COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

A..
OA 698/2019
Col Sanjay Joshi (Retd) ..... Applicant
VERSUS
Union of India and Ors. ..... Respondents

For Applicant : Mr. SS Pandey, Advocate
For Respondents : Mr. D K Sabat, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
02.01.2024

Vide our detailed order of even date; we have allowed the OA 698/2019. Learned counsel for the respondents makes an oral prayer for grant of leave to appeal in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007 to assail the order before the Hon'ble Supreme Court. After hearing learned counsel for the respondents and on perusal of our order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order to grant leave to appeal. Therefore, prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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For Applicant : Mr. S. S. Pandey, Advocate
For Respondents : Mr. D. K. Sabat, Advocate

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O R D E R

OA 698/2019

The applicant vide the present OA had made the following prayers:-

> ***"(a) Call for the records, instructions including the RMB proceedings as well as all other guidelines, entitlement Rules etc based on which such findings and opinion declaring the disability of the applicant as neither attributable nor aggravated by military service was rendered and approved by the competent authority based on which the respondents in most illegal manner rejected the claim of the Applicant in respect of disability Diabetes Mellitus Type II and also rejected the First Appeal and Second Appeal vide order dated 27.11.2017 and 26.09.2018 respectively and thereafter quash all such orders.***

(b) Direct the respondents to process the claim of the Applicant in respect of disability Diabetes Mellitus Type II and pay him such disability element of pension @50 percent w.e.f. the date of retirement after extending the benefit of broad banding along with arrears with an interest @12% as expeditiously as possible.
(c) Issue such other order/direction as may be deemed appropriate in the facts and circumstances of the case."

2. The applicant Col Sanjay Joshi (Retd.) IC 43548 Y was commissioned in the Indian Army on 14.12.1985 and retired from service on 31.03.2017 (AN) on attaining the age of superannuation. Before retirement as he was in Low Medical Category, he was brought before a duly constituted Release Medical Board (RMB) on 01.10.2016 which opined the applicant to be suffering from the disability of Diabetes Mellitus Type II with a percentage of disablement @20% for life which however was quantified with the disability element of pension at NIL with the RMB having opined the disability to be neither attributable to nor aggravated by military service.

3. The onset of the said disability as per the RMB is indicated to be on 22.11.2014 whilst the applicant was posted at 1Mah Sig Coy NCC, Pune. The applicant's claim for the grant of disability element of pension was rejected vide letter No.13015/ IC-43548Y/A-15/MP-6(B)/623/2016/AG/PS-4 (Imp-I) dated 30.11.2016 stating that the applicant did not fulfill the requirements

of Regulation 37 of Pension Regulation for the Army 2008, Part I. The applicant's First Appeal dated 26.05.2017 against rejection of disability claim was rejected by the Appellate Committee on First Appeals vide the letter dated 27.11.2017 stating to the effect :-

Ser No	Disability	Reason(s)
(a)	Diabetes Mellitus (Type-2)	ID is a metabolic disorder of idiopathic origin with a strong genetic/ familial preponderance and is per se not attributable to service. In the instant case the onset of ID was in peace station. Hence, the ID is conceded as neither attributable to nor aggravated by military service in terms of Para 26, Chapter VI of GMO 2002/2008 and ER-2008.

4. The Second Appeal dated 26.09.2018 filed by the applicant against rejection of his disability claim was also rejected by the Second Appellate Committee on Pension (SACP) vide letter no. B/38046A/170/2018/AG/PS-4 (2nd Appeal) dated 26.09.2018 on the following grounds :-

> ***"Onset of the ID DM Type-II' ws in November 2014 while the veteran officer was posted in Pune (Peace). He was detected to have DM Type-2 during work up for lower UTI. The veteran officer was started on medication without any evidence of***

micro/macro vascular complications. ID, Type II Diabetes Mellitus' is a metabolic disorder of idiopathic origin with a strong genetic/familial preponderance and is therefore not attributable to service. However, the benefit of doubt is given due to the dietary restrictions and stress and strain of service and aggravation is conceded if the onset occurs while serving in Fd/CI Ops/HAA or if the individual serves in such areas following onset. In the instant case, onset of the ID occurred while the veteran officer was posted in peace area and he continued to serve in peace areas till the time of superannuation from service. Hence, ID is conceded as neither attributable to nor aggravated by service (Para 26, Chapter VI, GMO 2002, amendment 2008)"

5. The applicant has thus filed the present OA seeking the grant of the disability element of pension with the broad banding thereof to 50% for life. We consider it appropriate to take up the OA for consideration in terms of Section 21(1) of the AFT Act, 2007.

