

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

C.
OA 94/2020

Ex MWO Rana Pratap Ray Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Baljeet Singh &
Ms. Deepika Sheoran, Advocate
For Respondents : Mr. Prabodh Kumar, Advocate

CORAM

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

ORDER
24.01.2024

Vide our detailed order of even date, we have allowed the OA 94/2020. 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.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(LT. GEN P.M. HARIZ)
MEMBER (A)

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HON'BLE LT GEN P. M. HARIZ, MEMBER (A)

ORDER

The applicant "No. 653489-R Ex MWO Rana Pratap Ray" vide the present
OA makes the following prayers:-

"(a) To set aside the impugned order Air HQ/99798/1/653489/DAV/DP/CC dated 06.12.2019.

(b) To direct the respondents to grant the disability pension @50% with effect from the date of discharge for life by considering the disabilities as attributable and aggravated by the military service.

(c) To direct the respondents to grant the benefit of rounding off of the disabilities of the applicant @75% (50% to be rounded off to 75%) with effect from the date of discharge with all consequential benefits.

(d) To direct the respondents to pay the due arrears of disability pension with interest @12% p.a. with effect from the date of discharge till actual payment.

(e) To pass such further order or orders, direction/directions as this Hon'ble Tribunal may deem fit and proper in accordance with law."

2. The applicant was enrolled in the Indian Air Force on 21.03.1980 and discharged from service on 30.04.2019 under the clause on "On attaining the age of superannuation" after rendering total 39 years and 41 days of regular service. He was initially placed in LMC A4G4 (T-24) for **ID - Primary Hypertension** vide AFMSF-15 dated 24 Nov 2010 whilst serving at AF Stn Chandigarh. During subsequent review he was detected to have ID - Psoriasis Vulgaris and placed in LMC A4G3 (T- 24) composite for ID- Primary Hypertension and ID Psoriasis Vulgaris vide AFMSF-15 dated 01 Jun 2011. He was reviewed regularly and placed in LMC A4G3 (P) composite for both disabilities vide AFMSF-15 dated 03 Nov 2011. The applicant was also detected to have the ID – Type II Diabetes Mellitus and was placed in LMC A4G4 (T-24) composite for all the three disabilities vide AFMSF- 15 dated 01.11.2017.

3. The Release Medical Board not solely on medical ground was held at AF Stn Begumpet vide AFMSF-16 dated 02 Jul 2018 and found him fit to be released from service in low medical category A4G2 (P) composite for the three disabilities with reasons as specified in RMB on attributability /aggravation aspect and disability elements of disability pension.

4. The opinion of the Medical Board as put forth in the RMB dated 02.07.2018 is as under:-

DISABILITY	Attributable to service (Y/N)	Aggravated by service (Y/N)	Not connected with service (Y/N)	Reason / cause / specific condition and period in service
(i) PRIMARY HYPERTENSION (OLD) I 10.0.Z 09.0	NO	NO	YES	Onset of disability in Oct 2010 at Chandigarh (Peace area). There was no delay in diagnosis / Treatment No close time association with field/CI Ops HAA. Hence not attributable / not aggravated by service as per para 43 chapter VI of GMO 2008.
(ii) PSORIASIS VULGARIS (OLD) Z 09.0	NO	NO	YES	Onset of disability in Jun 2006 at Chandigarh (Peace area). Disability is genetically determined disease. It is not attributable / not aggravated by service as per para 67 chapter VI of GMO 2008.
(iii) DM TYPE 2 (OLD) E 11.0.Z 09.0	NO	NO	YES	Onset of disability in Oct 2010 at Secunderabad (Peace area). There was no delay in diagnosis/Treatment. Individual has not served in field / CI Ops/ HAA at the time of onset. Hence disability is not attributable / not aggravated by service para 26 of GMO 2008.

