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

Supplementary
1.

OA 757/2019 with MA 1358/2019

Ex EA(P) 2 Satyendra Narayan Singh ..... Applicant
VERSUS
Union of India and Ors. ..... Respondents

For Applicant : Mr. Ved Prakash, Advocate
For Respondents : Mr. R.S. Chillar, proxy for
Ms. Barkha Babbar, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE LT. GEN C.P. MOHANTY, MEMBER (A)

ORDER
09.02.2024

Vide our detailed order of even date we have allowed the OA 757/2019. 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 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, the prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(LT. GEN C.P. MOHANTY)
MEMBER (A)

TS

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

OA 757/2019 with MA 1358/2019

Ex EA(P)2 Satyendra Narayan Singh ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Mr. Ved Prakash, Advocate
For Respondents : Ms. Barkha Babbar, Advocate

CORAM :

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE LT. GEN. C.P. MOHANTY, MEMBER (A)

O R D E R

MA 1358/2019

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 457 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of **UoI & Ors** Vs **Tarsem Singh** 2009(1)AISLJ 371 and in **Ex Sep Chain Singh** Vs **Union of India & Ors** (Civil Appeal No. 30073/2017 and the reasons mentioned, the MA 1358/2019 is allowed and the delay of 457

days in filing the OA 757/2019 is thus condoned. The MA is disposed of accordingly.

OA 757/2019

The applicant vide the present OA 757/2019 makes the following prayers:

> *"(a) Quash the Impugned Order No.PEN/600/D.LRDO1:07/2017/122390-K dated 03.07.2017.*
>
> *(b) Direct the respondents to grant disability element of pension duly rounded off to 50% w.e.f. his date of discharge i.e. 01.08.2017*
>
> *(c) Direct the respondents to pay the due arrears of disability element of pension with interest @12% p.a. from the date of retirement with all the consequential benefits.*
>
> *(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case alongwith cost of the application in favour of the applicant and against the respondents."*

2. During the course of the submissions made on 18.01.2024, it was submitted on behalf of the applicant that the prayer made through the OA is confined to the grant of the disability element of pension in relation to the disability of Diabetes Mellitus Type-II only and the prayer made on behalf of the applicant for the grant of the disability element of pension in relation to Cerebral Venous Thrombosis(APC-r+ve) is not pressed.

3. The applicant was enrolled in the Indian Navy on 28.07.1997 and was discharged from Naval service on 31.07.2017 on expiry of his engagement period. The applicant was sanctioned Pension vide PPO NO.09/87/B/S/002145/2017 dated 14.07.2017 for qualifying service of 20 years and 04 days. The Release Medical Board placed the applicant in Low Medical Category S3A2(P) for the disabilities,namely, CEREBRAL VENOUS THROMBOSIS(APC-R+ve) REVISED FROM CORTICAL VENOUS THROMBOSIS AND (ii) TYPE II DIABETES MELLITUS ICD No.E 11 but opined that both the disabilities qua the applicant were neither attributable to nor aggravated by Naval Service with composite assessment @44% for life rounded off to 40% for life. The claim of the applicant for the grant of disability element of pension was rejected by the respondents and a communication to this effect was sent to the applicant vide letter dated 03.07.2017 with option to prefer an appeal to the Appellate Committee on First Appeal within six months from the date of receipt of the said letter. The First Appeal dated 28.09.2018 preferred by the applicant had not been adjudicated by the respondents till the filing of the present OA. In the interest of justice, we consider it appropriate to take up the present OA under Section 21(2)(b) of the Armed Forces Tribunal Act, 2007 for consideration.