CONTENTIONS OF THE PARTIES

6. The applicant submits that he joined the Indian Army on 14.12.1985 in a fit medical category without any note of any disability qua him recorded on the medical records of the respondents. The applicant submits further that after commissioning he served at various locations which included field tenures, high altitude area and CIOps areas. The applicant further submits that he served in the operation area such as "Operation Trident, Operation Parakram and Operation Rakshak". He has further submitted to the effect that he was detected with Diabetes

Mellitus Type II for the first time at Pune, Maharashtra where he was admitted to the hospital for eleven days and was downgraded to LMC P4(T4) on 02.12.2015. The applicant further submits that he reported to Command Hospital, Pune for medical checkup and Re-categorisation Board on 29.12.2014 and was admitted to the hospital for four days and was placed in Medical Category P3 (T-24) and was discharged from hospital on 02.01.2015.

7. It is further submitted by the applicant that he reported to Command Hospital, Pune for a medical checkup for the third Re-categorisation Medical Board when he was upgraded to medical category P2 (T-24). *Inter alia* the applicant submits that during the Re-categorisation Board after six months in December 2015 he was declared P2 (P) for the disability of Diabetes Mellitus Type II assessed at 20% for life. The applicant submits that he superannuated from service on 31.03.2017 after serving the Indian Army for 32 years in LMC P2 (P).

7. The applicant placed reliance on the verdict of the Hon'ble Supreme Court in ***Dharamvir Singh Vs. Union Of India &Ors*** (Civil Appeal No. 4949/2013) in Para 28 thereof which is 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."

8. Reliance was also placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in ***UOI & Ors. Vs. Rajbir Singh*** (2015) 12 SCC 264 as well as on the verdict of the Hon'ble Supreme Court in ***Ex. Power Satyaveer Singh vs. UoI & Ors.*** in C.A. 7368/2011.

9. Reliance is also placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in Civil No. 418/2012 dated 10.12.2014 titled as ***Union of India & Ors. vs. Ram Avtar*** to seek the broad banding of the disability element of pension assessed at 20% for life by the RMB to 50% for life as well as in terms of the Govt. of India instructions dated 31.01.2001. *Inter alia* the applicant submits that merely because the onset of the disability was in a peace area, the same cannot detract from the fact that

stress and strain that the applicant suffered due to various postings in his tenure of 32 years with the Indian Army.

10. Reliance was placed on behalf of the applicant on his posting profile as reflected in part I in the personal statement of the RMB which reads as under :-

PART-I
PERSONAL STATEMENT

1. Give details of service (P=Peace or F=Field/Operation/Sea Service)									
S No	From	To	Place/Ship	P/F (HAA /Ops/Sea Service)	S No	From	To	Place/Ship	P/F (HAA /Ops/Sea Service)
1	Jan 86	Jun 87	Dehradun/ Op Trident	P/F (Op Trident)	11	May 98	Jul 01	Delhi	P
2	Jul 87	Dec 89	Drubuk, (Ladakh)	F/HAA	12	Jul 01	Nov 02	Ferozpur/Op Parakram	P
3	Dec 89	Sep 91	Talbehat/ Dehradun	P	13	Nov 02	Nov 04	Sambalpur (Odisha)	P(HNMS)
4	Sep 91	Nov 92	Binaguri (WB)	P	14	Nov 04	Sep 05	Ranchi	P
5	Nov 92	Dec 93	School of Arty, Deolali (Mali)	P	15	Sep 05	Oct 07	Naugam (J&K)/Op Rakshak	F/HAA
6	Dec 93	Jan 94	Dehradun	P	16	Oct 07	Aug 09	Jaipur	P
7	Jan 94	Aug 95	Narian (J&K)/Op Rakshak	F	17	Sep 09	Aug 11	School of Arty, Deolali (Mah)	P
8	Sep 95	Oct 96	JWG (J&K)/Op Rakshak	F	18	Sep 11	Apr 14	Bhagalpur, Bihar	P(HNMS)
9	Oct 96	Jan 97	Alhilal	P	19	May 14	Till date	Pune	P
10	Jan 97	May 98	Pune (Girinagar)	P					

