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

C..

OA 8/2019 with MA 313/2019

Ex Sgt S Rakesh ..... Applicant
VERSUS
Union of India and Ors. ..... Respondents

For Applicant : Mr. Praveen Kumar, Advocate
For Respondents : Mr. Shyam Narayan, Advocate

CORAM

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

ORDER
07.02.2024

Vide our detailed order of even date; we have allowed the OA 8/2019. 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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O R D E R

MA 313/2019

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 552 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 313/2019 is allowed and the delay of 552 days in filing the OA 8/2019 is thus condoned. The MA is disposed of accordingly.

OA 8/2019

2. The applicant vide the present O.A 8/2019 has made the following prayers:-

"(a) Quash and set aside the impugned letters dated 26 Apr 2017 and 08 Jun 2018.
(b) Direct respondents to grant disabilities Pension@50% and rounding off the same to 75% for life to the applicant with effect from 01 Jul 2017 i.e. the date of discharge from service with interest @12% p.a. till final payment is made.
(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case."

3. At the outset, the applicant has fairly conceded that he is already in receipt of the disability element of pension in relation to Primary Hypothyroidism assessed @20% which is rounded off to 50% for life as submitted by the respondents, vide MA 4634/2023 by placing on record a copy of the order dated 24.12.2019 whereby the first appeal of the applicant in relation thereto was allowed vide Letter Air HQ/99798/5/198/2019/770848/DP/AV-III(Appeals) dated 24.12.2019 which is to the effect:

"ACCEPTANCE OF FIRST APPEAL AGAISNT REJECTION OF DISABILITY PENSION CLAIM" EX 770848 SGT RAKESH

1. *I am directed to refer to First Appeal submitted by above named Ex Sgt dated 20 Apr 18 against rejection of his disability pension claim by the adjudicating authority.*
2. *The subject appeal has been considered by the Appellate Committee for First Appeal. Individual was enrolled in the IAF on 28 Jun 94 and discharged from service wef 30 Jun 17 under the clause "On fulfilling the condition of his enrolment:. The Release Medical Board(RMB) assessed his disabilities i.e. ID(i) DM Type II @20% ID(ii) Primary Hypertension @30% & (iii) Primary Hypothyroidism @20% with composite assessment for all disabilities @50% for life and held the same as neither attributable to nor aggravated by military service. The adjudicating authority accordingly rejected his disability pension claim. Consequentially, he filed first appeal.*
3. *After examining all the material facts, relevant medical documents and his appeal, the Appellate Committee for First Appeal has accepted the disability as aggravated for ID(iii) only by service with 20% of disablement and accordingly, sanction*

of the competent authority is hereby accorded under Govt of India, Min of Defence, Order No.4684/DIR(PEN)/2001 dated 14 Aug 01 as further amended vide Corrigendum of even number dated 07 Nov 01 and 08 Feb 02 for accepting the appeal and grant of disability pension @20% for ID(iii) only for life to Ex-770848 Sgt Rakesh with effect from 01 Jul 17 i.e. next date of his discharge from service. Percentage of disablement to be rounded off to 50%(20% to be rounded off to 50%) in terms of PCDA(P) Allahabad circular NO.584 dated 07 Sep 17 and MoD letter 1(2)/97/D(Pen-D) dated 31 Jan 2001."

The applicant thus submits that his prayer is confined to seeking the grant of the disability of pension for the other two disabilities i.e. DM Type-II and Primary Hypertension assessed @20% and 30% for life respectively.

