

BRIEF FACTS

2. The applicant was enrolled in the Indian Air Force on 13.05.1985 and discharged from service on 31.12.2020 on fulfilling the conditions of his enrolment in Low Medical Category after rendering 35 years and 07 months 19 days of service. At the time of discharge from service, the Release Medical Board (RMB), not solely on medical ground held on 18.02.2020 found the applicant fit to be released in low medical category A4G3(P), for the disabilities (i) Diabetes Mellitus Type-II assessed @ 20% for life (ii) Beta Thalassaemia Minor @ 15% for life, compositely assessed @ 30% for life while the net qualifying element for the disabilities was recorded as NIL for life on account of the disabilities being treated as neither attributable to nor aggravated (NANA) by military service.

3. The applicant's claim for grant of disability element of pension was rejected vide letter Air HQ/99798/1/685112/12/20/DAV(DP)/RMB) dt. 22.12.2020 stating that the disabilities which the applicant suffers from are neither attributable to nor aggravated by military service for the

reasons mentioned therein. The applicant preferred First Appeal dt. 18.01.2021, was not replied by the Appellant Authority. It is in this perspective that the applicant has preferred the present Original Application.

CONTENTION OF THE PARTIES

4. Learned Counsel for the applicant contended that at the time of enrolment, the applicant was found mentally and physically fit for service in the Air Force and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Air Force. Both the diseases of the applicant were contacted during the service, hence they are attributable to and aggravated by Air Force Service.

5. It is further submitted that in addition to conditions of service, dietary compulsions of military life including frequent changes in weather and social environment at different geographical locations were the main causes of stress and strain to the applicant.

6. Placing reliance on the judgments of the Hon'ble Supreme Court in the case of ***Dharamvir Singh vs. Union of India & Ors***, reported in (2013) 7 SCC 316, ***Sukhvinder Singh vs.***

Union of India & Ors, reported in (2014) STPL (WEB) 468 SCC, ***Union of India vs. Rajbir Singh*** (2009) 9 SCC 140 and ***Union of India vs. Ram Avtar***, Civil appeal No. 418 of 2012, decided on 10.12.2014, learned counsel for the applicant pleaded that various Benches of Armed Forces Tribunal have also granted disability pension in similar cases, as such the applicant be granted disability pension and its rounding off to 50% for life.

7. It is pertinent to note that being given various opportunities, the respondents have not filed the counter affidavit and subsequently on 21.03.2023 the rights to file the counter affidavit got closed automatically.

Analysis

8. We have heard learned counsel for the parties at length and also perused the available records.

9. As per Regulations 153 of the Pension Regulations for the Air Force, 1961 (Part-I), a person who is retired from air force service on account of a disability which is attributable to or aggravated by such service and is assessed at 20% or more, on

retirement may be awarded disability pension. Now, the questions which need to be answered are of two folds:-

(a) Whether the disabilities of the applicant are attributable to or aggravated by Air Force Service?

(b) Whether the applicant is eligible for the benefit of rounding off the disability element of pension?

10. The issue of attributability of the disease is no longer res integra in view of the verdict of the Hon'ble Apex Court in Dharamvir Singh v. Union of India (supra), wherein it is clearly spelt out that any disease contracted during service is presumed to be attributable to military service, if there is no record of any ailment at the time of commission into the Military Service.

11. Regulation 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. has not been obliterated. (emphasis supplied),

12. We find that the RMB has assessed the disabilities (i) Diabetes Mellitus Type-II @ 20% for life (ii) Beta Thalassaemia Minor @ 15% for life while the net qualifying element for both the disabilities was recorded as 'NIL' for life on account of the disabilities being treated as neither attributable to nor aggravated (NANA) on the ground of onset of disabilities while posted in peace area.

13. However, considering the facts and circumstances of the case, we are of the opinion that this reasoning of Release Medical Board for denying disability pension to the applicant is cryptic, not convincing and doesn't reflect the complete truth on the matter. Peace Stations have their own pressure of rigorous military training and associated stress and strain of military service. *Type 2 diabetes is considered a life style disease. Stress and strain, improper diet non compliance to therapeutic measures because of sedentary life style are the known factors which can precipitate diabetes or cause uncontrolled diabetic state.* A perusal of the weight chart of the applicant submitted by the respondents for the period 1985 to 2020 indicates that the applicant for the first time in the year 2008 after completing 23 years of service was advised to reduce weight. The applicant was enrolled in Indian Air Force on 13.05.1985 and both the disabilities started after more than 31 years of Air Force service i.e. in December, 2016 and November, 2019 respectively. We also find that when the onset of disability Diabetes Mellitus occurred in 2016, the applicant was not overweight. The RMB also not opined that it is because of the obesity that the

applicant had developed the disability Diabetes Mellitus. We are therefore of the considered view that the benefit of doubt in these circumstances should be given to the applicant in view of Dharamvir Singh vs Union of India & Ors. (supra), as the applicant has been discharged from service in low medical category, the disability must be presumed to have arisen in the course of service which must, in the absence of any reason recorded by the Medical Board, be presumed to have been attributable to or aggravated by air force service.

14. In so far as the second disability “Beta Thalassaemia Minor” is concerned, the RMB has assessed the disability as neither attributable to nor aggravated (NANA) by service and percentage of disability assessed is 15% for life. As per Rule 153 of Pension Regulations for Indian Air Force 1961 (Part-I) disability pension is granted to those who fulfill the twin criteria that the disability must be either attributable to or aggravated by service and the degree of disablement should be assessed @ 20% or more. Hence, the disability pension with respect to the disability of “Beta Thalassaemia Minor” is not admissible.

15. It is also essential to observe that vide the verdict of the Hon'ble Supreme Court in Civil Appeal no. 5970/2019 titled as Commander Rakesh Pandey vs UOI & ors., dated 28.11.2019, wherein the applicant thereof was suffering from Non-Insulin Dependent Diabetes Mellitus (NIDDM) and Hyperlipidaemia, the grant of disability pension for life @ 20% broad banded to 50% for life was upheld by the Hon'ble Supreme Court.

16. As regards broadbanding benefits, the applicant is entitled to rounding off the disability element of the pension in view of the decision of the Hon'ble Supreme Court in its order dated 10.12.2014 in ***Union of India v. Ram Avtar, Civil Appeal No. 418 of 2012.***

CONCLUSION

17. Therefore, in view of our analysis, OA 1353/2021 is partially allowed and the Respondents are directed to grant the disability element of pension @20% for life (for DIABETES MELLITUS Type II) rounded off to 50% for life in view of judgment of Hon'ble Apex Court in Union of India Vs. Ram Avtar (supra) from the date of discharge i.e. 31.12.2020, since there is no delay in filing the present OA.

18. The respondents are directed to calculate, sanction and issue the necessary Corrigendum PPO to the applicant within three months from the date of receipt of the copy of this order and in the event of default, the applicant shall be entitled to the interest @ 6% per annum till the date of payment.

19. There is no order as to costs.

20. Pending miscellaneous application, if any, stands disposed of.

Pronounced in open Court on this 15th day of April, 2026.

(RASIKA CHAUBE)
MEMBER (A)

(JUSTICE NANDITA DUBEY)
MEMBER (J)

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