To submit to the effect that he had been posted from January 1986 to January 1987 in Operation Trident, from July 1987 to December 1989 at Drubuk (Ladakh) in a Field/High Altitude Area from

January 1994 to August 1995 at Narian (J&K)/OP Rakshak a field area from September 1995 to October 1996 at JWG (J&K)/OP Rakshak another field area, from July 2001 to November 2002 at Ferozpur in Operation Parakram, from September 2005 to October 2007 at Naugam (J&K) in OP Rakshak, a field and high altitude area and it has thus been submitted on behalf of the applicant that in terms of Para 26 of the GMO (Military Pensions) 2008 itself stress and strain of service being precipitative causative factors for Diabetes Mellitus Type II have been categorically spelt out.

11. Reliance was also placed on behalf of the applicant on Regulation 423 of the Regulations for the Medical Services to the Armed Forces Personnel 2010 to submit to the effect that the mere arising of the disability in the peace area or high altitude area or CIOPs area is insufficient to assess the attributability of a disability on the basis of the posting of the Armed Force Personnel and what is required to be considered is the existence of the causal connection between the onset of the disability and military service.

12. On behalf of the respondents it has been submitted to the effect that the opinion of the RMB in Part V of the RMB which reads to the effect :-

PART V

OPINION OF THE MEDICAL BOARD

1. Causal Relationship of the Disability with Service conditions or otherwise.				
Disability	Attributable to service (Y/N)	Aggravated by service (Y/N)	Not connected with service (Y/N)	Reason/cause/specific condition and period in service
(a) Diabetes Mellitus (Type 2)	No	No	Yes	Onset of ID in peace, he continued to posting in peace. There is no evidence of stress and stain due to military service. Hence, ID is not attributable not aggravated by military service. Ref Para-26 of GMO 2008 (Revised)
Note. A disability "Not connected with service" would be neither attributable nor aggravated by service. (This is in accordance with instructions contained in Guide to Medical Officers (Mil Pension)2002"				

categorically spells out that there was no evidence of stress and strain due to military service and that the onset of the disability was in a peace area and that thus the applicant cannot be held entitled to the grant of the disability element of pension.

13. *Inter alia* reliance was placed on behalf of the respondents on the order dated 11.09.2023 in **OA 121/2021** ***Ex Sub M Vijayakannan vs. UoI & Ors.*** to contend to the effect that the prayer made for the grant of the disability element of pension in relation to Diabetes Mellitus Type II in the said case had been categorically declined and that the present OA be dismissed.

ANALYSIS

14. On a consideration of the submissions made on behalf of either side, it is essential to observe that the factum that as laid down by the Hon'ble Supreme Court in ***Dharamvir Singh*** (Supra),

a personnel of the Armed Forces has to be presumed to have been inducted into military service in a fit condition, if there is no note or record at the time of entrance in relation to any disability in the event of his subsequently being discharged from service on medical grounds the disability has to be presumed to be due to service unless the contrary is established,- is no more ***res integra.***

15. Furthermore, 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, 11 to the effect:-

> ***"6. Causal connection:***
> ***For award of disability pension/special faraily pension, a causal connection between disability or death and military service has to be established by appropriate authorities.***
>
> ***7. 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) <u>Injuries:</u>***
> ***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) <u>Disease:</u>

(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 course 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. Altitudes etc."

(emphasis supplied),___

Thus, the ratio of the verdicts in ***Dharamvir Singh Vs. Union Of India &Ors*** (Civil Appeal No. 4949/2013); (2013 7 SCC 316,

Sukhvinder Singh Vs. Union Of India &Ors, dated 25.06.2014 reported in 2014 STPL (Web) 468 SC, ***UOI &Ors. Vs. Rajbir Singh*** (2015) 12 SCC 264 and ***UOI & Ors. Vs. Manjeet Singh*** dated 12.05.2015, Civil Appeal no. 4357-4358 of 2015, as laid down by the Hon'ble Supreme Court are the fulcrum of these rules as well.