CONTENTIONS OF THE PARTIES

4. The applicant submits that at the time of entry into service, he was subjected to a thorough medical examination conducted by the Board of Doctors and when found fit in all aspects at the Selection Centre he was enrolled in the Indian Navy on 28.07.1997 and no note of any disability was made in respect of any disease by the Medical Board. The applicant submits that he remained fit for a long period of 08 years which makes it crystal clear that his disability was due to Naval service. The applicant further submits that the Release Medical Board in Part V para 2 itself declared that the applicant was not having any disability before entering the service. It is further averred by the applicant that the Release Medical Board conducted at the time of retirement assessed his disability @40% for life for both the disabilities but held the same as being neither attributable to nor aggravated by military service and on this ground, his claim for the grant of disability element of pension was rejected by the respondents violating the provisions of the Entitlement Rules for Casualty, Pensionary Awards for the Armed Forces Personnel- 1982. The applicant further submits that as per the Guide to Medical Officer(MP) 2008 in terms of Para 26 of Chapter VI, thereof, Diabetes Mellitus Type-II which arises in close time association to service in field areas, active operation area, war like situation both in peace and field area is acceptable as being aggravated when exceptional stress and strain of service is in evidence.

5. The applicant has placed reliance on the verdict of the Hon'ble Supreme Court in ***Dharamvir Singh*** vs ***UOI & Ors*** (Civil Appeal No. 4949/2013) 2013 AIR SCW 4236, submitting to the effect it has been observed therein that as to whether the disability is 'attributable to or aggravated by military service' is to be determined under the "Entitlement Rules for Casualty Pensionary Awards 1982" as shown in Appendix-II, the Government of India, Ministry of Defence letter No 1(1)/81/D(Pen-C) dated 20.06.1996 and on Para 423 of the Regulations for the Defence Medical Officers of Armed Forces Personnel 2010 with "Attributability to Service" with specific reliance on observations in Para 28 of the verdict of the Hon'ble Supreme Court in ***Dharamvir Singh***(Supra) to the effect:-

> *"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."

6. Reliance has also been placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in ***UOI & Ors. vs Rajbir Singh*** in Civil Appeal no. 2904/2011 dated 13.02.2015 (2015) 12 SCC 264 to contend to the effect that as laid down in ***Dharamvir Singh*** (supra), the respondents having not made any note of any disability at the time of induction of the applicant into service, the disease from which the applicant suffers has to presumed to have arisen due to military service

and that the onus of proof lay not on him, the employee but on the employer i.e. the respondents, to establish that the reasons for the disability were other than the conditions of military service.

7. Reliance was also placed on behalf of the applicant on Para 26 of Chapter VI of the GMO(MP)2008 which deals with the disease of Diabetes Mellitus Type-II to contend that the onset of ID was detected after continuous stressfull service onboard ships and his ID should be considered to be attributable to service.

8. The applicant further submits that the disablement assessed @ 20% for life be rounded off to 50% for life in terms of the verdict of the Hon'ble Supreme Court in ***Union of India*** vs ***Ram Avtar*** decided on 10.12.2014 in Civil Appeal no. 418 of 2012 and also in terms of Letter No. 1(2)/97/D (Pen-C) dated 07.02.2001.

9. The respondents on the other hand submit that the applicant was not entitled for the grant of the disability element of pension in terms of Regulation 100 of the Navy Pension Regulation 1964 since the disabilities qua the applicant were found to be neither attributable to nor aggravated by military service as opined by the Release Medical Board as NIL for life which makes the applicant ineligible for the grant of the disability element of pension as per Regulation 105-B of Navy Pension Regulations 1964. Furthermore, the respondents submit that

the Release Medical Board is the competent authority to determine the attributability/aggravation of a disability after examining all previous medical records in conjunction with the facts pertaining to the disease and service conditions and the instant case, the Release Medical Board had considered both the disabilities of the application i.e.(i) CEREBRAL VENOUS THROMBOSIS(APC-R+ve) REVISED FROM CORTICAL VENOUS THROMBOSIS AND (ii) TYPE II DIABETES MELLITUS ICD No.E 11 not related to service conditions and thus the instant OA 757/2019 is liable to be dismissed.

10. The respondents thus submit that in terms of the prevailing rules and the policies, the applicant is not entitled for the grant of disability element of pension and there is no question of rounding off of the pension from 20% for life to 50% for life as prayed by the applicant.

