

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

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OA 93/2021

Ex JWO Dhir Singh Dahiya

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Mr. Praveen Kumar, Advocate

For Respondents : Ms. Jyotsna Kaushik, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)

HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
02.01.2024

Vide our detailed order of even date; we have allowed the OA 93/2021. 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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ORDER

The applicant "No. 668527-L Ex JWO Dhir Singh Dahiya" vide the present OA makes the following prayers:

"(a) Quash and set aside the impugned letters dated 31 Jan 2020 and 19 Oct 2020.

(b) Direct Respondents to grant disability Pension @70% and rounding off the same to 75% for life to the applicant with effect from 01 Jun 2020 i.e. the date of discharge from service with interest @ 12% p.a. till final payment is made.

(c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case."

2. The applicant was enrolled in the Indian Air Force on 07.10.1980 and discharged from IAF on 31.05.2020 under the clause "on fulfilling the conditions of enrolment/on attaining the age of superannuation" after

rendering total 39 years and 238 days of regular service. The applicant was initially placed in LMC A4G4 (T 24) for the ID – Primary Hypertension and ID – Diabetes Mellitus Type-II vide AFMSF-15 dated 27.08.2013 whilst posted at AF Stn Jamnagar. The applicant was detected to have raised blood pressure and raised blood sugar level during the evaluation of ECG abnormality.

3. During subsequent review he was placed in LMC A4G4 (P) composite for both the disabilities vide AFMSF - 15 dated 26 Sep 2014. The applicant was admitted to 12 AFH/CH (CC) Lucknow with complaints of breathlessness on 27 Jun 2017 whilst posted at 17 Wg, AF. He was evaluated and diagnosed ID- Dilated Cardiomyopathy and underwent CAG on 29 Jun 2017 and was placed in LMC A4G4 (T24) composite for all three disabilities vide AFMSF-15 dated 07 Jul 2017.

4. His Release Medical Board not solely on medical ground was held at 28 Wing, AF vide AFMSF-16 dated 13 Jul 2019 which found him fit to be released from service in low medical category A4G4 (P) composite for ID-Primary Hypertension, ID-Diabetes Mellitus Type-II and ID-Dilated Cardiomyopathy. The RMB has considered his disabilities as neither attributable to nor aggravated by service. The percentage of disablement was assessed @ 30% for Dis-1, 20% for dis-2 and 50% for dis-3 with composite assessment @ 70% for life long. The disability

qualifying element for disability pension was quantified at NIL. His RMB was approved by Dy PMO (S) HQ WAC, IAF dated 24 Sep 2019.

5. The RMB assessed his disability ID (i) Primary Hypertension @30%, ID (ii) DM Type-II @ 20% and ID (iii) Dilated Cardiomyopathy @ 50% (compositely @ 70%) for life and recommended all the IDs as being neither attributable to nor aggravated by AF Service. On adjudication, the AOC AFRO upheld the recommendations of the RMB and rejected the disability pension claim vide letter No. RO / 3305 / 3 / Med dated 15 Jan 2020. The outcome of the same was also communicated to the applicant vide letter No. Air HQ/99798/1/668527/05/20/DAV(DP/RMB) dated 31 Jan 2020 with an option that he may prefer an appeal to the Appellate Committee within six months from the date of receipt of letter.

6. The legal notice dated 27 Aug 2020 was replied to as one of the impugned letters No. Air HQ/99798/1/668527/DAV/DP/CC dated 19 Oct 2020 apprising the applicant that in terms of Rule 153 of the Pension Regulations for the IAF, 1961 (Part-I) the conditions thereof were not fulfilled. The applicant's first appeal dated 27 Aug 2020 was under consideration by Appellate Committee of First Appeal and was stated to be presently held with Brig AFMS (Pens) for considered opinion at the time of filing of the Counter Affidavit. In the interest of justice, in terms of Section 21 (1) of the AFT Act 2007, we consider it appropriate to take up the matter for consideration.