4. The applicant Ex. Sgt S Rakesh was enrolled in the Indian Air Force on 28.06.1994 and was discharged from the IAF on 30.06.2017 under the clause on "On fulfilling the conditions of enrolment" after rendering a total of 23 years and 03 days of regular service. The applicant was placed in Low Medical Category(T-24) composite for the ID Type-II Diabetes Mellitus, Primary Hypertension and Primary Hypothyroidism vide AFMSF-15 dated 24.02.2016 while serving at Air Force Station, Palam, New Delhi. The Release Medical Board not solely on medical grounds was held at the Air Force Station, Palam vide AFMSF-16 dated 20.10.2016 which found the applicant fit to be released in Low Medical Category A4G2(P) composite for the disabilities ID-Type-II Diabetes Mellitus, Primary Hypertension and Primary Hypothyroidism. However,

the RMB considered the disabilities of the applicant as being neither attributable to nor aggravated by service by stating that the onset of the said diseases was in a peace area with it having been opined in the RMB in Para V thereof as under:-

1. Causal relationship of the disability with service conditions or otherwise				
Disabilities	Attributed to Service(Y/N)	Aggravated to Service(Y/N)	Not connected with service(Y/N)	Reasons/Cause/specific condition and periodic service
DM Type II(Old) Z09.0	NO	NO	YES	Onset in peace. There is no relation to stress and strain or posting high altitude/Field area/CI Ops Area (Refers para 26, CH(VI) of GMO
PRIMARY HYPERTENSION(OLD)(Z09.0	NO	NO	YES	Onset in peace. There is no relation to stress and strain or posting high altitude/Field area/CI Ops Area (Refers para 43, CH(VI) of GMO
Primary Hypothyroidism(Old) Z09.)	NO	NO	YES	Onset in peace. There is no relation to stress and strain or posting high altitude/Field area/CI Ops Area (Refers para 37, CH(VI) of GMO
Note: A disability "not connected with service" would be neither nor aggravated by service.(This is in accordance with instructions contained in "Guide to Medical Officers(Mil Pension-2008)				

"

The Statement of the Case in Part IV of the RMB is to the effect:

PART IV

STATEMENT OF CASE

"

1. Chronological list of the disabilities

Disabilities	Date of origin	Rank of the Indl	Place & unit Where serving at the time
DM Type II(Old) Z09.0	Dec 2015	Sgt	New Delhi 3 Wg AF
Primary Hypertension(Old) Z09.0	Dec 2015	Sgt	New Delhi 3 Wg AF
Primary Hypothyroidism(Old) Z09.0	Dec 2015	Sgt	New Delhi 3 Wg AF

The percentage of disablement as put forth in the RMB as under:

"

6. What is present degree of disease/disablement as compared with a healthy person of the same age and sex?(Percentage will be expressed as Nil or as follows) 5%,10%,15% and thereafter in multiples of ten from 20% to 100%				
Disease/Disability (As numbered in Para 1 Part VI)	Percentage of disablement	Composite assessment for all disabilities (Max 100%) with duration	Disability Percentage Qualifying for Disability Pension with duration	Net Assessment Qualifying for disability Pension (Max 100%) with duration
1.DM Type-II(Old) Z09.0	20% (Twenty percent) for life	50% (Fifty percent) for life	NIL for life	NIL for life
2. PRIMARY HYPERTENSION(OLD) Z09.0	30%(Thirty per cent) for life			
3. Primary Hypothyroidism(Old) Z09.0	20% (Twenty percent) for life			

"

"

5. The RMB was approved by the AOC AFRO which upheld the recommendations of the RMB and rejected the disability pension claim vide letter No.RO/3305/3/Med dated 26.02.2017. The first appeal dated 20.04.2018 submitted by the applicant against rejection of his claim for disability pension was disposed of on 24.12.2009 granting the applicant the disability element of pension @20% rounded off to 50% for life, in

relation to the disability of Primary Hypothyroidism(Old) as already observed in para 3 hereinabove.

