



MA 2003/2019 is allowed and the delay of 365 days in filing the OA is thus condoned. The MA is disposed of accordingly.

**OA No. 1272/2019**

2. Invoking the jurisdiction of the Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this OA and the reliefs claimed in Para 8 read as under:

- “(a) Direct the respondents to treat the disabilities as attributable to or aggravated by military service and grant him disability element of pension along with benefits of broad banding from 60% to 75%. And/or***
- (b) Direct respondents to pay the due arrears of disability element of pension with interest @12% p.a. from the date of retirement with all the consequential benefits.***
- (c) Any other relief which the Hon’ble Tribunal may deem fit and proper in the fact and circumstances of the along with cost of the application in favour of the applicant and against the respondents.”***

**BRIEF FACTS**

3. The applicant, having been found medically and physically fit after thorough medical examination, was enrolled in the Indian Army on 29.06.1981 as Havildar Education Instructor and was discharged from service on 30.06.2012 under the provisions of Army Rule 13(3) I(i)(a) i.e. on completion of period of service/tenure and age limit

after rendering 31 years and 02 days of service and is in receipt of service pension. The Release Medical Board (RMB) held on 26.12.2011 assessed the applicant's disabilities '(a) Ischemic Stroke Right MCA Territory @ 30% for life (b) Primary Hypertension @ 30% for life and (c) Type II Diabetes @ 20% for life, with composite assessment of disablement @ 60% for life and held the said disabilities as 'neither attributable to nor aggravated by military service' (NANA). Based on the recommendations of the RMB, the disability pension was denied to the applicant.

4. The initial claim for disability pension of the applicant was rejected and the said decision was communicated to the applicant vide letter No. Pen GP/JC-802400M/DP/71 dated 22.08.2012, vide which the applicant was informed about his non-entitlement to the disability element of disability pension, with instructions to prefer a First Appeal before the Appellate Committee for First Appeal (ACFA) within six months, if aggrieved by the decision. Thereafter, the applicant approached AEC Records vide letter No. 802400M/Dis Pen/Pers dated 10.12.2018, seeking grant of the disability element of pension with effect from 01.07.2012.

However, the respondents again rejected the applicant's

claim for disability pension, and the said decision was communicated to him vide letter No. Pen GP/JC-802400M/DP/71 dated 07.01.2019, advising that if dissatisfied, he may prefer an appeal to the Appellate Committee within six months from the date of receipt of the letter.

5. As stated in the OA, the applicant has preferred his first appeal for grant of the disability element of pension, but the same was not responded to by the respondents. The respondents denied having received the first appeal of the applicant and contend that the applicant had not exhausted all remedies available to him and has approached the Tribunal directly. Aggrieved by the non-response to his first appeal, the applicant has filed the present OA on 02.08.2019. In the interest of justice, it is considered appropriate to take up the present OA for consideration, in terms of Section 21(2)(b) of the AFT Act, 2007.

### **CONTENTIONS OF THE PARTIES**

6. The learned counsel for the applicant submitted that the applicant, at the time of joining the service, was declared fully fit mentally and physically and no note of any disability was made in his medical record at the time of entering the

service and therefore, any medical disability contracted by him during the course of his service should be treated as being attributable and/or aggravated by the stress and strain of his service. The learned counsel explained about the stressful and challenging conditions of service undertaken by the applicant during his service tenure. The learned counsel submitted that the applicant was posted at various peace as well as field stations in different parts of the country and had served in tough and different weather and environmental conditions in his career and discharged all assigned duties with utmost dedication in a well-disciplined and professional manner.

7. The learned counsel for the applicant further contended that the instant matter is squarely covered by a catena of judgments of the Hon'ble Supreme Court such as **Dharamvir Singh v. Union of India & Ors.** (Civil Appeal No. 4949 of 2013) [2013 (7) SCC 316], 2013 (12) JT 44], **Union of India and Anr. v. Rajbir Singh, Civil Appeal No. 2904/2011** [(2015) (2) SCALE 371], 2015 (2) JT 392, 2015 (3) SLR 318 vide judgment dated 13.02.2015, **Union of India & Ors. v. Manjit Singh** AIR 2015 SC 2114, CA 5605/2010 titled **Sukhvinder Singh v. Union of India**

(2014 STPL (web) 468 SC) decided on 25.06.2014 and Civil Appeal No. 418/2012 titled **UoI & Ors. v. Ram Avtar** vide judgment dated 10.12.2014.

