

- (c) *Direct the respondents to grant disability pension to the applicant @40% for life w.e.f. 29.11.2021 as degree of his disablement due to the said disability has been assessed @40% for life by the RMB.*
- (d) *Direct the respondents to pay disability pension to the applicant at enhanced rate of 50% for life w.e.f 29.11.2021 by broad-banding his disabilities from 40% to 50% as per Govt. Policy dated 31.01.2001;*
- (e) *Direct the respondents to pay to the applicant an interest @10% p.a. on arrears of the disability pension w.e.f 29.11.2021 and/or;*
- (f) *Pass such other order/direction as may be deemed appropriate in the facts and circumstances of the case.*

BRIEF FACTS

2. The applicant, having been found mentally and physically fit after thorough medical examination, was commissioned in the Indian Army on 09.12.2000 and retired from service prematurely on 28.11.2021. At the time of premature retirement from service, the applicant was placed in permanent low medical category P₂ (P) for the disabilities (i) PIVD C6-C7 and (ii) Diabetes Mellitus Type-II. The Release Medical Board held on 28.10.2021 assessed the applicant's disabilities '(i) PIVD C6-C7 @ 30% (ii) Diabetes Mellitus Type-II @ 20%, with composite assessment of disabilities @ 40% for life. Despite RMB holding the disability of the applicant 'PIVD' as 'Aggravated' by military service', the Competent

Authority held the said disability as well as the other disability i.e. Diabetes Mellitus Type-II as 'neither attributable to nor aggravated by military service' (NANA).

3. The initial claim of the applicant for grant of the disability pension was rejected by the competent authority and the said decision was communicated to the applicant vide letter dated 17.03.2022 with an advice that in case, the applicant is not satisfied with the decision of the respondents, he may prefer an appeal to the Appellate Committee within six months from the date of issue of the above mentioned letter. The applicant preferred the first appeal dated 18.04.2022 which was rejected by the Appellate Committee and the decision was communicated to the applicant vide letter dated 22.07.2022 considering the disabilities as neither attributable to nor aggravated by military service. Against this, the applicant preferred the second appeal, and the same was also rejected vide IHQ MoD (N)/DPA letter dated 18.04.2023. Aggrieved by the same, the applicant has filed the present OA on 02.03.2023. In the interest of justice, it is considered appropriate to take up the present OA for consideration, in terms of Section 21(1) of the AFT, Act 2007.

CONTENTIONS OF THE PARTIES

4. The learned counsel for the applicant submitted that the applicant, at the time of joining the service, was declared fully fit mentally and physically and no note of disability was made in his medical record at the time of entering the service and any medical disability contracted by him during the course of his service should be treated as being attributable and aggravated by the stress and strain of his service. The learned counsel explained about the stressful and challenging conditions of service during his service tenure. The learned counsel submitted that the applicant was posted at various stations (Peace and Field) and had served in tough and different weather and environmental conditions in his career and discharged all assigned duties with utmost dedication in a well-disciplined and professional manner and thereby, any disability that arose during his service has to be deemed to be attributable to or aggravated by military service.

5. The learned counsel for the applicant further contended that the instant matter is squarely covered by a catena of judgments of the Hon'ble Supreme Court such as ***Dharamvir Singh Vs. Union of India & Ors. [2013 (7) SCC***

316], Union of India and Ors. Vs. Rajbir Singh [(2015) 12 SCC 264], Union of India & Ors vs. Angad Singh Titaria (2015) 12 SCC, Union of India & Ors. Vs. Manjeet Singh (2015) 12 SCC 275 and Ex Spr Mohinder Singh vs. Union of India & Ors. (Civil Appeal No. 164 of 1993) etc. and the orders passed by this Tribunal and submitted that the respondents' action in denying the grant of the disability pension to the applicant is unjustified and unlawful because the disability 'PIVD' recorded by the RMB occurred during the military service and was considered aggravated due to stress and strain of the military service and the other disability arose during service period. The learned counsel, therefore, prayed that the disabilities in question may be held to be attributable to/aggravated by military service and that the disability pension may be granted to the applicant.