CONTENTIONS OF THE PARTIES

6. The Applicant submits that he was inducted into the Indian Air Force in a medically fit condition after a thorough medical examination conducted by the Recruiting Medical Officers at the Recruitment/Selection Centre and that there was no mention that the applicant was suffering from any kind of disease/injury or wound. The applicant submits that he was also put to a thorough medical examination at the Training Centre and was found medically fit and after training, he was posted to different units in peace and field areas and his performance was excellent. *Inter alia*, the applicant submits that due to the peculiar armed forces service conditions he used to stay away from family and was forced to stay alone whilst on training/courses/exercise in hard areas. The applicant submits that he was posted to Amritsar, Bhuj, Vadodara and also to Leh, a hard and high altitude unit where he was detailed to work on his trade duties and was responsible to carry out the duties assigned to him which required extra physical and mental stress and strain. The applicant submits that in the year 2013, he was posted to New Delhi. The applicant submits that he was found to be suffering with the IDs(i) Diabetes Mellitus Type-II(Old @20% (ii) Primary Hypertension(Old) @30% and(iii) Primary Hypothyroidism(Old) @20% and though the RMB assessed his composite disabilities @50% for life, but opined the said disabilities as being neither

attributable to nor aggravated by military service. *Inter alia*, the applicant submits that the said disabilities occurred in 2015 after a field area posting at Leh and thus his disabilities have to be considered as attributable to and aggravated by service as the same have causal connection with military service.

7. The applicant submits that the disabilities he suffers from occurred due to adverse conditions of military service and are due to severe stress and strain of the specific nature of service duties and have to be considered as being attributable to or aggravated by service and have wrongly been opined by the RMB being *"Neither Attributable to nor aggravated by military service"*.

8. Inter alia, the applicant places reliance on the verdict of the ***Dharamvir Singh Vs UOI & Ors***(Civil Appeal No 4949/2013) 2013 AIR SCW 4236, the "Entitlement Rules for Casualty Pensionary Awards 1982" as shown in Appendix-II, Government of India, Ministry of Defence letter no. 1(1)/81/D(Pen-C) dated 20.06.1996 and "General Rules of Guide to Medical Officer(Military Pensions) 2002 and also on Rule 423 of the Regulations for Medical Services for the Armed Forces 2010 which deals with "Attributability to Service". The applicant places specific reliance on the observations in para-28 of the verdict of the Hon'ble Supreme Court in Dharamvir Singh(Supra) which are 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."

9. The applicant also placed reliance on the verdict of the Hon'ble Supreme Court in ***UOI & Ors.*** *Vs* ***Rajbir Singh*** in Civil Appeal No.

2904/2011, decided on 13.02.2015, to contend to the effect that in as much as in the absence of any reasons recorded by the Medical Board, the disability that had arisen during the course of service of the applicant and with which the applicant did not suffer at the time of enrolment into the Military Service, has to be presumed to have arisen in the course of military service. The applicant also submits that in terms of the verdict dated 10.12.2017 of the Hon'ble Supreme Court in *UOI Vs Ram Avtar* in Civil Appeal No.418/2012, the applicant is entitled to the rounding off of the disability pension assessed @50% for life to 75% for life from the date of discharge.

10. The respondents through their counter affidavit submit to the effect that there is no infirmity in the assessment made by the RMB holding the disabilities of Primary Hypertension @20% and Type-II Diabetes Mellitus(Old) @30% in terms of Rule 153 of Pension Regulations for IAF, 1961(Part-1) which provides to the effect:-

> ***"Unless otherwise specifically provided, disability pension maybe granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by Air Force service and is assessed at 20% or over."***

The respondents have thus prayed for dismissal of the OA 8/2019.

ANALYSIS

11. 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.***

12. It is further 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 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)

13. 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 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 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."

14. 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 has not been obliterated.

Thus, the ratio of the verdicts in ***Dharamvir Singh*** vs ***UOI & Ors*** (Civil Appeal No. 4949/2013) (2013) 7 SCC 316, ***Sukhvinder Singh*** vs ***UOI & Ors***, dated 25.06.2014 reported in 2014 STPL (Web) 468 SC, ***UOI & Ors. vs Rajbir Singh*** (2015) 12 SCC 264 and ***UOI & Ors*** versus ***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.