ANALYSIS

11. It is essential to advert to the Medical Board proceedings qua the applicant which are to the effect:

"PERSONAL STATEMENT

The posting profile of the applicant has been put forth in the RMB as under:

1. Give details of service)P-Peace OR F-Field/Operational/Sea Service									
S.No.	From	To	Place P/F(HAA/Ops/Sea Service/Modified Fd	P/F	S.No.	From	To	Place	P/F
(i)	28.7.97	17.1.98	INS CHILKA	P	(ii)	18.1.98	28.2.98	VIZAG/KIRPAN	F
(iii)	1.3.98	1.12.98	Guj/Valsura	P	(iv)	2.12.98	17..6.02	MD/OLD SHAKTI	F
(v)	18.6 02	27.12.03	Guj/Valsura	P	(vi)	28.12.03	6.3.04	MB/Trishul	F
(vii)	7.3.04	24.8.04	Kochi/D;Charya	P	(viii)	25.8.04	10.2.06	Vizag/Rajput	F
(ix)	11.2.06	7.7.07	Vizag/FMU(v)	P	(x)	8.7.07	19.12.08	Vizag/Rana	F
(xi)	20.12.08	26.3.11	Kochi/D.charya	P	(xii)	27.3.11	01.10.12	Vizag/Rana	F
(xiii)	2.10.12	Till date	Vizag/Kalinga	P					
2Give particulars of any disease, wounds or injuries from which are you suffering									

Illness, wound injury	First stated		Rank of Ind.	Where treated	Approximate dates and periods treated
	Date	Place			
1.CEREBRAL VENOUS THROMBOSIS(APC-R+ve) REVISED FROM CORTICAL VENOUS THROMBOSIS AND	Oct 05	Kochi	EA(P) 4	INS SANJIVANI/CH(SC), PUNE	01 Oct 05 to 6.Oct 05
2. TYPE II DIABETES MELLITUS ICD No.E 11	Oct 14	Vizag	EA(P)2	INS KALINGA	OPD Basis
3. Did you suffer from any disability during your service, which you think caused or made the disability worse NO					
4.Give details of any incident during your service, which you think caused or made the disability worse NO					
5.Incase of wound or Injury, State how they happened and whether or nor (A) Medical Board or Court of Inquiry was held NA (B) Injury Report was submitted : NO					

The opinion of the Medical Board in Part V thereof is to the effect:

" OPINION OF THER MEDICAL BOARD

1. Please endorse diseases/disabilities in chronological order of

Disability	Attributable to service(Y/N)	Aggravated by service(Y/N)	Not connected with serviced(Y/N)	Reason/cause/specific condition and period in service
1.CEREBRAL VENOUS THROMBOSIS(APC-R+ve) REVISED FROM CORTICAL VENOUS THROMBOSIS AND	N	N	Y	Neither attributable nor aggravated by service. Not related to service condition
2. TYPE II DIABETES MELLITUS ICD No.E 11	N	N	Y	Neither attributable to nor aggravated by service. Onset of illness in Dec.14 while serving in peace area at INS Kalinga

"

12. The verdicts of the Hon'ble Supreme Court in ***Dharamvir Singh vs Union of India & Ors*** decided on 02.07.2013 in Civil Appeal no. 4949 of 2013 and ***Union Of India & Anr*** vs ***Rajbir Singh*** decided on

13 February, 2015 Civil Appeal No. 2904 of 2011, stipulate specifically that a member of the Armed Forces is presumed to be in sound, physical and mental condition upon entering service if there is no note or record at the time of entrance and in the event of subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service. It is also laid down thereby vide the said verdicts of the Hon'ble Supreme Court that the onus of proof is not on the claimant (employee) and that the corollary is that the onus of proof for the condition for non-entitlement is on the employer and that a claimant has a right to derive benefit for any reasonable doubt and he is entitled for the pensionary benefits more liberally.

13. 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.

[pic] 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 realized 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)

It is thus held that the presumption that the disability of Diabetes Mellitus was attributable to and aggravated to military services has not been rebutted by the respondents.