8. The learned counsel further placed reliance on the order of this Tribunal in OA No. 171/2014 with 189/2014 titled **Naib Subedar Mani Kumar Martand vs. UoI & Ors.** The learned counsel for the applicant placed specific reliance on the order of Hon'ble High Court in W.P. (C) 5783/2024 & CM APPL. 23945/2024 in the case of **Union of India through the Secretary Ministry of Defence & Ors. v. Maj Gen Rajesh Chaba (Retd.)** and submitted that the respondents' action in denying him the disability pension is unjustified and unlawful, when the disabilities recorded by the RMB occurred during the military service and thus were caused due to stress and strain of service. The learned counsel, therefore, prayed that the disabilities in question may be held to be attributable to and/or aggravated by military service and that the disability pension may be granted to the applicant.

9. *Per contra*, the learned counsel for the respondents contended that the applicant is not entitled to the relief claimed since the RMB, being an Expert Body, found the

disabilities as being “Neither Attributable to Nor Aggravated by Military Service”. During the course of submissions, while submitting the weight chart of the applicant, the counsel for the respondents contended that the applicant was overweight and the applicant contracted the disability in question was contracted as a consequence of his being overweight. The learned counsel submitted that since the applicant’s disabilities do not fulfill one of the twin conditions in terms of Regulation 173 of the Pension Regulations for the Army, 1961, (Part-I) as the same were assessed as neither attributable to nor aggravated by military service, the applicant is not entitled to the grant of the disability element of pension. The learned counsel also contended that the applicant has filed the present OA prematurely as he has not exhausted all the statutory remedies available as per the Armed Forces Tribunal Act and the learned counsel thus prayed that OA deserves to be dismissed.

### **ANALYSIS**

10. We have carefully perused the materials available on record and also the submissions made on behalf of the parties. The applicant’s disabilities i.e. (i) Ischemic Stroke Right MCA Territory (ii) Primary Hypertension and (iii) Type II

Diabetes have been assessed by the RMB @ 20% or more each, with composite assessment @60% hence the issue for consideration in this case is whether the disabilities of the applicant can be held to be 'attributable to and/or aggravated by military service' or not.

11. The onset of the disabilities of the applicant namely (i) Ischemic Stroke Right MCA Territory and Primary Hypertension was in April 2010 and the third disability Type II Diabetes occurred in January 2011. For determining the attributability or aggravation of the disabilities, we would like to refer to the Para 43, 14 and 26 for hypertension, Ischemic stroke and Diabetes, contained in Chapter VI of the Guide to Medical Officers (Military Pension), 2002 amended 2008 (hereinafter referred to as '(GMO (MP) 2008)', which are reproduced hereunder:-

*"43. Hypertension - 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.”

**(emphasis supplied)**

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#### **“14. Cerebrovascular Accident (Stroke).**

Stroke or cerebrovascular accident is a disease of acute onset leading to neurological deficit such as hemiplegia caused by intravascular events. Cerebral infarction following thrombosis and embolism accounts for a large number of cases whereas cerebral hemorrhage is the cause only in a few cases. Atherosclerotic thrombosis is of gradual onset and any permanent neurologic deficit is preceded by TIAs (Transient Ischaemic Attacks).

TIAs result mostly from embolism of thrombus or platelet material from an extra cerebral artery (Internal carotid) and some times due to stenosis of a major artery, altering hemodynamics in the event of change of posture and exertion.

Mural thrombus from the heart in IHD and SBE and ulcerated plaques of atherosclerotic arteries are the principal source of embolism.

Among other causes, **physical trauma (heat) and mechanical trauma and arteritis associated with infection like TB, connective tissue disorder (PAN, SLE) can give rise to stroke. Service in HAA can precipitate stroke by virtue of hypercoagulable state.**

About half of the strokes caused by cerebral hemorrhage are due to subarachnoid

hemorrhage from rupture of a berry aneurysm (Circle of Willis) and less commonly due to arteriovenous malformation. **Remaining cases of hemorrhage in cerebral substance are due to rupture of small perforating arteries/arterioles weakened by hypertension or atheromatous degenerations.**

The majority cases exhibit greater degree of hemiparesis, dysphasia (if dominant hemisphere is involved), hemianaesthesia and hemianopia. In some cases ataxia, cranial nerve palsy, nystagmus may be the presentation depending on the territory of brain involved.

It will be appropriate to award attributability if there is sufficient evidence of infection underlying the disease and physical and mechanical trauma related to service.

Aggravation can be conceded when atherosclerosis is the underlying cause and exceptional stress and strain of service is in evidence irrespective of his service in peace or field.

It nearly takes 6 months for complete recovery. However, cases showing no sign of improvement up to two years are unlikely to improve further and should be labelled as permanent.