CONTENTIONS OF THE PARTIES

7. The applicant submits that at the time of entry into service he was subjected to thorough medical examination conducted by recruiting medical officer and when he was found fit by the Recruiting Medical Officers at the Recruitment/Selection Centre in all aspects he was enrolled in the Indian Air Force. Inter alia the applicant submits that there was no mention that the applicant was suffering from any kind of disease/injury or wound and was again put to a thorough medical examination at the Training Centre before training and was found medically fit and after passing out from Training Centre, he was posted to different units (Peace and Field) during service.

8. Inter alia the applicant submits that during his postings he was detailed to work on his trade duties which required extra physical and mental stress on him and he often stayed away from his family whilst on courses / trainings exercises and in hard areas. Inter alia the applicant submits that due to peculiar armed forces service conditions he used to stay away from his family and was forced to stay alone while on courses/trainings/exercises and in hard areas staying alone and away from social and family life added to stress and strain of services condition still he continued to serve the nation with best of his abilities and his integrity and patriotism is unquestionable.

9. Inter alia the applicant submits that in the year Dec 1982 he was posted to MTI, Tambaram and was again detailed for his trade duties as (AF/FIT), whilst posted at this place. He worked hard and performed his duties, he hardly got any time to properly take rest and relaxation. He alone handled and carried out this very strenuous and stressful duty for around four years. Inter alia the applicant submits that in the year Jul 1984, he was posted to 1 AOP, Ranchi and was detailed to perform his trade duties. His job at this place was very tedious and cumbersome. He was very hard pressed during this tenure. Despite all hardships he continued to give his best to the organization with best of his abilities. He faced many hardships while he was posted at various places.

10. Inter alia the applicant submits that in the year Sep 1986 he was posted to MTI, Tambaram and again was deployed on his trade duties whilst posted to this place he was moved very frequently on temporary duties to other station and submits that in the year Oct 1987, he was posted to 5 BRD, Suler and was detailed to perform his trade duties. His job at this place was very tedious and cumbersome. He was very hard pressed during this tenure.

11. Inter alia the applicant submits that in the year Nov 1989 he was posted to ADE, Bangalore and again he was deployed on his trade duties and in the year Feb 1996 he was posted to 21 Wg. Leh a high altitude area and again he was deployed on his trade duties while posted to this

place and in the year Mar 1997 he was posted to 07 Wg. Ambala on his trade duties and in the year Mar 2002 he was posted to 06 Sqn, Pune and in the year Jul 2006 he was posted to 17 Wg. Gorakhpur on his trade duties.

12. Inter alia the applicant submits that in the year May 2011 he was posted to 33 Wg, JTF, Jamnagar and was detailed to work on his trade duties and was made responsible to carry out the duties assigned to him which required extra physical and mental stress on the applicant. Whilst posted to this place he was found to be suffering with first and second disabilities viz (i) Primary Hypertension (Old) onset Jul 2013 at Jamnagar @30% for life and (II) Diabetes Mellitus Type-II (Old) onset Jul 2013 at Jamnagar @ 20% for life. He stayed at this unit for around 04 years and thereafter was posted to 17 Wg, JTF, Gorakhpur and in the year May 2016 he was posted to 17 Wg, JTF, Gorakhpur, he was detailed to work on his trade duties and was made responsible to carry out the duties assigned to him which required extra physical and mental stress on the applicant.

13. Whilst posted to this place he was found to be suffering with third disability (III) DILATED CARDIOMYOPATHY with onset in Jul 2016 at Gorakhpur, Uttar Pradesh @ 50% for life. The RMB opined that these disabilities were neither attributable to and nor aggravated by military service. The opinion of RMB is arbitrary and illegal because the

applicant suffered with the disabilities while he was in active service and the same should have been considered as attributable to and aggravated by military service since it occurred due to severe stress and strain of military service and dietary compulsions.

14. Inter alia the applicant submits that the applicant hardly got any time to properly take rest and relaxation and was under treatment at MH Jamnagar & Command Hospital (CC) Lucknow subsequently was placed in Low Medical Category since 2013 and rendered 39 years and 07 months of color service in the Indian Air Force. The applicant further submits that he was finally discharged from service on 31 May 2020 From 131 FAC, FLT, Hindan, Ghaziabad in low medical category A4G4(P) without any disability pension and that due to his low medical category he was not promoted to next higher ranks.

