

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

OA 741/2019

Col Atul Sharma (Retd)

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Indra Sen Singh, Advocate

For Respondents : Mr. Anil Gautam, Sr. CGSC

CORAM :

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

ORDER

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:-

“(a) Set aside the impugned order dated 10.01.2019 passed by the respondents.

(b) Set aside the opinion/finding of the Release Medical Board (RMB) only to the extent it has opined the Applicant's two disabilities, namely i.e. “DM Type-II and Dyslipidemia”, as neither attributable to nor aggravated by military service;

(c) Direct respondents to treat the Applicant's remaining two disabilities, i.e. “DM Type-II and Dyslipidemia”, too as attributable to or aggravated by military service.

(d) Direct the respondents to pay disability pension to the Applicant @75% w.e.f 01.11.2015 by rounding off the Applicant's disabilities from composite 50% (as originally awarded by the RMB) to 75%

- (e) *Direct the Respondents to pay 12% interest on the arrears of disability pension w.e.f. 01.11.2015 after calculating the same @75%; and*
- (f) *Issue such other order/direction as may be deemed appropriate in the facts and circumstance of the case.”*

BRIEF FACTS

2. The applicant was commissioned in the Indian Army on 24.12.1982 and was discharged from the service on attaining the age of superannuation on 31.10.2015. The Release Medical Board dated 11.03.2015 held that the applicant was fit to be discharged from service in low medical category A4G4 (P) and assessed the disabilities of (i) Primary Hypertension@ 30% for life, (ii) Diabetes Mellitus Type-II (Old) @ 20% for life (iii) Dyslipidemia @1-5% for life, compositely assessed @50% for life. While the first disability, Primary Hypertension was conceded to be 'Aggravated by military service, the other two disabilities, Diabetes Mellitus Type-II and Dyslipidemia were held to be 'neither attributable to nor aggravated by military service' and, therefore, the applicant was sanctioned disability pension with respect to the disability Primary Hypertension only which was subsequently broad banded from 30% to 50% for life vide order dated 05.04.2017 in OA 485/2017.

2. The applicant preferred his first appeal dated 22.02.2016 against non-grant of disability pension with respect to the other two disabilities

except Primary Hypertension, which was rejected by the Appellate Committee on First Appeal (ACFA) vide letter dated 15.02.2017.

3. The applicant filed another OA being OA 1357/2017 against the rejection of his first appeal and seeking grant of disability pension with respect to the two disabilities i.e. DM Type II and Dyslipidemia with rounding off benefits and the said OA was disposed of as withdrawn at the admission stage as the applicant had not exhausted the remedy available before filing the OA with liberty to approach the respondents. Therefore, the applicant preferred the second appeal dated 10.07.2018, which was rejected by the Second Appellate Committee on Pension (SACP) vide letter dated 10.01.2019 stating the reasons therein. Aggrieved by the rejection, the applicant filed the present OA i.e. OA 741/2019 seeking grant of disability pension with respect to the aforesaid two disabilities. 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. Placing reliance on the judgment of the Hon'ble Supreme Court in *Dharamvir Singh v. UOI & Ors [2013 (7) SCC 36]*, the learned counsel for the applicant submitted 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 Army at various places in different

environmental and service conditions in his prolonged service and thus thereby, any disability during the time of his service has to be deemed to be attributable to or aggravated by military service.

5. The learned counsel for the applicant also placed reliance on various judgments of the Hon'ble Supreme Court including *Ex Gnr Laxmanram Vs. UOI (AIR 2017 SC 1170)* and Civil Appeal No. 418/2012 titled *UOI vs Ram Avtar* dated 10.12.2014 for grant of disability pension with broadbanding benefits.

6. The learned counsel further placed reliance on the decision of the AFT, Principal Bench, New Delhi in the case of OA No 1172/2016 titled *Gp Capt Shrimohan Gupra (Retd.) vs. UOI & Ors* decided 07.01.2019 and wherein similarly situated person was granted relief.