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 favor, 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),___

and the same has not been obliterated.

16. It is essential to observe that it has been laid down by the Hon'ble Supreme Court in ***Dharamvir Singh vs. Union of India & Ors.*** vide observations in Para 423 to the effect:-

"33. As per Rule 423(a) of General Rules for the purpose of determining a question whether the cause of a disability or death resulting from disease is or is 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 service/active service area or under normal peace conditions. "Classification of diseases" have been prescribed at Chapter IV of Annexure I; under paragraph 4 post traumatic epilepsy and other mental changes resulting from head injuries have been shown as one of the diseases affected by training, marching, prolonged standing etc. Therefore, the presumption would be that the disability of the appellant bore a casual connection with the service conditions."

17. It is thus apparent as rightly contended on behalf of the applicant that merely because the disability of Diabetes Mellitus had its onset on 22.11.2014 at Pune in a peace area, the same does not detract from the causative stress and strain of Diabetes Mellitus being due to the stress and strain of military service cannot be overlooked.

18. It is also essential to observe that the prayer for the grant of the disability element of pension for the disability of 'Diabetes Mellitus' in C.A. 7368/2011 in the case of ***Ex. Power Satyaveer Singh*** has been upheld by the Hon'ble Supreme Court vide the verdict in ***UOI & Anr*** Vs. ***Rajbir Singh*** (Civil Appeal 2904/2011) dated 13.02.2015.

19. It is essential to observe that vide the verdict of the Hon'ble Supreme Court in Civil Appeal no. 5970/2019 titled as ***Commander Rakesh Pande vs UOI & Ors.,*** dated on 28.11.2019, wherein the applicant thereof was suffering from **Non-Insulin Dependent Diabetes Mellitus(NIDDM) and Hyperlipidaemia the grant of disability pension for life @ 20% broad banded to 50% for life was upheld by the Hon'ble Supreme Court.**

20. It is essential to observe that the verdict of the Hon'ble Supreme Court in ***Rajbir Singh*** (supra) vide Paras 12 to 15 is to the effect:-

> *"12. Reference may also be made at this stage to the guidelines set out in Chapter-II of the Guide to Medical Officers (Military Pensions), 2002 which set out the "Entitlement: General Principles", and the approach to be adopted in such cases. Paras 7, 8 and 9 of the said guidelines reads as under:*
>
> *"7. Evidentiary value is attached to the record of a member's condition at the commencement of service, and such record has, therefore, to be accepted unless any different conclusion has been reached due to the inaccuracy of the record in a particular case or otherwise. Accordingly, if the disease leading to member's invalidation out of service or death while in service, was not noted in a medical report at the commencement of service, the inference would be that the disease arose during the period of member's military service. It may be that the inaccuracy or incompleteness of service record on entry in service was due to a non-disclosure of the essential facts by the member e.g. pre-enrolment history of an injury or disease like epilepsy, mental disorder, etc. It may also be that owing to latency or obscurity of the symptoms, a disability escaped detection on enrolment. Such lack of recognition may affect the medical categorisation of the member on enrolment and/or cause him to perform duties harmful to his condition. Again, there may occasionally be direct evidence of the contraction of a disability, otherwise than by service. In all such cases, though the disease cannot be considered to have been caused by service, the question of aggravation by subsequent service conditions will need examination.*
>
> *The following are some of the diseases which ordinarily escape detection on enrolment:*
>
> *(a) Certain congenital abnormalities which are latent and only discoverable on full investigations e.g. Congenital Defect of Spine, Spina bifida, Sacralisation,*
>
> *(b) Certain familial and hereditary diseases e.g. Haemophilia, Congential Syphilis, Haemoglobinopathy.*
>
> *(c) Certain diseases of the heart and blood vessels e.g. Coronary Atherosclerosis, Rheumatic Fever.*

(d) Diseases which may be undetectable by physical examination on enrolment, unless adequate history is given at the time by the member e.g. Gastric and Duodenal Ulcers, Epilepsy, Mental Disorders, HIV Infections.