14. The verdicts of the Hon'ble Supreme Court in ***Dharamvir Singh*** (supra) dated 02.07.2013, ***Rajbir Singh*** (supra) dated 13.02.2015, ***Sukhvinder Singh*** vs ***UOI & Ors***, dated 25.06.2014 reported in 2014 STPL (Web) 468 SC and ***UOI & Ors*** versus ***Manjeet Singh*** dated 12.05.2015 Civil Appeal no. 4357-4358 of 2015, stipulate and lay down categorically to the effect that the recording of reasons by the medical board as mandated by the regulations, rules and guiding principles cannot be overlooked and that though the verdict relied upon on behalf of the respondents underline the primacy of the opinion of the medical board on the issue, it however does not relieve the medical board of its statutory obligations to record reasons as required and that necessarily the decision turned on their own facts.

15. Significantly, the observations in Paragraphs 22, 23, 24 & 25 of the Hon'ble Supreme Court in ***Manjeet Singh*** (supra) are to the effect:-

"22. Be that as it may, adverting inter alia to Rule 14(b) of the Rules, we are of the unhesitant opinion that reasons, that the diseases could not be detected on medical examination prior to acceptance in service, ought to have been obligatorily recorded by the Medical Board sans whereof, the respondent would be entitled to the benefit of the statutory inference that the same had been contracted during service or have been aggravated thereby. There is no reason forthcoming in the proceedings of the Medical Board, as to why his disabilities eventually adjudged to be constitutional or genetic in nature had escaped the notice of the authorities concerned at the time of his acceptance for Army service. On a comprehensive consideration of the Regulation, Rules and the General Principles as applicable, the service profile of the respondent and the proceedings of the Medical Board, we are constrained to hold that he had been wrongly denied the benefit of disability pension. His tenure albeit short, during which he had to be frequently hospitalized does not irrefutably rule out the possibility, in absence of any reason recorded by the Medical Board that the disability even assumed to be constitutional or genetic, had not been induced or aggravated by the arduous military conditions. The requirement of recording reasons is not contingent on the duration of the Army service of the member thereof and is instead of peremptory nature, failing which the decision to board him out would be vitiated by an inexcusable infraction of the relevant statutory provisions. Having regard to the letter and spirit of the Regulation, Rules and the General Principles, the prevailing presumption in favour of a member of the Army service boarded out on account of disability and the onus cast on the authorities to displace the same, we are of the unhesitant opinion that the denial of disability pension to the respondent in the facts and circumstances of the case, have been repugnant to the relevant statutory provisions and thus cannot be sustained in law. The determination made by the High Court of Jammu and Kashmir at Jammu is thus upheld on its own merit.

23. The authorities cited at the Bar though underline the primacy of the opinion of the Medical Board on the issue, however, do not relieve it of its statutory obligation to record reasons as required. Necessarily, the decisions turn on their own facts. With the provisions involved being common in view of the uniformity in the exposition thereof, a dilation of the adjudications is considered inessential.

24. Though noticeably, the decision rendered in LPA(SW) 212/2006; Union of India and Others vs. Ravinder Kumar, as referred to in the impugned judgment, was reversed by this Court in Civil Appeal No.1837/2009, we are of the respectful view that the same cannot be construed to be a ruling relating to the essentiality of recording of reasons by the Medical Board as mandated by the Regulations, Rules and the Guiding Principles. This decision thus is of no determinative relevance vis-a-vis the issues involved in the present appeal.

25. The last in the line of the rulings qua the dissensus has been pronounced in a batch of Civil Appeals led by Civil Appeal No. 2904 of 2011; Union of India & Others vs. Rajbir Singh in which this Court on an exhaustive and insightful exposition of the aforementioned statutory provisions had observed with reference as well to the enunciations in Dharamvir Singh vs. Union of India 2013(7) SCC 316, that the provision for payment of disability pension is a beneficial one and ought to be interpreted liberally so as to benefit those who have been boarded out from service, even if they have not completed their tenure. It was observed that there may indeed be cases where the disease is wholly unrelated to Army service but to deny disability pension, it must affirmatively be proved that the same had nothing to do with such service. It was underlined that the burden to establish disability 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 was on account of Army service or had been aggravated by it. True to the import of the provisions, it was

held that a soldier cannot be asked to prove that the disease was contracted by him on account of Army service or had been aggravated by the same and the presumption continues in his favour till it is proved by the employer that the disease is neither attributable to nor aggravated by Army service. That to discharge this burden, a statement of reasons supporting the view of the employer is the essence of the rules which would continue to be the guiding canon in dealing with cases of disability pension was emphatically stated. As we respectfully, subscribe to the views proclaimed on the issues involved in Dharamvir Singh (supra) and Rajbir Singh(supra) as alluded hereinabove, for the sake of brevity, we refrain from referring to the details. Suffice it to state that these decisions do authoritatively address the issues seeking adjudication in the present appeals and endorse the view taken by us."