(emphasis supplied)"

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## **"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 .....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 ..... 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.”*

*(emphasis supplied)”*

12. The applicant's said three disabilities all occurred during active military service in 2010 and 2011, close in time to each other. Para 14 of GMO (MP) 2008 clearly states that a stroke will be treated as aggravated by service when caused by atherosclerosis and when there is evidence of exceptional stress and strain, whether in field or peace areas. However,

the applicant served in five field postings during his long service of 36 years, which may have caused onset of disability due to long periods of stress and strain. Furthermore, Para 43 and Para 26 confirm that prolonged military service can contribute to the aggravation of both the disabilities of Primary Hypertension and Diabetes Mellitus Type-II.

13. With regard to the attributability of a disability, the consistent stand taken by this Tribunal is based on the law laid down by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Vs. Union of India and others [(2013) 7 SCC 316]***, which has been followed in subsequent decisions of the Hon'ble Supreme Court and in the number of orders passed by the Tribunal, wherein the Apex Court had considered the question with regard to payment of disability pension and after taking note of the provisions of the Pension Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers, it was held by the Hon'ble Supreme Court that an Army personnel shall be presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance and in the event of his being

discharged from service on medical grounds, any deterioration in his health, which may have taken place, shall be presumed to be due to service conditions. The Apex Court further held that the onus of proof shall be on the respondents to prove that the disease from which the incumbent is suffering is neither attributable to nor aggravated by military service. The relevant para thereof is reproduced hereunder:-

***“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."*

14. 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.***

***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:***

***Injuries:***

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

***i) Injuries sustained when the individual is 'on duty', as defined, shall be treated as attributable to military service, (provided a nexus between injury and military service is established).***

**ii) In cases of self-inflicted injuries while 'on duty', attributability shall not be conceded unless it is established that service factors were responsible for such action.**

**(b) Disease:**

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

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

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

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

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

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

**11. Aggravation:**

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

15. 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 :*

*AFMSF - 16 (Version - 2002) in all cases*

*(ii) IAFY - 2006 in all cases of injuries.*

*(f). In cases where award of disability pension or reassessment of disabilities is concerned, a Medical Board is always necessary and the certificate of a single medical officer will not be accepted except in case of stations where it is not possible or feasible to assemble a regular Medical Board for such purposes. The certificate of a single medical officer in the latter case will be furnished on a Medical Board form and countersigned by the Col (Med) Div/MG (Med) Area/Corps/Comd (Army) and equivalent in Navy and Air Force."*

*(emphasis supplied)*

has not been obliterated.

16. In the present case, the applicant was diagnosed with the disabilities namely (i) Ischemic Stroke Right MCA Territory and Primary Hypertension (Old) in April 2010 when

the applicant was posted at Andaman, a peace station, and in subsequent posting at Bhopal i.e. peace station too, in the year 2011, he was diagnosed with Diabetes Mellitus Type II. Although, the applicant was diagnosed with the said disabilities when he was at peace stations but it is evident from the posting-profile of the applicant that during his service tenure, before the onset of the disabilities, he was posted to five field postings. Prior to the onset of the first two disabilities, the applicant's last field posting was in Srinagar from 07.01.2002 and 15.11.2004 and after approx 5 years and 5 months of service the applicant was diagnosed with the disabilities of Ischemic Stroke Right MCA Territory and Primary Hypertension. It is evident from the Para 43 of GMO (MP) 2008 that 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.

17. In support of the abovementioned fact, we may place reliance on the order of the AFT (PB), New Delhi, in OA 1729/2018 titled **Ex Sgt Ashutosh Bharti vs. Union of India & Ors.** wherein Para 16 states to the effect:-

**“16. The applicant during his service in the Indian Air Force was posted at 07 postings. Para 43 of the GMO(MP) 2008, which the respondents rely upon through the RMB proceedings itself stipulates that in certain cases the disease of hypertension has been reported after long and frequent spells of service in field/HAA active operational areas, and that such cases can be explained by variable responses exhibited by different individuals to stress and strain. Apparently, in the facts and circumstances of the instant case, the probability of the onset of the disability of Primary Hypertension in the instant case being due to the tough terrains that the applicant worked in, cannot be overlooked especially as the disability continued from 30.04.2002 till his discharge on 31.10.2017. It is thus, held that the disability of Primary Hypertension that the applicant suffers from has to be held to be both attributable to and aggravated by military service.”**

19. The applicant has served in the Army for 31 years and 02 days long years and the disabilities occurred after 28 years and 9 months of service. It is, therefore, reasonable to conclude that such long service tenure in the military cannot be ignored when considering the causal connection between the disabilities of the applicant and service. Moreover, he served in varied climatic, social, and environmental conditions, performing strenuous and stressful duties, which would have contributed to the onset or aggravation of the disabilities. The cumulative stress and strain of such a long service must be given due weight.