The Release Medical Board assessed the percentage of disablement of the three disabilities as under:-

<i>Disability</i>	<i>Percentage of disablement</i>	<i>Probable duration of this degree to disablement</i>	<i>Composite assessment for disabilities with duration (Max 100%)</i>	<i>Disability qualifying for Disability Pension with duration</i>	<i>Net Assessment Qualifying for disability Pension (Max 100% with duration)</i>
(i) PRIMARY HYPERTENSION (OLD) I 10.0.Z 09.0	30% (Thirty Percent)	Life long	50% (fifty percent) Life long	NIL	NIL
(ii) PSORIASIS VULGARIS (OLD) Z 09.0	20% (Twenty Percent)	Life long		NIL	NIL
(iii) DM TYPE 2 (OLD) E 11.0.Z 09.0	20% (Twenty Percent)	Life long		NIL	NIL

The onset of the disabilities is indicated in Part IV - Statement of the case in the RMB as under:-

<i>Disabilities</i>	<i>Date of origin</i>	<i>Rank of the Individual</i>	<i>Place and unit where serving at the time</i>
(i) PRIMARY HYPERTENSION (OLD) I 10.0.Z 09.0	Oct 2010	JWO	Chandigarh 3 BRD
(ii) PSORIASIS VULGARIS (OLD) Z 09.0	Jun 2006	JWO	Chandigarh 3 BRD
(iii) DM TYPE 2 (OLD) E 11.0.Z 09.0	Oct 2017	MWO	Secunderabad 1 TEL ANCC

5. In as much as the Release Medical Board opined all the three disabilities of Primary Hypertension, Psoriasis vulgaris (Old) and DM Type 2 (Old) as

being neither attributable to nor aggravated by military service with the net assessment qualifying for disability pension at nil for each of them, 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 21.12.2018 and the applicant was informed of the same vide letter no. Air HQ/99798/1/653489/04/19/DAV (DP/RMB) dated 30.01.2019 with advice that he may prefer an appeal to the Appellate Committee within six months from the date of receipt of letter.

6. A legal notice dated 25.11.2019 sent on behalf of the applicant was replied to by the respondents vide the impugned letter dated 06.12.2019 no. Air HQ/99798/1/653489/DAV/DP/CC, placing reliance on Rule 153 of the Pension Regulations for the IAF 1961 Part-I stating to the effect that the disabilities having not been opined by the Release Medical Board to be attributable to or aggravated by military service, the applicant was not entitled to the grant of the disability element of pension.

CONTENTIONS OF THE PARTIES

7. During the course of the hearing on 20.10.2023 on behalf of the applicant, it was submitted that the first appeal filed by the applicant was disposed of by the respondents vide letter no. Air HQ/99798/5/25/2020/653489/DP/AV-III (Appeals) dated 19.11.2020, whereby the Appellate Committee for First Appeal had accepted the ID (ii) that is

Psoriasis Vulgaris (Old) assessed at 20% for life as being the only ID aggravated by service for the grant of the disability element of pension with effect from 01.06.2019 that is the next day of discharge of the applicant from service, with the percentage of disablement having been directed to be rounded off from 20% to 50% in terms of the PCDA (P) circular no. 584 dated 07.09.2017 and MoD letter 1(2)/97/D (Pen-C) dated 31.01.2001. Thus, the relief claimed through the present OA is now confined to seeking the grant of the disability element of pension in relation to the disabilities of primary hypertension assessed at 30% for life and DM Type II assessed at 20% for life.

8. The applicant submits that he was enrolled in the Indian Air Force on 21.03.1980 after being subjected to a thorough medical examination conducted by the Medical Board and was found medically fit to join the service of the Indian Air Force and that there was no note of any disability recorded on the records of the respondents qua the applicant and thus the applicant submits that the disabilities that the applicant suffers from are thus to be held to be attributable to or aggravated by military service.

9. *Inter alia* the applicant submits that the onset of the disability of Primary Hypertension (old) was in October 2010 and the onset of the disability of Diabetes Mellitus Type II (old) was in October 2017 after the applicant's enrolment in a fit medical category in the Indian Air Force on 21.03.1980 that is after a period of 30 years and 37 years respectively for the said two disabilities

and that the said disabilities were apparently due to the stress and strain that the applicant has undergone during his 10 postings in the Indian Air Force.

10. The applicant submits that he was deployed in the trade of an Equipment Assistant and his duties included demand receipt, issue of aircraft spares and other equipments to user sections and their accountability apart from customs clearance for imported items of the Air Force. *Inter alia* the applicant submits that whilst posted at 3 BRD Chandigarh when he suffered the disability of primary hypertension during his eighth posting there from 22.05.2006 to 15.05.2011 with the onset of the disability of primary hypertension being in October 2010, the applicant apart from his trade duties was also working as a Flt Cdr of Site-III which is a Commissioned Officers post and he was responsible for supervising the work of all personnel working on the said site which duties involved prolonged working hours inclusive of work on holidays and that he was also frequently detailed for orderly officer duties which involved night guard checks during odd hours.