15. Inter alia the applicant submits that he was released from service on 31 May 2020 in the rank JWO in Permanent Low Medical Category A4G4(P) and the Release Medical Board assessed his disabilities (i) Primary Hypertension (Old) with onset in Jul 2013 at Jamnagar @ 30% for life (ii) Diabetes Mellitus Type-II (Old) with its onset in Jul 2013 at Jamnagar @ 20% for life and (III) Dialated Cardiomyopathy (Old) @ 50% for life with its onset in Jun 2016 respectively at Gorakhpur, Uttar Pradesh. The composite assessment for all the disabilities was @ 70%.

16. The applicant also seeks the broad banding of the composite disability from 70% for life to 75% for life in view of the Hon'ble Supreme Court in Civil Appeal no. 418/2012 titled as *UOI & Ors vs Ram Avtar* vide judgment dated 10.12.2014.

17. The respondents through their counter affidavit place reliance on Rule 153 of Pension Regulations for IAF, 1961 (Part- 1) to submit that the primary conditions for the grant of disability pension are "*Unless otherwise specifically provided, disability pension may be 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.*" 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.

18. Inter alia the respondents submit that the mere occurrence of any disease in service does not mean that it has happened due to service and that there are certain other factors also which instigate the occurrence of disease. In this case ID-Primary or essential hypertension tends to be a familial, it has progressive age related onset which is likely to be consequence of an interaction between environment and genetic factors including high salt intake, heavy consumption of alcohol, obesity and lack of exercise. The respondents submit that the entitlement of attributability

is never appropriate in essential hypertension though in certain cases the disease has been reported after long and frequent spell of service in field/HAA/active operational area. Such cases can be explained by variable response exhibited by different individual to stressful situation in terms of Para 43 of chapter VI of GMO 2008.

19. Inter alia the respondents submit that Diabetes Mellitus Type - II is a metabolic disease characterized by hyperglycemia due to absolute/relative deficiency of insulin and association with long term complication called microangiopathy (retinopathy, nephropathy and neuropathy) and macroangiopathy. The respondents thus submit that in the instant case there is no infirmity in the opinion of the Release Medical Board having opined that the disabilities of Primary Hypertension (Old) and Diabetes Mellitus (Old) were neither attributable to nor aggravated by military service. Significantly, there is not a whisper of an averment in the counter affidavit dated 16.11.2021 filed on behalf of the respondents in relation to the disability of Dilated Cardiomyopathy to contend specifically that the same was neither attributable to nor aggravated by military service.

ANALYSIS

20. 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 vs UOI & Ors* (Civil

Appeal No. 4949/2013) 2013 AIR SCW 4236 decided on 02.07.2013), 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*.

21. 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 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 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.

22. 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),__

has not been obliterated.

23. It is essential to observe that para-33 of the verdict of the Hon'ble Supreme Court in ***Dharamvir Singh*** (supra) is to the effect:-

"33. As per Rule 423(a) of General Rules for the purpose of determining a question whether the cause of a disability or death resulting from disease is or is not attributable to service, it is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a field service/active service area or under normal peace conditions. "Classification of diseases" have been prescribed at Chapter IV of Annexure I; under paragraph 4 post traumatic epilepsy and other mental changes resulting from head injuries have been shown as one of the diseases affected by training, marching, prolonged standing etc. Therefore, the presumption would be that the disability of the appellant bore a casual connection with the service conditions."

(emphasis supplied)

It is thus apparent that in terms of para 423 (a) of the Regulations for the Medical Services of the Armed Forces 2010 for the purpose of determining a question whether the cause of disability or death resulting from disease is or is not attributable to service, it is immaterial whether the cause giving rise to the disability, or death occurred in an area declared to be a field service / active service area or under normal peace conditions, is well established.

