

COURT No.3  
ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

A.

OA 2001/2018

Col Hemant Chaturvedi (Retd) ..... Applicant  
VERSUS  
Union of India and Ors. .... Respondents

For Applicant : Mr. VS Kadian, Advocate  
For Respondents : Mr. Neeraj, Sr. CGSC  
CORAM

HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)  
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER  
29.05.2025

Judgment in this matter has been pronounced today vide a separate signed order. At the time of hearing, certain original documents were kept by us for perusal. Since the judgment in the matter has now been pronounced, these documents be returned to the respondents after taking due acknowledgement.

(JUSTICE NANDITA DUBEY)  
MEMBER (J)

/

(RASIKA CHAUBE)  
MEMBER (A)

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O R D E R

OA 2001/2018

By way of this OA filed under Section 14 of the Armed Forces Tribunal Act 2007, the applicant seeks a direction to the respondents to grant him disability element of pension with benefit of broad banding treating his disability ID DM Type II as attributable to and aggravated by military service. The reliefs claimed in para 8 of the OA are as under:

- “(a) Direct respondents treat disability ID (IV) DM Type II as attributable to/aggravated by military service and grant disability element of pension by considering compositely ID (iv) DM Type II from the date of discharge along with benefit of broad banding @ 75% and/or*
- (b) Direct respondents to pay the due arrears with interest @ 12% p.a. from the date of discharge 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 case.”*

2. Before we proceed further, it would be apposite to have a glimpse of the facts on record.

3. The applicant was commissioned in the Indian Army in the year 1984 and on being found in Low Medical Category was discharged from service in the year 2015. The Release Medical Board held at the time of discharge found the applicant suffering from five disabilities, viz. (i) ACNE Conglobata @ 11.14%, (ii) Obesity @ 1.5%, (iii) PIVD C4-C5 and C5-C6 @ 20%, (iv) DM Type II @20% and (v) Fracture 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> RIBS assessed @ 11.14%. For the disabilities (i), (iii) and (v), considering as attributable to and aggravated by Military Service and compositely assessed @ 40%, the applicant was granted disability element of pension vide PPO No.M/Corr/7151/2016. So far as the remaining disabilities, i.e., (ii) Obesity and (iv) DM Type II, the respondents considering these disabilities as NANA, did not grant any disability element of pension to the applicant. By way of the present OA the applicant claims benefit of disability element of pension by treating the disability (iv) DM Type II also as attributable to and aggravated by Military Service. It is also contended that the disability of DM Type II is the result of stress and strain of military service. It is further submitted that at the time of entry into the Army, the applicant was found medically and physically fit and any disability that has arisen during service is deemed to be attributable to and aggravated by Military Service.

4. It is inter alia submitted that after denial of disability element of pension in respect of ID DM Type II, the applicant filed the First Appeal which was not decided till filing of this OA.

5. To substantiate his claim, learned counsel for the applicant has placed reliance on the judgments of the Hon'ble Supreme Court in the case of Dharamvir Singh Vs. Union of India and Ors. [(2013) 7 SCC 316] to contend that no note of any disability was recorded in the service documents of the applicant at the time of his entry into Army service, therefore the presumption is that any disability arisen during service is deemed to be attributable to or aggravated by military service. Placing reliance on the judgment in the case of Union of India and Ors. Vs. Ram Avtar {(2014) 6 SCC 1761], learned counsel for the applicant argues that he is also entitled to broad banding.

6. The respondents have filed their counter affidavit. It is admitted that treating the disabilities (i) and (iii) as aggravated and (v) as attributable to Military Service with composite degree of assessment, @40%, the applicant was granted the benefit of disability element of pension and as regards IDs (ii) and (iv), these have been held to be NANA and therefore, he is not entitled to any relief. It is further stated that the First Appeal of the applicant for grant of disability element of pension in respect of Obesity and DM Type II, for the reasons stated below, was rejected by the Appellate Authority vide Letter No.13304/IC-42523A/A-4/AAD/MP-(B)/64/2018/Appeal/AG/PS4 (Imp II) dated 21<sup>st</sup> February, 2019:

Ser No.	Disability(ies)	Reason(s)
(a)	OBESITY (E-66)	ID being a metabolic disorder influenced strongly by dietary indiscretions and a sedentary lifestyle, is

