

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

**O.A. No. 615 of 2017**

**WITH**

**M.A. No. 537 of 2017**

**In the matter of:**

**Col Dharmendra Singh, Retd**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant** : Shri R.K. Tripathi, Advocate

**For Respondents** : Ms. Barkha Babbar, Advocate

**CORAM :**

**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON**  
**HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)**

**ORDER**

**MA 537/2017**

Vide this application, the applicant seeks condonation of delay in filing the OA. In view of the law laid down by the Hon'ble Supreme Court in the case of **Deokinandan Prasad Vs. State of Bihar [AIR 1971 SC 1409]** and in **Union of India & Ors. Vs. Tarsem Singh [2009 (1) AISLJ 371]**, delay in filing the OA is condoned.

2. MA stands disposed of accordingly.

**OA 615/2017**

3. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant vide the present OA makes the following prayers:-

***“(i) To call for the records of all the Medical Board Proceedings for your Lordships’ perusal***

***(ii) To set aside the orders of the Adjutant General issued vide their letter number B/40431/BB/2016/AG/PS-4(Imp-1), dated 07 February 2017 Annexure A1 (Impugned Order).***

***(iii) To direct the Respondents to pay the Applicant the disability pension at the rate of 100% for life in view of Hon’ble Supreme Court Judgements in Union of India Vs Ram Avtar, Civil Appeal No 418/2012 dated 10.12.2014 with effect from 01 October 2009.***

***(iv) To direct the Respondents to pay the arrears of Disability Pension with 18% interest with effect from the next day of release of the Applicant in terms of Honb’le Supreme Court Judgement in Davinder Singh vs UoI & Ors, Civil Appeal no 9946 of 2016, dated 20 September 2016***

***(v) To grant any other relief as the Hon’ble members of the Tribunal may deem appropriate.”***

#### **BRIEF FACTS**

4. The applicant was commissioned in the Indian Army on 18.03.1978 and was granted permanent commission on 18.03.1983, the applicant thereafter superannuated from service on 30.11.2009 in low medical category S<sub>1</sub>H<sub>1</sub>A<sub>1</sub>P<sub>2</sub>(PERMT)E<sub>1</sub>. The Release Medical Board (RMB) held on 24.04.2009 assessed his disabilities IDs (a) Primary Hypertension@ 30%; (b) Diabetes Mellitus Type-II @ Nil and

(c)CAD LMCA+TVD LV DYS FUNCTION POST CABG @ 40% with disabilities qualifying for disability pension @ 40% for life. While the disabilities (a) and (c) were conceded as 'aggravated by service', the disability (b) has been held as 'neither attributable to nor aggravated by service'.

3. The applicant was sanctioned and admittedly is in receipt of the disability element of disability pension by the competent authority @ 40% vide PPO No. M/DIS/001582/2010 with effect from 01.12.2009 as the disabilities PRIMARY Hypertension and Coronary Artery Disease were held as 'aggravated by military service'. The applicant made a representation dated 20.01.2017 to the Adjutant General's Branch IHQ of MoD for grant of broad-banding of the disability pension, which was rejected on the ground that 'since the implementation of 7<sup>th</sup> CPC recommendations relating to methodology for calculation of disability element has been referred to the Anomalies Committee, status quo is being maintained till the final decision is communicated'. Aggrieved by this, the applicant has filed the instant OA. In the interest of justice, in terms of Section 21(2) of the AFT Act, 2007, we take up the same for consideration.

## CONTENTIONS OF THE PARTIES

4. The learned counsel for the applicant, referring to the judgment of Hon'ble Supreme Court in **Union of India Vs. Ram Avtar, Civil Appeal No. 418/2012** dated 10.12.2014, submitted that the respondents have committed error in ignoring the verdict of the Apex Court in the judgment 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 learned counsel further submitted that the respondents have acted arbitrarily in not granting the disability pension as per the provision of 5<sup>th</sup> CPC, any disability is to be fixed to the effect between 1 to 50% = 50%; between 51 to 75% = 75% and above 75% = 100% and thus the applicant ought to have been granted disability element of pension @ 100%. Therefore, the learned counsel prayed that the OA be allowed granting the reliefs prayed for.

5. The respondents have filed their counter affidavit and have admitted the fact that the applicant has already been granted disability element of pension @ 40% with effect

from 01.12.2009. The learned counsel submitted that, in compliance of the direction dated 09.05.2017 of the Tribunal, where clarification was sought with regard to the applicant's contention that the composite assessment of disabilities @ 40% appeared to be incorrect, the respondents have placed on record the policy letter dated 14.12.2009 dealing with conduct of RMB/IMB/AMB-Computation of Composite Assessment of Disabilities pertaining to method of calculation of composite disability. The learned counsel for the respondents, placing on record the original copy of the RMB proceedings submitted that the applicant's claim of the assessment of disability CAD @ 90% is incorrect and liable to be rejected.