24. Thus, in relation to all the three disabilities that the applicant suffers from of Primary Hypertension (old), Diabetes Mellitus (old) and Dilated Cardiomyopathy (old), the opinion of the Release Medical Board to the effect that the disabilities of Primary Hypertension (old) and Diabetes Mellitus (old) had their onset in July 2013 whilst the applicant was serving at Jamnagar a Peace Station and had been posted to peace stations prior to the onset of the said two disabilities is itself insufficient to detract from the cumulative stress and strain of military service that the applicant had undergone prior to the onset of the disability, after his induction in the Indian Air Force on 07.10.1980, with the said two disabilities of Primary Hypertension (old) and Diabetes Mellitus Type 2 (old) with their onset in July 2013 i.e. after 33 years of service in the Indian Air Force, which would thus have to be held to be attributable to and aggravated by military service. That the applicant from 09.02.1996 to 26.03.1997 was posted at 21 Wing Leh in a high altitude hard area can also not be overlooked.

25. It is essential to advert to Para-43 of Chapter-VI of Clinical Aspects of certain diseases of GMO(MP), 2008, which relates to Hypertension which reads as under:-

"43. Hypertension- The first consideration should be to determine whether the hypertension is primary or secondary. If secondary, entitlement considerations should be directed to the underlying disease process (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."

(emphasis supplied).

Thus, in terms of Para 43 of the Chapter VI of the GMO (Military Pensions) 2008 itself, it has been stipulated to the effect that in certain cases the said disease has been reported after long and frequent spells of service in field / HAA / active operational area, and such cases can be explained by variable response exhibited by different individuals to stressful situations.

26. It is essential also to observe that though the respondents vide their counter affidavit in response to Paras 5.1 and 5.11 of the OA have sought to submit to the effect that the ID of Primary or Essential hypertension tends to be familial, the Summary and Opinion of Gp Capt Ashish Chauhan Senior Advisor (Medicine) and Cardiologist at AFCME dated 12.07.2019 forming part of the Release Medical Board proceedings dated 13.07.2019 indicates the course of illness as under:-

"COURSE OF ILLNESS:- 56 Yr old serving JWO is a known case of Diabetes Mellitus & Primary Hypertension detected in Jul 2013. No F/H of Hypertension, Diabetes Mellitus & CAD. No habit of smoking, he is an occasional drinker. No habit of using tobacco. He was evaluated for the disability, no target organ damage detected. He has been observed in LMC and subsequently upgraded to A4G2(P). He was also presented with features of CCF. On evaluation at CH (CC) Lucknow he was detected to have Dilated Cardiomyopathy. He underwent CAG which revealed normal coronaries."

The same clearly indicates that there was no family history of Hypertension, Diabetes Mellitus and CAD, and that the applicant was also not a smoker and had no habit of using tobacco and there was no target organ damage detected and that he underwent CAG which revealed normal coronaries, though he was an occasional drinker.

27. Thus, the contention that the respondents have sought to raise through their counter affidavit that the disability of primary hypertension was familial is not countenanced even through the Summary and Opinion of Gp Capt Ashish Chauhan Senior Advisor (Medicine) and Cardiologist at AFCME dated 12.07.2019.

28. In these circumstances, in terms of Rule 7 and Rule 10 (b) (iii) of the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel 2008, the initial presumption of entitlement in favour of the applicant having not been effectively refuted by the respondents, the applicant is held entitled to the grant of the disability element of pension

in relation to the disability of Primary Hypertension (old) assessed with the percentage of disablement at 30% for life.

29. As regards the disability of Diabetes Mellitus Type 2 (old), it is essential to advert to Para 26, 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."

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

31. It is essential to observe that in OA 1532/2016 titled **Cdr Rakesh Pande vs UIO & 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 UIO & Ors** (Civil Appeal No. 4949/2013) and in **UIO & 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 UIO & Ors.**, dated 28.11.2019, was upheld for life, it being a disability of a permanent nature.