11. *Inter alia* the applicant has submitted that in his 10th posting whilst posted at 1 TEL ANCC/Secunderabad from 24.04.2017 to 30.04.2019 when the disability of the DM Type II (old) had its onset in October 2017, the applicant was discharging the duties of an adjutant which includes the ensuring of promulgation of PORs, to process TD/posting claims, updating and maintaining service documents and maintaining strict military discipline amongst the

personnel posted to 1 Tel Air NCC as well as liaising with State government authorities for providing administrative support and that all these duties at various Air Force units involved prolonged working hours which were immensely strenuous both physically and mentally.

12. The applicant thus submits that in terms of the verdict of 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 with specific reliance on observations in Para 28 thereof which reads 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."

he is entitled to the grant of the disability element of pension in relation to the two disabilities.

13. The applicant has also sought the rounding off of the disability element of pension from 50% 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.

14. The respondents have not refuted the contentions of the applicant in relation to his posting profile and duties assigned to him through their counter affidavit dated 21.12.2020 but reiterate in terms of Rule 153 of the Pension Regulations for the IAF 1961 Part-I, that in as much as the disabilities of the applicant of primary hypertension and diabetes mellitus Type II had been opined by the RMB as being neither attributable to nor aggravated by military

service, the applicant is not entitled to the grant of the disability element of pension.

ANALYSIS

15. 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*.

16. 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.

17. As has been observed elsewhere hereinabove, the onset of the disability of primary hypertension in October 2010 was after 30 years of the applicant's service in the Indian Air Force in his eighth posting.

18. 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.

19. 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)

and it is thus apparent that in terms of the verdict of the Hon'ble Supreme Court in ***Dharamvir Singh*** (supra) as observed by para 33 therein read with para 423 of the Regulations for Medical Services of the Armed Forces Personnel 2010, it is immaterial whether a disability had its onset in a peace area or a Clops area or field area or high altitude area and what is required to be established is the causal connection between the onset of the disability and military service.

20. Thus, merely because the disability of Primary Hypertension had its onset in Chandigarh, a peace station, the same is insufficient to dislodge the initial presumption that arises in favour of the applicant that he had joined the Indian Air Force in a fit medical category, and that the disability in question of Primary Hypertension has arisen due to the stress and strain of military service. That stress and strain are also causative factors for the onset of the disability of Primary Hypertension is brought forth through the contents of Para-43 of Chapter-VI of the GMO(MP), 2008 itself which provides 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."

that peace stations have their own rigours of military training and military service is laid down in a catena of orders of this Tribunal. In the facts and circumstances of the instant case, in as much as the initial presumption that arises in favour of the applicant in terms of Para-7 of the Entitlement Rules for Casualty Pensionary Awards, 2008 having not been repelled by the respondents effectively, the applicant is held entitled to the grant of disability element of pension in relation to the disability of Primary Hypertension.

21. That the applicant suffered from no disability before the onset in the Indian Air Force is not refuted by the respondents and is rather put forth categorically through the question and response in paras 2 and 3 in Part V of the RMB which read as under:-

"2. Did the disability exist before entering service? NO

3. In case the disability existed at the time of entry, is it possible that it could not be detected during the routine medical examination carried out at the time of entry? NO N/A"

22. In the circumstances of the instant case where the onset of the disability of primary hypertension is indicated to have been after 30 years of strenuous service in the Indian Air Force, the said disability is held to be attributable to and aggravated by military service.

23. As regards, the disability of Diabetes Mellitus Type II (old), the same had its onset after 37 years of military service of the applicant in his 10th posting. That stress and strain precipitate are causative factors for precipitating diabetes mellitus Type 2 is brought forth through Para 26 of Chapter VI of the GMO (Military Pensions) which reads as under:-

"26. Diabetes Mellitus

This is a metabolic disease characterised by hyperglycemia due to absolute/relative deficiency of insulin and associated with long term complications called microangiopathy (retinopathy, nephropathy and neuropathy) and macroangiopathy.

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

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

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

Type 2 Diabetes Mellitus will be conceded aggravated if onset occurs while serving in Field, CIOPS, HAA and prolonged afloat service and having been

diagnosed as Type 2 diabetes mellitus who are required serve in these areas.