Significantly, it has been observed vide Para 25 in ***Manjeet Singh*** (supra) by the Hon'ble Supreme Court that the last in the line of the rulings qua the dissensus has been pronounced in a batch of Civil Appeals led by Civil Appeal No. 2904 of 2011; ***Union of India & Others*** vs. ***Rajbir Singh*** in which the Hon'ble Supreme Court on an exhaustive and insightful exposition of the statutory provisions had observed with reference as well to the enunciations in ***Dharamvir Singh*** vs. ***Union of India*** 2013(7) SCC 316, that the provision for payment of disability pension is a beneficial one and ought to be interpreted liberally so as to benefit those who have been boarded out from service, even if they have not completed their tenure and that it had been held therein that a soldier cannot be asked to prove that the disease was contracted by him on account of Military service or had been aggravated by the same and

the presumption continues in his favour till it is proved by the employer that the disease is neither attributable to nor aggravated by Military service and that to discharge this burden, a statement of reasons supporting the view of the employer is the essence of the rules which would continue to be the guiding canon in dealing with cases of disability pension which was emphatically stated.

16. Furthermore, the 'Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel 2008, which take effect from 01.01.2008 vide Paras 6, 7, 10, 11 thereof provide as under:-

"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) 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 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.

17. Furthermore, Para 423(a) 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.

(emphasis supplied),

and has not been obliterated.

18. It is thus for the respondents themselves to consider the aspect of conducting appropriate medical tests at the time of entry and induction of personnel into Armed Forces, the necessity of which is not required to be spelled out by us, and has been categorically highlighted vide para 22 of the verdict of the Hon'ble Supreme Court in ***Manjeet Singh*** (supra).

19. It is also essential to observe that the prayer for 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 versus Rajbir Singh*** (Civil Appeal 2904/2011) dated 13.02.2015.

20. It is essential to observe that in OA 1532/2016 titled ***Cdr Rakesh Pande*** vs ***UOI & Ors.***, vide order dated 06.02.2019 of the AFT (PB), New Delhi, the prayer made therein for the grant of disability element of pension in relation to the medical disability of 'NIDDM' and

'hyperlipidemia' assessed at 20% for NIDDM and 6-10% of hyperlipidemia, composite 20% for a period of 5 years in view of the verdict of the Hon'ble Supreme Court in ***Dharamvir Singh*** vs ***UOI & Ors*** (Civil Appeal No. 4949/2013) and in ***UOI & Ors. vs Rajbir Singh*** (2015) 12 SCC 264, was upheld for a period of 5 years, which vide judgment of the Hon'ble Supreme Court in Civil Appeal no. 5970/2019 titled as ***Commander Rakesh Pande vs UOI & Ors.,*** dated 28.11.2019, was upheld for life, it being a disability of a permanent nature.

21. In the case of OA 1532/2016 titled as ***Cdr Rakesh Pande*** vs ***UOI & Ors.***, the observations in relation to the grant of the disability element of pension as depicted in paras 8, 9, 10, 11 and 12 thereof were upheld by the Hon'ble Supreme Court in ***Commander Rakesh Pande*** (supra). The observations in paras 8, 9, 10, 11 and 12 of the decision of the AFT (PB), New Delhi in OA 1532/2016 were to the effect:-

> *"8. On the merits of the case, the respondents submit that the medical disability NIDDM is considered as a metabolic disorder resulting from a diversity of aetiologies, both genetic and environmental, acting jointly. It is characterized by hyperglycemia and often associated with obesity and improper diet. Diabetes Mellitus Type 2, as per Para 26 of Amended Guide to Medical Officers (Medical Pensions) 2008 can be conceded as aggravated while serving in field, CI operations, high altitude areas and prolonged afloat service. However, the same is not relevant in the applicant's case as he was serving in shore duties in New Delhi, Mumbai and Goa prior to onset of the disease. As regards the disability Hyperlipidaemia, respondents submit that associated high cholesterol levels are also a result of metabolic disorder caused due to genetic causes or dietary indiscretion and there can be no*

service causes that can be considered responsible for predisposition and onset of the disability. Thus, respondents contend that the RMB was just and correct in assessing that the disability was neither attributable nor aggravated by military service.