(e) Relapsing forms of mental disorders which have intervals of normality.

(f) Diseases which have periodic attacks e.g. Bronchial Asthma, Epilepsy, Csom, etc.

8. The question whether the invalidation or death of a member has resulted from service conditions, has to be judged in the light of the record of the member's condition on enrolment as noted in service documents and of all other available evidence both direct and indirect.

In addition to any documentary evidence relative to the member's condition to entering the service and during service, the member must be carefully and closely questioned on the circumstances which led to the advent of his disease, the duration, the family history, his pre-service history, etc. so that all evidence in support or against the claim is elucidated. Presidents of Medical Boards should make this their personal responsibility and ensure that opinions on attributability, aggravation or otherwise are supported by cogent reasons; the approving authority should also be satisfied that this question has been dealt with in such a way as to leave no reasonable doubt.

9. On the question whether any persisting deterioration has occurred, it is to be remembered that invalidation from service does not necessarily imply that the member's health has deteriorated during service. The disability may have been discovered soon after joining and the member discharged in his own interest in order to prevent deterioration. In such cases, there may even have been a temporary worsening during service, but if the treatment given before discharge was on grounds of expediency to prevent a recurrence, no lasting damage was inflicted by service and there would be no ground for admitting entitlement. Again a member may have been invalided from service because he is found so weak mentally that it is impossible to make him an efficient soldier. This would not mean that his condition has worsened during service, but only that it is worse than was realised on enrolment in the army. To sum up, in each case the question whether any persisting deterioration on the available [pic]evidence which will vary according to the type of the disability, the consensus of medical

opinion relating to the particular condition and the clinical history."

13. In Dharamvir Singh's case (supra) this Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words:

"29.1. Disability pension to be granted to an individual who is invalided 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 to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).

29.2. 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 read with Rule 14(b)].

29.3. The 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).

29.4. 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)]. [pic] 29.5. 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 [Rule 14(b)].

29.6. 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 [Rule 14(b)]; and 29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 - "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."

14. Applying the above principles this Court in Dharamvir Singh's case (supra) found that no note of any disease had been recorded at the time of his acceptance into military service. This Court also held that Union of India had failed to bring on record any document to suggest that Dharamvir was under treatment for the disease at the time of his recruitment or that the disease was hereditary in nature. This Court, on that basis, declared Dharamvir to be entitled to claim disability pension in the absence of any note in his service record at the time of his acceptance into military service. This Court observed:

"33. In spite of the aforesaid provisions, the Pension Sanctioning Authority failed to notice that the Medical Board had not given any reason in support of its opinion, particularly when there is no note of such disease or disability available in the service record of the appellant at the time of acceptance for military service. Without going through the aforesaid facts the Pension Sanctioning Authority mechanically passed the impugned order of rejection based on the report of the Medical Board. *As per Rules 5 and 9 of the Entitlement Rules for Casualty Pensionary Awards, 1982, the appellant is entitled for presumption and benefit of presumption in his favour. In the absence of any evidence on record to show that the appellant was suffering from "generalised seizure (epilepsy)" at the time of acceptance of his service, it will be presumed that the appellant was in sound physical and mental condition at the time of entering the service and deterioration in his health has taken place due to service."*

15. The legal position as stated in Dharamvir Singh's case (supra) is, in our opinion, in tune with the Pension Regulations, the Entitlement Rules and the Guidelines issued to the Medical Officers. The essence of the rules, as seen earlier, is that a member of the armed forces is presumed to be in sound physical and mental condition at the time of his entry into service if there is no note or record to the contrary made at the time of such entry. More importantly, in the event of his subsequent discharge from service on medical ground, any deterioration in his health is presumed to be due to military service. This necessarily implies that no sooner a member of the force is discharged on medical ground his entitlement to claim disability pension will arise unless of course the employer is in a position to rebut the presumption that the disability which he suffered was neither attributable to nor aggravated by military service. From Rule 14(b) of the Entitlement Rules it is further clear that if the medical opinion were to hold that the disease suffered by the member of the armed forces could not have been detected prior to acceptance for service, the Medical Board must state

the reasons for saying so. 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. The burden to establish such a disconnect would lie heavily upon the employer for otherwise the rules raise a presumption that the deterioration in the health of the member of the service is on account of military service or aggravated by it. A soldier cannot be asked to prove that the disease was contracted by him on account of military service or was aggravated by the same. The very fact that he was upon proper physical and other tests found fit to serve in the army should rise as indeed the rules do provide for a presumption that he was disease-free at the time of his entry into service. That presumption continues till it is proved by the employer that the disease was neither attributable to nor aggravated by military service. For the employer to say so, the least that is required is a statement of reasons supporting that view. That we feel is the true essence of the rules which ought to be kept in view all the time while dealing with cases of disability pension."***