32. In the case of OA 1532/2016 titled as **Cdr Rakesh Pande vs UIO & 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) AISIJ 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)

33. 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, Congenital 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)

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

34. It is essential to advert to the opinion of the medical board in the RMB in Part VII which as under:-

| Disability | Attributable to service (Y/N) | Aggravated by service (Y/N) | DETAILED JUSTIFICATION |
|--|--|--|--|
| (i) PRIMARY HYPERTENSION (OLD) (I10.0) (Z09.0) | NO | NO | Onset of the disability was on Jul 13 while serving at Jamnagar, peace station and was posted to peace station prior to onset and no close time association with stress & strain of field/HAA/CIOPS & there was no delay in diagnosis or dietary compulsion or Infection/Trauma. Hence NANA as per para 43 of Ch - VI of GMO 2008. |
| (ii) DIABETES MELLITUS TYPE-II | NO | NO | Onset of the disability was on Jul 13 while |

| | | | |
|--|----|----|--|
| (OLD) (E11.0) (Z09.0) | | | serving at Jamnagar, was posted to peace station prior to onset. This is a metabolic disease characterized by hyperglycemia due to absolute/relative deficiency of insulin & there was no delay in diagnosis & no close time association of stress & strain of service in field/HAA/CIOPs area is established. Hence NANA as per para 26 of Ch-VI of GMO 2008. |
| (iii) DILATED CARDIOMYOPATHY (OLD) (I42.0) (Z09.0) | NO | NO | Onset of the disability was on Jun 16 while serving at Gorakhpur, peace station and was posted to peace station prior to onset and no close time association with stress & strain of field/HAA/CIOPS & there was no delay in diagnosis or dietary compulsion or Infection/Trauma. Hence NANA as per para 08 of Ch - VI of GMO 2008. |

”

35. In the instant case, It is essential to advert to the opinion given to the summary and opinion dated 12.07.2019 forming part of the Release Medical Board proceedings which is as under:-

“OPINION: A known case of Type 2 Diabetes Mellitus & Primary Hypertension detected in Jul 2013. He is maintaining grade-II (acceptable) glycemic control with medication. He has good control of his blood pressure with medication. No target organ damage detected. He requires life style modification, medication and observation.”

36. Though the respondents content that the disability of Diabetes Mellitus type 2 was a metabolic disease and that it required lifestyle modifications, medication and observation, the course of illness already reproduced hereinabove as depicted in the summary and opinion dated 12.07.2019 in para 35 does not indicate any significant contributory factors from the side of the applicant for the onset of the disability of Diabetes Mellitus type 2.

37. The weight of the applicant at the date of medical examination dated 06.06.2019 in forming part of the Release Medical Board proceedings indicates that the applicant weight 76 kilograms with the ideal body weight of 69 kilograms, the applicant is apparently only marginally overweight but not indicated to be obese as spelt out through the GMO (Military Pensions) 2008 itself referred to hereinabove, stress and strain are causative precipitative factors for the onset of the disability of Diabetes Mellitus type 2 which in the instant case arose after 33 years of service in the Indian Air Force and has to be held in these circumstances in the instant case to be attributable to and aggravated by military service.

38. As regards the disability of 'Dilated Cardiomyopathy' as reflected in the Summary and Opinion of Gp Capt Ashish Chauhan Senior Advisor (Medicine) and Cardiologist at AFCME dated 12.07.2019 does not bring

forth any contributory factors from the side of the applicant for the onset of the said disability.

39. As per the article of the www.mayoclinic.org, it is stated to the effect:-

“Dilated cardiomyopathy is a type of heart muscle disease that causes the heart chambers (ventricles) to thin and stretch, growing larger. It typically starts in the heart's main pumping chamber (left ventricle). Dilated cardiomyopathy makes it harder for the heart to pump blood to the rest of the body.

Dilated cardiomyopathy causes the chambers of the heart to grow larger. Untreated, dilated cardiomyopathy can lead to heart failure.

Symptoms of dilated cardiomyopathy - such as fatigue and shortness of breath - can mimic other health conditions. A person with dilated cardiomyopathy might not notice any symptoms at first. But dilated cardiomyopathy can become life-threatening. It's a common cause of heart failure.

Dilated cardiomyopathy is more common in men than women. Treatment of dilated cardiomyopathy may include medications or surgery to implant a medical device that controls the heartbeat or helps the heart pump blood. Sometimes, a heart transplant is needed.

Symptoms

Some people with dilated cardiomyopathy don't have any signs or symptoms in the early stages of the disease.