		<i>recommended to be conceded as neither attributable to nor aggravated by mil service. Hence, the appeal merits rejection.</i>
(b)	<i>Diabetes Mellitus Type II (E-11)</i>	<i>ID is a metabolic disorder with a strong genetic preponderance and per se not attributable to service, aggravation may be conceded if onset occurs in Fd/CI Ops/HAA. In the instant case, ID was detected in peace area and the officer continued to service in a peace area after the onset. Hence ID is conceded as being neither attributable nor aggravated by service. Para 26, Chapter VI GMO 2002, amended 2008.</i>

It is further submitted on behalf of the respondents that Pension Regulations 37 (a) and 81 of the Pension Regulations for the Army (2008) Part I, stipulate the eligibility criterion for grant of disability pension consisting of service element and disability element. The said Regulations read thus:

*“37. (a) An Officer who retires on attaining the prescribed age of retirement or on completion of tenure, if found suffering on retirement, from a disability which is either attributable to or aggravated by military service and so recorded by Release Medical Board, may be granted in addition to the retiring pension admissible, a disability element from the date of retirement if the degree is accepted at 20% or more.*

*XX*

*XX*

*XX*

*81. (a) Service personnel who is invalided from service on account of a disability which is attributable to or aggravated by such service may, be granted a disability pension consisting of service element and disability element in accordance with the Regulations in this section.*

*(b) The question whether disability is attributable to or aggravated by military service shall be determined under the Entitlement Rules for Casualty Pensionary Award, 1982 as laid down in Appendix IV of these Regulations.*

7. Relying on the aforesaid provisions, learned counsel for the respondents further submits that the disability of DM Type II of the applicant was held as "neither attributable to nor aggravated" by military service and not connected with the military service, therefore, he is not entitled for grant of disability pension. It is further submitted that applicant's claim for disability pension for DM Type II was also considered and rejected at the initial stage when he was granted disability pension for other disabilities and since no new facts or documents to claim disability pension for ID DM Type II are brought on record, the applicant is not entitled to any benefit.

8. In support of his submissions, learned counsel for the respondents has also relied on the judgment of this Tribunal in the case of Ex (HFO) Gyanendra Singh Vs. Union of India and Ors. (OA 1656/2016) decided on 20<sup>th</sup> February, 2019) which was affirmed in appeal by the Hon'ble Supreme Court vide its order dated 8<sup>th</sup> July, 2019 passed in CA 21017/2019, to state that there was no close association of the onset of the disabilities with military service and it could not be said that due to Military Service the disabilities had been aggravated..

9. We have heard learned counsel for both the parties and have also perused the available records and considered the case law relied upon by them.

10. In the first instance we may say that having failed on administrative count; the applicant has filed this OA as a second round

of litigation. The applicant had already been denied grant of disability element of pension for the ID DM Type II on the administrative side at the initial stage on the ground that it was NANA when for other three IDs (i), (iii) and (iv) he was granted disability element of pension assessed @40%.

11. To come to the conclusion whether the applicant is entitled to disability element of pension for the ID DM Type II or not, we consider it necessary to note the Statement of Case, Opinion of the Medical Board as contained in Part IV and Part V of the Release Medical Board Proceedings and also the weight chart brought on record which read as under:

PART – IV

STATEMENT OF CASE

1. Chronological list of the disabilities			
Disabilities	Date of Origin	Rank of Indl	Place and unit where serving at the time
(a) ACNECONGLOBATA (L.70.1)	Jun 1993	Capt	Ambala – 709 PTA Flight
(b) OBESITY (E-66)	Dec 2007	Lt Col	Gwalior – HQ 788 (I) Ad Bde
(c) PIVD C4-C5 & C5-C6 (M 50.2)	Jan 2011	Col	Bathinda – HQ 10 Corps
(d) Diabetes Mellitus Type –II (E-11)	Jan 2012	Col	Bathinda – HQ 10 Corps
(e) Fracture 4 <sup>th</sup> , 5 <sup>th</sup> , 6 <sup>th</sup> , & 7 <sup>th</sup> Ribs (Lt) (S-22)	Apr 2015	Col	Firozpur – 196 GL Section Type 'B' During EVT of HQ 2 Corps