7. *Per contra*, the learned counsel for the Respondents submits that under the provisions of Rule 37 of the Pension Regulations for the Army, 2008, (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 Army service and is assessed @ 20% or more. In other words, disability pension is granted to those who fulfill the following two criteria simultaneously:-

(i) Disability must be either attributable to or aggravated by service.

(ii) Degree of disablement should be assessed at 20% or more.

the learned counsel further submits that the RMB has assessed the applicant's disabilities 'Diabetes Mellitus Type-II' @ 20% for life, and 'Dyslipidemia' @1-5% for life as neither attributable to nor aggravated by service as they do not fulfill the above mentioned criteria and hence the applicant is not entitled for grant of disability pension in accordance with prevailing rules and policies.

ANALYSIS

8. 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 had suffered from three disabilities viz. of (i) Primary Hypertension @ 30% for life, (ii) Diabetes Mellitus Type-II (Old) @ 20% for life (iii) Dyslipidemia @1-5% for life. The applicant has already been granted disability pension in respect of disability (i) Primary Hypertension@ 30% for life rounded off to 50% for life, and for the disabilities Diabetes Mellitus Type-II and Dyslipidemia, the applicant's claim for disability pension was rejected. In so far as, the disability of 'Dyslipidemia' is concerned, the same has been assessed below 20% (1-5%) which does not fulfil the mandatory condition as per Rule 37 of the Pension Regulations for the Army, 2008, (Part-I) and hence is not admissible.

9. We find that the disability of the applicant 'Diabetes Mellitus Type-II' has been assessed @ 20% which is more than bare minimum for the grant of disability pension in terms of Rule 37 of the Pension

Regulations for the Army, 2008, (Part-I), the only question that arise is whether the same was attributable to or aggravated by military service.

10. 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 thereof as under:

"6. Causal connection:

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

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) Injuries:

In respect of accidents or injuries, the following rules shall be observed:

- i) Injuries sustained when the individual is 'on duty', as defined, shall be treated as attributable to military service, (provided a nexus between injury and military service is established).*
- ii) In cases of self-inflicted injuries while 'on duty', attributability shall not be conceded unless it is established that service factors were responsible for such action.*

(b) Disease:

(i) *For acceptance of a disease as attributable to military service, the following two conditions must be satisfied simultaneously:-*

(a) that the disease has arisen during the period of military service, and

(b) that the disease has been caused by the conditions of employment in military service.

(ii) Disease due to infection arising in service other than that transmitted through sexual contact shall merit an entitlement of attributability and where the disease may have been contracted prior to enrolment or during leave, the incubation period of the disease will be taken into consideration on the basis of clinical courses as determined by the competent medical authority.

(iii) If nothing at all is known about the cause of disease and the presumption of the entitlement in favour of the claimant is not rebutted, attributability should be conceded on the basis of the clinical picture and current scientific medical application.

(iv) when the diagnosis and/or treatment of a disease was faulty, unsatisfactory or delayed due to exigencies of service, disability caused due to any adverse effects arising as a complication shall be conceded as attributable.

11. Aggravation:

A disability shall be conceded aggravated by service if its onset is hastened or the subsequent course is worsened by specific conditions of military service, such as posted in places of extreme climatic conditions, environmental factors related to service conditions e.g. Fields, Operations, High Altitude etc.”

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),__

has not been obliterated.

12. Furthermore, Para 26, Chapter VI of the Guide to Medical Officers (Military Pensions), 2008 reads as under:-

“26. Diabetes Mellitus

This is a metabolic disease characterised by hyperglycemia due to absolute/relative deficiency of insulin

and associated with long term complications called microangiopathy (retinopathy, nephropathy and neuropathy) and macroangiopathy.

There are two types of Primary diabetes, Type 1 and Type 2. Type 1 diabetes results from severe and acute destruction of Beta cells of pancreas by autoimmunity brought about by various infections including viruses and other environmental toxins in the background of genetic susceptibility. Type 2 diabetes is not HLA-linked and autoimmune destruction does not play a role.