6. *Per contra*, the learned counsel for the respondents contended that the applicant is not entitled to the relief claimed the learned counsel further contended that the applicant refused to undergo the surgery for the disability PIVD and he was also excused from physical activities named BPET and PPT. While rejecting the disability element of

pension to the applicant, the respondents have given detailed reasons for not assessing the disabilities as attributable to or aggravated by military service as the applicant had no exceptional stress and strain of service and the disabilities were conceded as neither attributable to nor aggravated by military service in terms of Paras 51 and 26 of Chapter VI of Guide to Medical Officers (Military Pensions) 2002, amendment 2008. The learned counsel submitted that since the applicant's disabilities do not fulfill one of the twin conditions in terms of Regulation 53 of the Pension Regulations for the Army, Part-1, 1961, as the same were assessed as neither attributable to nor aggravated by military service, and therefore, the applicant is not entitled to the grant of the disability pension and the OA thus, deserved to be dismissed.

ANALYSIS

7. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, we find that the applicant has been suffering from two disabilities viz. '(i) PIVD, C6-C7 @ 30% (ii) Diabetes Mellitus Type-II @ 20%' which have been considered as NANA by the respondents. However, the RMB considered the

disability of the applicant 'PIVD' @30% as 'aggravated due to stress and strain of the military service'.

8. In the instant case, the applicant was commissioned in India Army on 09.12.2000 after he was examined by a duly constituted Medical Board and found absolutely fit in all respects. From the posting profile of the applicant, it is evident that the applicant soon after his commission was posted in Tangdhar i.e. a field posting and thereafter from the year 2006 to 2009, the applicant was posted at two high altitude areas (HAA) postings. Moreover, in spite of the applicant found to be suffering from 'PIVD', he was posted at field area 'Oodalabari'. Moreover, his unit's operational area was in 'Lachen' a place located in North Sikkim which was 200 kms away from Oodalabari which is at a super high altitude terrain and he had to travel to his designated operational area to discharge his duties frequently. Hence, being posted to such a place with adverse climatic conditions and geographic location can be considered as one of the reason for deterioration of his health. It is pertinent to mention that for the said disability the applicant, was advised surgery in October 2018 but he refused to undergo the said surgery as the success of the surgery was not known which is

also admitted by the Medical Board and in support of the abovementioned fact, the relevant opinion of the RMB is reproduced hereunder:-

“(5) Does the Medical Board consider individual’s refusal to submit to operation/treatment reasonable? Given reasons in support of the opinion specifying the operation/treatment recommended. -

“Yes, the results of surgery are variable.”

9. On perusal of the RMB *qua* the applicant, we find that the RMB has assessed the said disability of the applicant as ‘aggravated due to stress and strain of military service’ which opinion is overruled by the administrative authority by declaring the said disability as NANA. The relevant parts of the RMB *qua* the applicant in relation to this aspect, is reproduced herein below:-

Part-II

18. If not directly attributable to service, was it aggravated by service? (Y/N) if so, please explain- *“Yes due to rigours of training, regimental duties and physical activities like BPET, PPT, PT & Games of military service as per Para 51 of Chapter VI of GMO 2008.”*

PART VII

(a) Please endorse diseases/disabilities in chronolo

Disability	Attributable to service (Y/N)	Aggravated by service (Y/N)	Detailed justification
PIVD C6-C7 (M 50.1)	NO	YES	Aggravation conceded due to stress and strain of mil service vide para 51 of chapter VI of GMO, 2008.

10. The issue of sanctity of the opinion of a Release Medical Board on its overruling by a higher formation is no more *Res Integra*. The Hon'ble Supreme Court in the case of ***Ex. Sapper Mohinder Singh vs Union of India & Others***, in Civil Appeal No. 164 of 1993, decided on 14.01.1993, has made it clear that without physical medical examination of a patient, a higher formation cannot overrule the opinion of a Medical Board. Thus, in light of the observations made by the Hon'ble Apex Court in the case of ***Ex Sapper Mohinder Singh*** (supra) we are of the considered opinion that the decision of competent authority over-ruling the opinion of RMB held on 28.10.2021 with regard to disability 'PIVD' is void in law. The relevant part of the aforesaid judgment is quoted below:-