20. As regards the onset of disabilities at peace station, the Tribunal has already observed in large number of cases that

military services in peace stations have their own pressure of rigorous military training and associated stress and strain, physically and mentally, of the service and the contention that there is no evidence of stress and strain of service in peace station should not be considered for the purpose of granting disability pension. It may also be taken into consideration that the most of the personnel of the armed forces, during their service, work in the stressful and hostile environment, difficult weather conditions and under strict disciplinary norms. Moreover, there is no note made in the applicant's medical documents that he was suffering from any disease at the time of joining the service. There is no record to show that the applicant has suffered the disabilities due to hereditary nor is there any family history of the applicant placed on record.

21. We may now consider the contention raised by the learned counsel for the respondents to the effect that the applicant's disabilities, namely, Ischemic Stroke Right MCA Territory and Primary Hypertension were caused due to the applicant being overweight. Pursuant to the direction of the Tribunal, a weight chart with regard to the applicant has been filed by the respondents giving year-wise data regarding

weight of the applicant during the period from July, 2010 to December 2011. The weight chart along with an addition of "% of Overweight" column is tabulated as follows:

S. No.	Date	Type of Med Exam (Year Wise)	Actual Weight (in Kg)	IBW (Kg) As per height and age)	BMI (if App)	% of overweight	Med Advice, if any
1	21 Jul 2010	AFMSF -15	-	74.5	-	-	Salt rest diet & prescribed medicine
2	19 Jan 2011	AFMSF -15	85	74.5	-	14.09%	-
3	15 Jul 2011	AFMSF -15	85	74.5	-	14.09%	-
4	26 Dec 2011	AFMSF -15	90	74.5	-	20.81%	-
5	26 Dec 2011	AFMSF -16	90	74.5	-	20.81%	-

However, it is pertinent to note that the letter No. LC/JC-802400M/OA-1272/2019/563 dated 27.05.2025 forwarding the said weight chart of the applicant was filed by the respondents. In that letter, details in a tabulated form show that the details of actual weight of the applicant in 2008, 2009 and 2010 is not held with the office of the respondents. It is also stated therein that the applicant was in SHAPE-I before 21.07.2010 and no medical records prior to the downgradation of the medical category in respect of the applicant are available with the office. The weight chart also does not contain the weight detail of the applicant before

19.01.2011. Without any data, we cannot conclude whether the applicant was actually overweight at that time or whether overweight had a role in causing the disabilities. In the absence of any record of the applicant being overweight in April, 2010 or before, held in the office of the respondents, gives the benefit of doubt to the applicant and the contention of the respondents that the applicant being overweight caused the above disabilities in 2010 cannot be accepted. Thereafter, as the applicant had already suffered the Ischemic Stroke Right MCA Territory, which affects the brain and primary hypertension and he was still in service, the third disability of Diabetes Type II, occurred in 2011, could be offshoot of the earlier diseases and might have affected the weight management on the part of the applicant. We are, therefore, of the considered view that the benefit of doubt in these circumstances should be given to the applicant and the disabilities suffered by the applicant should be held attributable to and aggravated by the military service.

22. In view of the aforesaid judicial pronouncements and the parameters/consideration referred to above, the applicant is held entitled for grant of disability element of pension in respect of the disabilities i.e. '(i) Ischemic Stroke

Right MCA Territory @ 30% for life, (ii) Primary Hypertension @ 30% for life and (iii) Type II Diabetes @ 20%, which were compositely assessed @ 60% for life along with rounding off benefit.

### CONCLUSION

23. In view of the above, OA 432 of 2024 is allowed. The respondents are directed to grant the disability element of pension to the applicant for the disabilities "(i) Ischemic Stroke Right MCA Territory, Primary Hypertension and Type II Diabetes @ 60% for life, which be rounded off to 75% for life, with effect from the date of discharge in terms of the judicial pronouncement of the Hon'ble Supreme Court in the case of **Union of India Vs. Ram Avtar (Civil Appeal No. 418/2012)** decided on 10.12.2014. However, as the applicant has approached the Tribunal after a considerable delay, in view of the law laid down by the Hon'ble Apex Court in *Tarsem Singh's case (supra)*, arrears will be restricted to three years prior to the date of filing of this OA i.e. 02.08.2019.

24. Accordingly, the respondents are directed to calculate, sanction and issue necessary PPO to the applicant within

three months from the date of receipt of copy of this order, *failing which*, the applicant shall be entitled to interest @ 6% per annum till the date of payment.

25. There is no order as to costs.

Pronounced in open Court on this 20<sup>th</sup> day of August, 2025.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)

/nmk/