9. Further, the respondents aver that the RMB had granted the medical disability only for five years and the same period has expired on 30.04.2006. The applicant made no effort whatsoever to present himself before a Resurvey Medical Board after expiry of the medical disability period. Respondents contend that the contents of Govt. of India (MoD) Circular dated 07.02.2001 can, in no way, be taken to imply that the applicant's disability period would automatically be extended 'for life' even without reference to the medical authorities for reassessment of medical disability on conclusion of the said period.

Consideration :

10. Having given careful consideration to the arguments on both sides, we find that the basic issue before us is whether the applicant, a naval officer who contracted NIDDM and Hyperlipidaemia after about 17 years of service, and was assessed @ 20% composite for these two diseases for a period of 5 years by the RMB three years later, on his taking premature retirement, can be granted disability element of pension despite the fact that (a) the applicant has approached the respondents and the Tribunal about 15 years after his premature retirement from service, and (b) the RMB assessed his disabilities (composite @ 20% for five years) as neither attributable nor aggravated (NANA) by military service.

11. In the first instance, we have considered the delay of about 15 years by the applicant in forwarding his representation against non-grant of disability element of pension and filing his OA thereafter. We have examined the averments in M.A. No. 566 of 2019 explaining the delay and, in the interests of justice, condoned the delay,

relying upon the judgment dated 13.08.2008 of the Hon ble Supreme Court in the matter of Union of India Vs. Tarsem Singh (2009) (1) AISJ 371.

12. With regard to the merits of the OA, we find that the applicant's case is squarely covered by the judgments in the case of Dharamvir Singh (supra) and Rajbir Singh (supra), whereby the Hon'ble Apex Court had observed to the effect that, unless cogent reasons are given to the contrary by the medical authorities, attributability or aggravation will be conceded in cases where military personnel contract medical disabilities during the course of the service based on the grounds that military personnel are put through thorough medical examination at the time of their entry into service, and are not enrolled or commissioned unless they are found fully fit medically."

(emphasis supplied)

22. As per the amendment to 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.

23. It is essential to observe that as per Para 26, Chapter VI of the Guide to Medical Officers (Military Pensions), 2008 in relation to the disability of Diabetes Mellitus it has been stated to the effect:-

"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."

24. In the instant case, the disability of Diabetes Mellitus Type –II had its onset in October 2014, after the applicant was inducted in the Indian Navy on 28.07.1997, i.e. after a period of 17 years of service in the Indian Navy and in the 13th posting of the applicant. It is also essential to observe that the applicant was posted in field areas afloat/onboard ships on 6 occasions in his 13 postings in his entire tenure. The cumulative stress and strain of the same on the applicant while in service in the Indian Navy cannot be overlooked and in terms of Para 26 of Chapter VI of the GMO(MP) 2008, itself has to be held to be attributable to military service.

CONCLUSION

25. Under the circumstances, the **OA 757/2019** is allowed and the applicant is held entitled to the grant of the disability element of pension qua the disability of 'Diabetes Mellitus Type II' @ 20% for life which is directed to be broad banded to 50% in terms of the verdict of the Hon'ble Supreme Court in ***Union of India*** vs ***Ram Avtar*** decided on 10.12.2014 in Civil Appeal no. 418 of 2012 with effect from the date of his discharge i.e. **31.07.2017** from the Indian Navy, and the respondents are directed to issue the corrigendum PPO with directions to the respondents to pay the arrears within a period of three months from the date of receipt of a copy of this order, *failing which*, the respondents

would be liable to pay interest @6% p.a. on the arrears due from the date of this order.

26. No order as to costs.

Pronounced in the Open Court on 9th day of February,2024.

[LT. GEN. C.P. MOHANTY]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/CHANANA/