

COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA 2846/2024

Lt Col Nirmal Kumar Dubey (Retd)		Applicant
Versus		
Union of India and Ors.		Respondents

For Applicant	:	Mr. Shakti Chand Jaidwal, Advocate
For Respondents	:	Mr. Prabodh Kumar, Sr. CGSC

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HON'BLE MS. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

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Dated: 27 October, 2025

ORDER

Aggrieved by the decision of the respondents of rejecting his First Appeal vide order dated 5th December, 2023, the applicant has filed this Original Application and prays for the following reliefs:

- “(a) Set aside the impugned order dated 05 Dec 2023 passed by the respondents, rejecting applicant’s first appeal for grant of disability pension.*
- “(b) Direct the respondents to concede both disabilities of the applicant, namely, “DIABETES MELLITUS TYPE 2 and DEGENERATIVE DISC DISEASE LV-5 SV-1 (M-51.8)” as “Attributable to/Aggravated by” stress and strain of service.*

- (c) *Direct the respondents to grant disability pension to the applicant @ 36% for life w.e.f. 01.01.2023, as degree of his disablement due to the said disability has been assessed @36% for life by the RMB.*
- (d) *Direct the respondents to pay disability pension to the applicant at enhanced rate of 50% for life wef 01.01.2023 by broad banding his disabilities from 36% to 50% as per Govt. Policy dated 31.01.2001.*
- (e) *Direct the respondents to pay to the applicant an interest @ 10% p.a. on arrears of the disability pension w.e.f. 01.01.2023 and/or*
- (f) *Pass such other order/direction as may be deemed appropriate in the facts and circumstance of the case."*

2. The facts, in brief, are that the applicant was commissioned in the Indian Army on 11th December, 1999 and during his career of 23 years in the Army, he has served at various places including stressful postings to Field Areas which, as averred, had a bad impact on his life resulting in developing of two disabilities. While serving at the Field Areas in Jammu and Kashmir for more than six years between the years 2001-2011, with dietary compulsions yet to meet the operational commitments, he had to perforce climb hilly terrains under extreme cold climatic conditions resulting in his low backache. While posted at Delhi from 2011-2014, he developed a disability, namely **Degenerative Disc Disease LV-5**

SV-1 (M-51.8) which was conceded as aggravated by service. In August 2013, due to improper diet and disturbed metabolism, the applicant was found suffering from another disability, i.e., **Type 2 Diabetes Mellitus Type**. Feeling the impact of his disabilities on his duties and lack of career progression, the applicant sought premature retirement which was approved with effect from 31st December, 2022. The Release Medical Board held before his retirement found the applicant suffering from two disabilities, namely, (i) **TYPE 2 DIABETES MELLITUS (E-11) @20%**, and (ii) **DEGENERATIVE DISC DISEASE LV-5 SV-1 @ 20%**. Though Release Medical Board held disability (ii) as aggravated by military service; disability (i) was held NANA. The composite assessment of both the disabilities was assessed @ 36% for life.

3. The applicant is in receipt of ordinary service pension. His claim for grant of disability pension was rejected by the respondents on 10th April, 2023. The First and Second Appeal dated 10th August, 2023 and 10th January, 2024 respectively were also rejected, hence this OA.

4. Learned counsel for the applicant, referring to Para 51 of Chapter VI of GMO (Mil Pensions), 2008, submitted that 'Low

Back Ache' has to be considered attributable to and aggravated due to stress and strain of service. (Annexure A-8)

5. In support of his case, the learned counsel for the applicant placed reliance on the following decisions:

- (i) (ii) Dharamvir Singh Vs. Union of India and Ors.
[(2013) 7 SCC 316]

The Hon'ble Supreme Court in this matter held that *"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.*

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)."

- (ii) Gurwinder Singh Vs. Union of India and others
(O.A. No. 407 of 2020, AFT, RB, CHD, decided on 17.01.2021)
(Annexure A-9)

- (iii) Air Cmde NPS Taprial (Retd.) Vs. Union of India and others
(OA 307/2019) decided by AFT, PB, Delhi, on 18.10.2022).
(Annexure A-10)

6. Per contra the respondents have stated in the counter affidavit that the applicant does not meet any of the conditions stipulated in Rules 6, 10 and 11 of Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel – 2008, which govern the attributability and aggravation of disabilities,

hence it is stated that in the absence of these conditions or evidence, the applicant's claim cannot be considered. It is further contended that Regulation 173 is applicable only in cases where the disability has been held to be attributable to or aggravated by military service in non battle casualties. The respondents in support of their contentions have placed reliance on the following judgments of the Hon'ble Supreme Court:

- (a) Union of India and Ors. Vs. Keshar Singh
(Civil Appeal No.4097/2006)

To contend that mere occurrence of a disability during service does not automatically entitle an individual disability pension unless a direct causal connection with service conditions is established.