6. The learned counsel further submitted that the applicant's disability ID Diabetes Mellitus Type II does not fulfil the necessary conditions for being eligible to get disability pension in terms of Regulation 37 of the Pension Regulations for the Air Force, 2008 (Part-I) of being assessed at 20% or more and being attributable to or aggravated by military service, this disability does not qualify for disability pension. The learned counsel,

therefore, prayed that on the above ground, the OA deserves to be dismissed.

### ANALYSIS

7. We have heard the learned counsel for the parties and have perused the record produced before us.
8. It is an admitted position that the applicant is already in receipt of disability element of pension @ 40% in respect of the two disabilities i.e. Primary Hypertension and Coronary Artery Disease, which have been conceded as 'aggravated by military service'. However, the disability ID Diabetes Mellitus Type II was held to be NANA and thus disability element of pension claim was rejected for this disability. It is an undisputed fact that at the time of joining the service in March, 1978, the applicant was found medically and physically fit and the disability of Diabetes Mellitus Type II had occurred in April, 1996 during service.
9. 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."*

10. Moreover, the Hon'ble Supreme Court in ***Union of India & Ors. Vs. Rajbir Singh***, (2015)12 SCC 264 and in ***Commander Rakesh Pande Vs. Union of India & Ors.*** [Civil Appeal No. 5970 of 2019] decided on 28.11.2019, upheld the decision of the Armed Forces Tribunal granting disability pension for the disability 'NIDDM' holding the same attributable to military service, which have been followed by this Tribunal in its numerous orders. Therefore, in view of the above judgments and settled law on the point of attributability, the disability of the applicant should be held attributable to military service.

11. In so far as the assessment of the disability of Diabetes Mellitus Type-II of the applicant at 'Nil' is concerned, 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 Mellitus as under :

<b>“(a) Diabetes Mellitus (DM) :</b>	
<b>(i) DM Type II, on Oral Hypoglycemic agents (OHA) without Target Organ Damage (TOD)</b>	<b>: 20%</b>
<b>(ii) DM Type II, on insulin without organ damage</b>	<b>: 30%</b>
<b>(iii) DM Type II/Type II with TOD</b>	<b>: 40% and above</b>
<b>(iv) Impaired Fasting Glucose/ Impaired Glucose Tolerance</b>	<b>As per clinical status : less than 20%”</b>

thus, as per the policy as referred to above, the disability percentage of Diabetes Mellitus Type-II cannot be assessed at less than 20%. Further, it is not clear as to why the assessment of this disability was made at Nil, when the medical category of the applicant was held as permanent. Therefore, the assessment of the disability DM Type-II is to be taken as 20%. We, therefore, hold that the applicant is entitled to the disability element of pension in respect of the disability ID Diabetes Mellitus Type II also @20% for life.

### **CONCLUSION**

12. In view of the aforesaid judicial pronouncements and the parameters referred to above, OA 615/2017 is allowed to the extent that the applicant is entitled for the disability element of pension in respect of the disability i.e. Diabetes



Mellitus Type II @ 20% in addition to the disabilities already sanctioned for disability pension. However, since the applicant is now entitled to disability element of pension for all the three disabilities i.e. (i) Primary Hypertension @ 30%; (ii) Diabetes Mellitus Type II @ 20% and (iii) CAD @ 40%, now the composite assessment of the disabilities is being calculated as per the guidelines laid down in MoD letter No. 16036/RMB/IMB/ DGAFMS/MA (pens) dated 14.12.2009 as under:-

Disability (i) Primary Hypertension = 30%

Disability (ii) Diabetes Mellitus Type-II  $(100-30)=70 \times 20 / 100 = 14\%$

Disability (iii) CAD =  $100 - (30+14) = 56 \times 40 / 100 = 224 / 10 = 22.4 = 22\%$

Hence, Composite Assessment of disabilities =  $(30+14+22)\% = 66\%$

13. Accordingly, the respondents are directed to grant the disability element of pension to the applicant @ 66% for life from the date of his retirement, which is directed to be rounded off to 75% for life 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, after adjusting the amount of disability element of pension already paid to the applicant.

14. Accordingly, the respondents are directed to calculate, sanction and issue necessary PPO to the applicant within four 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.

15. There is no order as to costs.

Pronounced in open Court on this 22<sup>ed</sup> day of October, 2024.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)

/nmk/