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

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

25. It is essential to observe that in OA 1532/2016 titled **Cdr Rakesh Pande vs UOI & Ors.**, vide order dated 06.02.2019 of the AFT (PB), New Delhi, the prayer made therein for the grant of disability element of pension in relation to the medical disability of 'NIDDM' and 'hyperlipidemia' assessed at 20% for NIDDM and 6-10% of hyperlipidemia, composite 20% for a period of 5 years in view of the verdict of the Hon'ble Supreme Court in **Dharamvir Singh vs UOI & Ors** (Civil Appeal No. 4949/2013) and in **UOI & Ors. vs Rajbir Singh** (2015) 12 SCC 264, was upheld for a period of 5 years, which vide judgment of the Hon'ble Supreme Court in Civil Appeal no. 5970/2019 titled as **Commander Rakesh Pande vs UOI & Ors.**, dated 28.11.2019, was upheld for life, it being a disability of a permanent nature.

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

"8. On the merits of the case, the respondents submit that the medical disability NIDDM is considered as a metabolic disorder resulting from a diversity of aetiologies, both genetic and environmental, acting jointly. It is characterized by hyperglycemia and often associated with obesity and improper diet. Diabetes Mellitus Type 2, as per Para 26 of Amended Guide to Medical Officers (Medical Pensions) 2008 can be conceded as aggravated while serving in field, CI operations, high altitude areas and prolonged afloat service. However, the same is not relevant in the applicant's case as he was serving in shore duties in New Delhi, Mumbai and Goa prior to onset of the disease. As regards the disability Hyperlipidaemia, respondents submit that associated high cholesterol levels are also a result of metabolic disorder caused due to genetic causes or dietary indiscretion and there can be no service causes that can be considered responsible for predisposition and onset of the disability. Thus, respondents contend that the RMB was just and correct in assessing that the disability was neither attributable nor aggravated by military service.

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

Consideration :

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

11. In the first instance, we have considered the delay of about 15 years by the applicant in forwarding his representation against non-grant of disability element of pension and filing his OA thereafter. We have examined the averments in M.A. No. 566 of 2019 explaining the delay and, in the interests of justice, condoned the delay, relying upon the judgment dated 13.08.2008 of the Honble 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)

In the circumstances of the instant case the said disability of DM Type 2 (old) is also held to be attributable and aggravated by military service.

CONCLUSION

27. In the circumstances, the OA 94/2020 is allowed and the applicant is held entitled to the grant of the disability element of pension qua the disabilities of

two disabilities as well as for the disability of "PSORIASIS VULGARIS (Old) 2 09.0 for which the applicant has already been granted the disability element of pension vide the acceptance of his first appeal on 19.11.2020. Thus the composite disability for the three disabilities calculated as per DGAFMS letter no. 16036/ RMB/ IMB/ DGAFMS /MA(pens) dated 14.12.2009 is 55 %. In terms of the verdict of the Hon'ble Supreme Court in **Ram Avtar** (supra) this is broad banded to 75% for life with effect from the date of his discharge. However, in terms of Hon'ble Supreme Court judgement in **UoI vs Tarsem Singh** [2009 (1) AISLJ 371] arrears will be restricted to three years from the date of filing of OA. The calculation of composite disability assessment is as under :-

<i>Disability</i>	<i>Assessment</i>	<i>Net assessment</i>	<i>Remarks</i>
<i>Disability 1 Primary Hypertension</i>	30%	30%	<i>The disability with max percentage is to be considered first.</i>
<i>Disability 2 Psoriasis Vulgaris</i>	20%	14%	<i>Granted on acceptance of first appeal on 19.11.2020</i>
<i>Disability 3 DM Type 2</i>	20%	11.2%	
<i>Composite Assessment</i>		55%	<i>Rounded off to 75%</i>
<p><i>Calculation</i></p> <p><i>Disability 1 = 30% (the disability with max percentage)</i></p> <p><i>Disability 2 (100-30) = 70 * 20/100= 14%</i></p> <p><i>Disability 3 (100-44) = 56 * 20/100= 11.2%</i></p> <p><i>Composite Assessment = 30+14+11= 55%</i></p> <p><i>Composite assessment of 55% rounded off to 75%.</i></p>			

28. 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.

29. No order as to costs.

Pronounced in the Open Court on the 24 day of January, 2024.

[LT GEN P. M. HARIZ]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/AP/