Signs and symptoms of dilated cardiomyopathy may include:

- Fatigue*
- Shortness of breath (dyspnea) during activity or while lying down*
- Reduced ability to exercise*
- Swelling (edema) in the legs, ankles, feet or belly (abdomen)*
- Chest pain or discomfort*

- *Fast, fluttering or pounding heartbeat (palpitations)*

Causes

It may be difficult to determine the cause of dilated cardiomyopathy. However, many things can cause the left ventricle to dilate and weaken, including:

- *Certain infections*
- *Complications of late-stage pregnancy*
- *Diabetes*
- *Excessive iron in the heart and other organs (hemochromatosis)*
- *Heart rhythm problems (arrhythmias)*
- *High blood pressure (hypertension)*
- *Obesity*
- *Heart valve disease, such as mitral valve or aortic valve regurgitation*

Other possible causes of dilated cardiomyopathy include:

- *Alcohol misuse*
- *Exposure to toxins, such as lead, mercury and cobalt*
- *Use of certain cancer medications*
- *Use of illegal drugs, such as cocaine or amphetamines.”*

Thus, in the instant case, it cannot be overlooked that the disability of Dilated Cardiomyopathy had its onset in June 2016 after the applicant having been inducted 07.10.1980 i.e. after a period of 36 years of service in the Indian Air Force and after the onset of the disabilities of Primary Hypertension (old) and Diabetes Mellitus Type 2 (old) in July 2013, already held hereinabove to be both attributable to an aggravated by military service.

40. It is thus apparent that in as much as high blood pressure (hypertension) and diabetes are inter alia causative factors for the onset of the disability of Dilated Cardiomyopathy (old) as reflected in the article referred to hereinabove of this website (www.mayoclinic.org), the disability of Dilated Cardiomyopathy (old) in relation to which there is nothing in the counter affidavit of the respondents to refute the claim of the applicant in relation to the said disability, in terms of Rule 7 and 10 (b) (iii) of the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel 2008, the said disability has also to be held to be attributable to and aggravated by military service.

41. The verdict of the Hon'ble Supreme Court in ***Dharamvir Singh vs Union of India & Ors*** Civil Appeal no. 4949 of 2013 categorically lays down to the effect that 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 with Rules 14(a), 16(c) and (d) thereof and "General Rules of Guide to Medical Officers(Military Pensions), 2002 of which the Rule 423 deals with "Attributability to Service" with specific observations in Para 28 of the said verdict 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."*

42. It is essential to observe to the effect that the Hon'ble Supreme Court in *Sukhvinder Singh Vs Union of India & Ors* vide judgment dated 25.06.2014 reported in 2014 STPL(Web) 468SC has categorically laid down to the effect:

“9 We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this moral would be severely undermined. Thirdly, there appears to be no provisions authorizing the discharge or invaliding out of service where the disability is below twenty per cent and seems to us to be logically so. Fourthly, wherever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension”

43. Thus in term of the verdicts of the Hon'ble Supreme Court in *Dharamvir Singh* (supra), *Rajbir Singh* (supra) and *Sukhvinder Singh* (supra) and a catena of orders of this Tribunal adverted to hereinabove and Para 26 and Para 43 of Chapter VI – Clinical Aspect of Certain Diseases as per the amendment to the Guide to Medical Officers (Military Pension) 2008, and the 'Entitlement Rules for Casualty Pensionary Awards, 1982', Rule 423 of the GMO (Military Pension) 2002 the letter no. 1(1)/81/D(Pen-C) dated 20.06.1996, the applicant is held entitled to the grant of the disability element of the pension.

CONCLUSION

44. In the circumstances, the OA 93 / 2021 is allowed and the applicant is held entitled to the grant of the disability element of pension qua the disabilities of the applicant i.e. 'PRIMARY HYPERTENSION (OLD) (I10.0) (Z09.0)' , DIABETES MELLITUS TYPE - II (OLD) (E11.0) (Z09.0) and 'DILATED CARDIOMYOPATHY (OLD) (I42.0) (Z09.0)' compositely assessed at 70% for life, which is directed to be broad banded to 75% 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 with effect from the date of his discharge 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.

45. No order as to costs.

Pronounced in the Open Court on the 2 day of December, 2023.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/AP/