- (b) Union of India and Ors. Vs. Ex Naik Suraj Bhan (Civil Appeal No.676/2017)

To support their contention that decisions of medical boards and appellate committees, based on expert opinion and policy guidelines, should not be lightly interfered with unless clear evidence of arbitrariness or violation of rules is demonstrated.

They, therefore, seek rejection of applicant's claim for grant of disability pension.

7. The relevant facts to the extent that the applicant was commissioned in the Indian Army and sought premature retirement are not in dispute. The Release Medical Board held

on 31st December, 2022 making composite assessment of applicant's disabilities @ 36% for life held disability (i) **TYPE 2 DIABETES MELLITUS (E-11) @20%** as NANA and (ii) **Degenerative Disc Disease LV-5 SV-1 @20%** as aggravated by military service. During the oral submissions, the applicant vide order dated 11/08/2025 submitted that he is only claiming benefit of disability pension for disability of Degenerative Disc Disease LV-5 SV-1 (M-51.8) and withdraw the prayer for Diabetes Mellitus Type-II.

8. Upon a comprehensive consideration of the pleadings, documents on record and submissions made by both sides, we find merit in the claim of the applicant for grant of disability pension for the disability of DEGENERATIVE DISC DISEASE LV-5 SV-1 since the same has been considered @20% and also is stated to be aggravated by military service by the RMB.

9. We are of the view that the administrative decision taken by the respondents to deny disability element of pension to the applicant despite the same being considered as aggravated by the RMB is against the decisions of the Hon'ble Supreme Court in *Ex Sapper Mohinder Singh v. Union of India and another (C.A No. 164 of 1993 decided on 14.01.1993)* and *Dharamvir Singh v. Union of*

India and others (2013) 7 SCC 316. The IHQ (Army) has also issued a letter dated 25.04.2011, the relevant portion of which is reproduced below:

“2 These alterations in the findings of IMB/RMB by MAP (PCDA(P)) without having physically examined the individual, do not stand to the scrutiny of law and in numerous judgments, Hon'ble Supreme Court has ruled that the medical Board which has physically examined should be given due weightage, value and credence.

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4. All Command HQs are requested to instruct all Record Offices under their command to withdraw unconditionally from such cases, notwithstanding the stage they may have reached and such file be processed for sanction.”

10. In a catena of judgments (*pointedly, O.A No. 270 of 2016 of Armed Forces Tribunal, Regional Bench, Chandigarh*), this Tribunal has reaffirmed with consistency that due credibility and primacy has to be given to medical board proceedings unless it can be established otherwise. Whether it be the PCDA or higher administrative authority, refutation of a medical opinion can only be by another higher more competent medical opinion. We do not find any justifiable reason on the part of the respondents in denying the disability element of pension to the applicant, especially when the Release Medical Board had determined the disability

DEGENERATIVE DISC DISEASE LV-5 SV-1 @20% and considered as aggravated by military service.

11. Consequently, the disability of DEGENERATIVE DISC DISEASE LV-5 SV-1 of the applicant satisfies the twin conditions, viz., (i) this disability is assessed at not less than 20% for life; and (ii) it is considered attributable to or aggravated by military service under Regulation 179 of the Pension Regulations for the Army, 1961 (Part I). The applicant was commissioned in the Army in the year 1999 and after serving for more than fifteen years the disabilities were detected. The respondents, except making submissions, have failed to produce any documentary evidence on record to deny causal connection of the disabilities with service. Therefore, presence of direct connection of the disabilities with military service cannot be ruled out. The applicant is, therefore, entitled to disability element of pension. Further in terms of the law laid down by the Hon'ble Supreme Court in Union of India and Ors. Vs. Ram Avtar [(2014) 14 SCC 563], the applicant is entitled to rounding off the disabilities assessed @ 20% to 50% for life.

12. In view of the above, the impugned order is quashed and set aside. The OA is allowed. The respondents are directed to

grant disability element of pension to the applicant for his disability (ii) **DEGENERATIVE DISC DISEASE LV-5 SV-1** assessed @20% for life and aggravated by service rounded off to 50% together with all other consequential benefits within a period of three months from the date of receipt of a copy of this order. Failure will carry interest @6% from the date of this order till payment. There will, however, be no order as to costs.

Pronounced in open Court on this ²⁷ day of October, 2025.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

(RASIKA CHAUBE)
MEMBER (A)

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