(emphasis supplied)

21. As regards, the contents on behalf of the respondents that in view of order dated 11.09.2023 in OA 121/2021 ***Ex Sub M Vijayakannan vs. UoI & Ors.*** reliance placed on the same of the AFT, RB, Chennai it is essential to observe that each case is to be determined on its own facts and circumstances and the facts of the instant case of OA 121/2021 relied upon on behalf of the respondents in view of observations in para 16 thereof :-

"16. The Tribunal finds that not even an iota of evidence linking Military Service as a cause of attributability has been

brought to the fore in this OA which gives us no leeway in considering a lenient view while deciding this case"

22. In the instant case, the applicant was posted on the (5) field postings as reflected through the personal statement of the applicant depicted hereinabove and thus in terms of para 26 of Chapter VI of the GMO (Military Pensions) 2008 itself it is thus apparent that the disability of the applicant would have to be held to be due to rigorous of stress and strain of military service which had its onset on 22.11.2014 after 29 years of military service and after the applicant had joined the Indian Army in a fit medical condition on 14.12.1985.

23. Significantly in terms of Para 2 and 3 of the RMB proceedings it has been stated to the effect :-

2. Did the disability exist before entering service? (Y/N/Could be) NO
3. In case the disability existed at the time of entry, is it possible that it could not be detected during the routine medical examination carried out at the time of the entry? NA

thus, indicating clearly as the applicant suffered from no disability before he joined military service and that it was not possible that the disability that the applicant suffered from could not be detected during routine medical examination carried out at the time of entry.

24. Though vide the rejection of the First Appeal and Second Appeal of the applicant, the respondents seek to contend that the

ID of Diabetes Mellitus Type II is a metabolic disorder of idiopathic origin of strong genetic preponderance and thus not attributable to military service, as rightly contended on behalf of the applicant the medical examination of the applicant in Part II of the RMB indicates his actual weight to be 70 Kg, with the ideal weight being 71 Kg and the applicant not being overweight and thus indicating no contributory metabolic factors from the side of the applicant for the onset of the disability though there is a mention in the clinical assessment qua the applicant of their being history of Diabetes Mellitus in both parents, it cannot be overlooked that the onset of the disability in the instant case was after the applicant was commissioned in the Indian Army in a fit medical category on 14.12.1985 and after 29 years of military service and thus the contention raised on behalf of the respondents in relation to the genetic preponderance for the onset of the said disability cannot be contingence.

25. In the circumstances of the instant case, with the initial onus having not been discharged by the respondents as to the causation of the disability of the applicant in terms of Para 7 of the Entitlement Rules for the Casualty Pensionary Awards to the Armed Forces Personnel 2008 and in terms of Para 10(b)(iii) of

the said Rules, attributability due of the disability of Diabetes Mellitus in the instant case would have to be held to be due to military service.

CONCLUSION

26. The applicant thus in the instant case is held entitled to the grant of the disability element of pension for the disability of Type-II Diabetes Mellitus assessed @20% which is directed to be broad banded to 50% for life in terms of the verdict of the Hon'ble Supreme Court in Civil No. 418/2012 dated 10.12.2014 titled as ***Union of India & Ors. vs. Ram Avtar*** w.e.f. the date of his discharge. The OA 698/2019 is thus allowed.

27. The respondents are directed to calculate, sanction and issue the necessary Corrigendum PPO to the applicant within three months from the date of receipt of the copy of this order and in the event of default, the applicant shall be entitled to the interest @6% per annum till the date of payment.

Pronounced in the open Court on the 2nd day of January, 2024.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/yogita/