disease (Antistemi, DVD, Pamilad, PCI-Ramus), (ii) Dyslipidaemia, and (iii) Obesity were assessed at 50%, 6-10% and 1-5% respectively and Composite Disability was assessed at 60% for life and Disability Qualifying for Pension was assessed as NIL. In the Medical Case Sheet, at Page No 93 of Release Medical Board, in the Personal History it is clearly mentioned "53 year old Serving Officer a case of CAD-ANT STEMI, DVD, PAMI-LAD, PCI-RAMUS (26/04/2010) has come after 4 weeks of Sick Leave. He is also in LMC for Obesity and Dyslipidemia (Since Sep 2001)"..... "Chronic Smoker x 38 years (10 Cig/day), Chronic Alcoholic (twice a week 2 pegs) x 38 years"..... weight 92 kg....". The Perusal of Medical Case Sheet clearly establishes that the Officer was Obese since 2001. Obesity is a lifestyle disease of a particular individual and it is common amongst the persons who do not exercise dietary discipline or undertake physical exercise. The disease Dyslipidemia is also a disorder of lipid metabolism and being a metabolic disorder, it is related to dietary habits and discretion and has no relationship to service conditions. Subsequently, nine years later, he was diagnosed as Coronary Artery Disease (Anti Stemi, DVD, Pamilad, PCI-Ramus) on 26.04.2010 which is

offshoot of the disability of Obesity, and thus these cannot be, by any stretch of imagination, regarded due to military service. More importantly, a soldier has a special responsibility to keep himself fully fit. Being overweight to the extent of being placed in Lower Medical Category of Obesity for nine years amounts to being negligent towards one's own health and also amounts to an invitation to lifestyle disease like Coronary Artery Disease. The Applicant was repeatedly advised by the medical authorities during Re-categorisation and Annual Medical Examination to reduce weight by diet control and regular exercise due to Obesity, however, which was ignored. The fact is mentioned clearly in Medical Case Sheet that the Applicant is a Chronic Smoker and Chronic Alcoholic for 38 years which clearly establishes that the diseases suffered by the Applicant were due to sheer negligence on part of the Applicant and are clearly not Attributable to or Aggravated by Service.

Para 9 : From the above, it is clear that the Diseases suffered by the Applicant have no causal connection to the Service. The Release Medical Board has rightly considered the Disability as NANA and we find no infirmity in its proceedings. Therefore, the Applicant is not entitled for grant of Disability Element of Pension. The Application is devoid of merit, hence Dismissed.

21. Therefore, having analysed the entire case of the applicant we hold, that the disabilities of 'Primary Hypertension' and 'DM TYPE II' in this particular case is caused due to lifestyle factors and failure in maintaining the ideal body weight which could have been managed

by the applicant by regular exercise and restricting diet, and the fact that the applicant is overweight from a long time signifies that the applicant has himself invited the disability. Thus, in such a case, it would be grossly unjustified for us to ignore the aforesaid facts and grant him benefit for his own wrong doings.

22. Before delving into the issue of third disability i.e. ID (iii) CATARACT LEFT EYE (optd) assessed @15%for life, it is pertinent to refer to para 13 of Chapter VI of the 'Guide to Medical Officers (Military Pension), 2008, which is produced as under;

13. Cataract. Cataract is primarily due to degenerative changes in the lens causing defective vision.

The causes of cataract are many :-

(a) Senile cataract

(b) Metabolic disease - Diabetes mellitus Hypocalcaemia Galactosemia

(c) Trauma - Direct penetrating injury Eye Concussion Ionizing radiation (Radiographer) Electric shock and Lightning Prolonged exposure to UV Light (for decades)

(d) Complicated cataract - Secondary to uveitis Chroiditis High myopia Glaucoma

(e) Drugs - Steroids, chlorpromazine, amiodarone

(f) Complications of atopic dermatitis and psoriasis

It is unaffected by conditions of military service in both its onset and course unless the onset or course is brought about or hastened by an ocular injury or infection during service.

Senile cataract is not usually affected by service.

Attributability is conceded when the cataract is secondary to trauma related to service, infection, post drug therapy and unforeseen complication to surgery.

In diabetic cataract, entitlement depends whether diabetes itself is brought about by service, in such cases aggravation will be conceded.

There is nothing on record to show that the applicant has had an eye injury or was exposed to UV light or fulfilled any of the conditions of attributability/ aggravation as mentioned in Para 13 of GMO (MP) 2008. Even if the cataract was triggered by the diabetic condition, we have already held that DM Type II is not attributable/ aggravated by service. Therefore the disability of "CATARACT LEFT EYE (optd) @15% " which in the instant case is apparently due to degenerative changes in the lens is also considered neither attributable to nor aggravated by the military service and is not admissible.

23. Further, before deciding the issue of the disability ID (iv) i.e. IRON DEFICIENCY ANAEMIA (old) assessed @ 5% for life it is pertinent to refer to para 3 of Chapter VI of the 'Guide to Medical Officers (Military Pension), 2008, which is produced as under;

3. Anaemia(Aplastic). This condition may be either primary (idiopathic) or secondary. The primary condition is rare, usually occurring in young adults and has been held as due to a congenital defect in the bone marrow. The disease is

progressive and fatal. The secondary variety may be the result of many factors. The most common are the toxic effects of certain chemicals (e.g.) benzol, T.N.T., arsenical drugs. Sulphonamides are occasionally a cause, as may be gold injections; x-ray and radium may give rise to this anaemia. Occasionally overwhelming septic infections may end with this type of anaemia. 11 Where full investigations have failed to reveal any of the known causes, then it would be reasonable to regard the disease as of idiopathic nature and unrelated to service as far as causation is concerned. However aplastic anaemia due to service related causative factors like septic infections and exposure to obnoxious agents in professions such as x-ray irradiation and chemicals in the case of factory workers and painters are acceptable as attributable to service.

Since the instant disability is assessed @5% and has no causal connection to service being neither attributable to nor aggravated by service and therefore, the benefits of the same cannot be granted to the applicant. Thus, the aforesaid disabilities ID (i), (ii), (iii) & (iv) in the instant case cannot be held to be attributable to military service nor can it be held to be aggravated thereby. We, therefore, uphold the findings of the RMB and the applicant is not entitled to disability element of pension.

24. Consequently, the O.A. 548/2022 is dismissed.

25. No order as to costs.

Pronounced in the open Court on ____ day of September, 2024.

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

**[RAJENDRA MENON]
CHAIRPERSON**

**[P.M. HARIZ]
MEMBER (A)**

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