Secondary diabetes can be due to drugs or due to trauma to pancreas or brain surgery or otherwise. Rarely, it can be due to diseases of pituitary, thyroid and adrenal gland. Diabetes arises in close time relationship to service out of infection, trauma, and post surgery and post drug therapy be considered attributable.

Type 1 Diabetes results from acute beta cell destruction by immunological injury resulting from the interaction of certain acute viral infections and genetic beta cell susceptibility. If such a relationship from clinical presentation is forthcoming, then Type 1 Diabetes mellitus should be made attributable to service. Type 2 diabetes is considered a life style disease. **Stress and strain, improper diet non-compliance to therapeutic measures because of service reasons, sedentary life style are the known factors which can precipitate diabetes or cause uncontrolled diabetic state.**

Type 2 Diabetes Mellitus will be conceded aggravated if onset occurs while serving in Field, CIOPS, HAA and prolonged afloat service and having been diagnosed as Type 2 diabetes mellitus who are required serve in these areas.

Diabetes secondary to chronic pancreatitis due to alcohol dependence and gestational diabetes should not be considered attributable to service."

13. As per Chapter VI of 'Guide to Medical Officers(Military Pensions), 2008, Para 26 thereof Type 2 Diabetes Mellitus is to be conceded as aggravated if the onset occurs while serving in Field/

CIOPS/HAA/prolonged afloat service and having been diagnosed as 'Type II Diabetes Mellitus' who are required to serve in these areas. Furthermore, *inter alia* stress and strain because of service reasons are stated therein to be known factors which can precipitate diabetes or cause uncontrolled diabetic state. In the present case, it is evident from Part I, Personal Statement of the RMB that the applicant was posted in the modified field area from 03.05.2013 to 31.10.2015 and the onset of the disability of DM Type II was recorded in August, 2014 which is mentioned in Part IV of the RMB proceedings.

14. The applicant has served in the Indian Air Force for 32 years, and the disability of 'Diabetes Mellitus Type-II' occurred in August, 2014 after more than 31 years of long service, whilst posted at 177 MG/MF Det Jaisalmer, a modified field area. The accumulated stress and strain of such a long service on the applicant cannot be overlooked. In the present case, there is also no record to show that the applicant has suffered from diabetes due to hereditary and unhealthy life style. Thus, we hold that the disability ID Diabetes Mellitus Type II is attributable to and aggravated by military service.

15. It is also 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 decision of the AFT, PB granting disability pension to the applicant

thereof who was suffering from **Non-Insulin Dependent Diabetes Mellitus (NIDDM) @ 20% broad banded to 50% for life** was upheld by the Hon'ble Supreme Court.

16. In view of the above consideration, we hold that the applicant is entitled to the disability pension in respect of the disability of Diabetes Mellitus Type II, assessed @ 20%, also and the applicant has already been held entitled to the disability pension in respect of Primary Hypertension assessed @ 30% and was already granted disability pension for this disability as brought out hereinabove. Accordingly, as per MoD letter No. 16036 /RMB /IMB /DGAFMS/MA(pens) dated 14.12.2009, the composite disablement of both the disabilities is now being calculated as under:-

Disability 'Primary Hypertension' = 30%

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

Composite Assessment of all three disabilities = $30+14 = 44\%$

17. In view of the above, the OA is allowed. We hold that the applicant is entitled to the disability element of pension with respect to the disabilities of Diabetes Mellitus Type-II and Primary Hypertension, with composite assessment of both the disabilities @ 44% for life which is to be further rounded off to 50% 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. As the applicant was already granted and has admittedly been receiving the disability pension @ 50% (rounding off benefits), no orders with respect to arrears of disability pension are necessary to be passed in this regard.

18. No order as to costs.

Pronounced in the open Court on this 19 day of November, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

/nmk