“From the above narrated facts and the stand taken by the parties before us, the controversy that falls for determination by us is in a very narrow compass viz. whether the Chief Controller of Defence Accounts (Pension) has any jurisdiction to sit over the opinion of the experts (Medical Board) while dealing with the case of grant of disability pension, in regard to the

percentage of the disability pension, or not. In the present case, it is nowhere stated that the Applicant was subjected to any higher medical Board before the Chief Controller of Defence Accounts (Pension) decided to decline the disability pension to the Applicant. We are unable to see as to how the accounts branch dealing with the pension can sit over the judgment of the experts in the medical line without making any reference to a detailed or higher Medical Board which can be constituted under the relevant instructions and rules by the Director General of Army Medical Core.”

11. Thus in light of the aforesaid judgment in *Ex Sapper Mohinder Singh (supra)* as well as records of the RMB, it is clear that the opinion qua the disability PIVD of the RMB cannot be overruled by competent authority. Hence, the decision of competent authority is void. Therefore, we are of the opinion that the disability i.e. 'PIVD' of the applicant be considered as aggravated by military service as has been opined by the RMB. As the disability of PIVD has been assessed @30%, the said disability of the applicant meets the twin conditions of Regulation 53 of the Pension Regulations for the Army, Part-1, 1961 and is admissible.

12. In so far as the other disability of the applicant 'Diabetes Mellitus Type-II' is concerned, the onset of the said disability was in October 2019, when the applicant was posted at Hyderabad i.e. a peace station which is soon after

his posting in Oodlabari (field posting), even though the disability had its origin in a peace area but the disability was due to the stress and strain of service which occurred during active service in adverse conditions which has not been refuted by the respondents as is evident in Part III Statement of Commanding officer/COMD/FMN CDR of RMB of the applicant of which relevant part is reproduced herein below:-

“5. Did the duties involve severe/exceptional stress and strain? (Give details). The officer was functioning as 2IC of a unit from May 2014 to Dec 2017 in Fd Area which was a duty of high stress and strain. This led to both the Disabilities.”

13. As per Para 26 of Chapter VI of ‘Guide to Medical Officers (Military Pensions), 2002, amendment 2008, Diabetes Mellitus Type-II is to be conceded as aggravated if the onset occurs while serving in Field/CIOPS/HAA/ prolonged afloat service to armed forces personnel and having been diagnosed as ‘Diabetes Mellitus Type-II’, who are required to serve in these areas. Furthermore, 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 diabetesType 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."

14. Keeping in view the factor of stress and strain as certified by the commanding officer and as brought out in Para 12 above, the disability of Diabetes Mellitus Type-2 is considered to be attributable to military service in the case of applicant.

15. In the present case at hand, it is not disputed that the onset of the first disability 'PIVD' occurred while he was posted in field area and second disability soon after his field posting in Oodlabari. Not only this, the applicant had been posted in various field, HAA and peace stations in his entire service career and was posted in different stations located in the different parts of the country having diverse climatic, social and environmental conditions and performed strenuous and stressful duties. Moreover, it has already been observed by the Tribunal in large number of cases that armed forces services, whether peace areas or field/HAA areas, have their own pressure of rigorous military training and associated stress and strain, physically and mentally, of the service. 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. Moreover, there is no note made in the medical documents of the applicant that he was suffering from any disease at the time of joining the service. There is no record to show that the applicant has suffered the disabilities due to hereditary or unhealthy life style or there is any family

history. Therefore, we are of the considered view that the benefit of doubt in these circumstances be given to the applicant in view of the settled law on the point of attributability/aggravation and thus we hold the aforesaid disability suffered by the applicant as attributable to and aggravated by the military service. Thus, the applicant is entitled to the grant of disability pension in respect of both the disabilities i.e. PIVD @ 30% and Diabetes Mellitus Type-II @ 20%, compositely assessed by the RMB @ 40% for life.

CONCLUSION

16. In view of our analysis made above, the OA 594/2023 is allowed. The respondents are directed to grant the disability element of disability pension to the applicant @ 40% which is directed to be rounded off to 50% for life from the date of retirement 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.

17. 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.

18. There is no order as to costs.

Pronounced in open Court on this 14 day of July, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (J)

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