15. It is essential to advert to the posting profile of the applicant as reflected in Part-I Personal Statement in the RMB dated 20.10.2010 which is as under:

PART-1

PERSONAL STATEMENT

1. Give details of service(P+Peace Or F-Field/Operational/Sea service)

S.No.	From	To	Place	P	S.no	From	To	Place	P/
1.	16.12.95	29.3.99	Uttarlai	P	2	30./3.99	9.5.04	Amritsar	P
3.	10..5.04	14.6.07	Bhuj	P	4	15.6.07	13.3.11	Vadodara	P
5.	14.3.11	5.6.13	Leh	F	6	06.5.13	Till date	New Delhi	p

The same indicates there that from 14.03.2011 to 05.05.2013, the applicant was posted at Leh, a field area. Para 43 of Chapter VI of the GMO(MP) 2008 amended provides as under:-

> "43. <u>Hypertension</u> – *The first consideration should be to determine whether the hypertension is primary or secondary. If (e.g. Nephritis), and it is unnecessary to notify hypertension separately.*
>
> *As in the case of atherosclerosis, entitlement of attributability is never appropriate, but where disablement for essential hypertension appears to have arisen or become worse in service, the question whether service compulsions have caused aggravation must be considered. However, in certain cases the disease has been reported after long and frequent spells of service in field/HAA/active operational area. Such cases can be explained by variable response exhibited by different individuals to stressful situations. Primary hypertension will be considered aggravated if it occurs while serving in Field areas, HAA, CIOPS areas or prolonged afloat service."*

In terms of para 43 of Chapter VI of the GMO(MP) 2008 itself, it is stipulated therein that in certain cases the said disease has been reported after long and frequent spells of service in

Field/HAA/Operational areas which can be explained by variable response exhibited by different individuals to stressful situations.

15. In view of the verdict of the Hon'ble Supreme Court in ***Dharamvir Singh Vs. Union of India & Ors.***(Supra) and the order of the Principal Bench of the AFT in OA 1825/2018- ***Col R.R. Panigarhi Vs Union of India & Ors.*** , and the factum that the non-existence of the ID of Hypertension at the time when the applicant joined military service is not refuted by the respondents, the contention of the respondents that the disability of hypertension assessed by the Release Medical board to be 30% as not being aggravated nor being attributable to military service,- cannot be accepted.

16. 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*** Vs. ***Rajbir Singh*** (Civil Appeal 2904/2011) dated 13.02.2015.

17. 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/ CI-ops/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.

18. Para 26 of Chapter VI of the Guide to Medical Officers (Military Pensions), 2008, is 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."

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 thus held that the presumption that the disabilities of Diabetes Mellitus Type II and the Primary Hypertension were attributable to and aggravated to military services has not been rebutted by the respondents.

21. As regards the reliance placed on behalf of the respondents on the order dated 11.09.2023 in OA 121/2021 of the Hon'ble AFT(RB) Chennai in ***Ex. Sub Vijyakannan*** Vs ***Union of India & Ors.*** it is essential to observe that the same is based on the facts of the said case, which are wholly distinguishable from the facts of the instant case in as much as the onset of the disability of Diabetes Mellitus Type-II in the instant case was in December, 2016 after the field posting of the applicant from 14.03.2011 to 05.05.2013 at Leh with its attendant rigours.

CONCLUSION

22. Thus, the OA 8/2019 is allowed and applicant is held entitled to the grant of the disability element of pension qua Primary Hypertension @ 30% and Diabetes Mellitus Type II @ 20%, assessed compositely @ 50% for life alongwith the Primary Hypothyroidism. Since the applicant is already in receipt of disability element of pension in relation to Primary Hypothyroidism assessed @20% and rounded off to 50% which in terms of the verdict of the Hon'ble Supreme Court of India in Civil Appeal 418/2012 dated 10.12.2014 titled as ***UOI & Ors. Vs. Ramavtar***, the percentage of disablement of the said disabilities are now rounded off to 75% from the date of discharge including the benefits of rounding off to 50% in relation to Primary Hypothyroidism of which the applicant is already in receipt thereof.

23. 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 7 day of February, 2024.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/chanana/