PART – V

OPINION OF THE MEDICAL BOARD

(Not To Be Communicated To The Individual)

1. Causal relationship of the disability with service conditions or otherwise				
Disability	Attributable to service	Aggravated by service	Not connected	Reason/Cause Specific

				with service	condition and period in service
		Y/N	Y/N	Y/N	
(a)	ACNECONGLOBATA (L.70.1)	No	Yes	No	D/S gets aggravated in hot and humid condition in which officer had to serve Hence aggravation conceded
(b)	OBESITY (E-66)	No	No	Yes	No causal relation with MI Service. Hence neither attributable nor aggravation conceded.
(c)	PIVD C4-C5 & C5-C6 (M 50.2)	No	Yes	No	Due to physical exertion like prolonged standing, marching during on MI service. Hence aggravation conceded.
(d)	Diabetes Mellitus Type -II (E-11)	No	No	Yes	On set in peace area. Hence neither attributable nor aggravation conceded.
(e)	Fracture 4 <sup>th</sup> , 5 <sup>th</sup> , 6 <sup>th</sup> , & 7 <sup>th</sup> Ribs (Lt) (S-22)	Yes	No	No	As per IAF4:2006 remarks of FMM Cdr Dt 04 Jul 2015

WEIGHT CHART IN R/O IC -42523A COL HEMANT CHATURVEDI (RETD)

Sr. No.	Date	Type of Med Exam (Year wise)	Actual weight (Kg)	IBW (Kg) (As per height and age)	BMI (If Appl)	Med Advice, if any
1.	01 Jan 10	AFMSF -15	82	-	-	-
2.	25 Jul 11	AFMSF -15	82	-	-	-
3.	12 Jan 12	OPIN ION	83	59-72	28.37	-
4.	14 Jan 12	AFMSF -15	82	-	-	-
5.	19 Aug 13	AFMSF -15	83	65.5	27.37	-
6.	16 May 15	# AFMSF -15	83	-	-	-
7.	10 Apr 15	# AFMSF -3A	80	61-67.5-74	-	-

From the above it is evident that in the origin of disability DM Type II metabolic and lifestyle factors and failure in maintaining the ideal body



weight do play a pivotal role. The height of the applicant is 170 Cms and at the time of onset of the disability DM Type II in Jan 2012 his body weight was 82 Kg, i.e. 10% plus the ideal body weight of 65.5 Kg. The applicant has miserably failed in maintaining the ideal body weight which could have been managed by regular exercise and diet restrictions. Thus in a way we can say that the applicant has himself invited the disability of DM Type II and for that the military service cannot be held responsible. Moreover, since 1993 the applicant has always remained posted at peace stations. So far as reliance placed by applicant's counsel on the decision of the Hon'ble Supreme Court in the case of *Dharamvir* (supra) and Ram Avtar (supra) is concerned, we are of the considered view that these judgments have no relevance and do not help the applicant in the peculiar facts and circumstances of this case.

12. In view of the above we are of the view that the applicant, who himself is responsible in not controlling the factors leading to disability of DM Type II, is not entitled to any relief.

13. We may further note that though the applicant has not prayed for broad banding of the disability pension already being received by him @40% for life, the respondents in the counter affidavit in reply to Paras 5.1 to 5.14 have admitted that the applicant is entitled to the benefit of broad banding in respect of IDs (i),(iii) and (v) from 40% to 50% in terms of Ministry of Defence Policy Letter No.17(01)/2017/(02)/D(Pension/Policy) dated 5<sup>th</sup> September, 2017.

We, therefore, direct the respondents to round off disability element of pension assessed at 40% for life to 50% for life from the date of retirement in terms of the judicial pronouncement of the Hon'ble Supreme Court in the case of Ram Avtar (supra).

14. The applicant is already in receipt of disability pension @ 40% for life which by this order has been rounded off to 50% for life for other three disabilities and his claim for grant of disability pension in respect of the ID DM Type II had already been rejected way back in 2016, therefore, we see no reason to grant any further benefit to the applicant. The OA is dismissed being devoid of merit.

Pronounced in the open Court on this 25<sup>th</sup> day of May, 2025.

  
[RASIKA CHAUBE]  
MEMBER (A)

[JUSTICE NANDITA DUBEY]  
MEMBER (J)

/vks/