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

OA1680/2021

Cdr Kailash Chandra Behera (Retd) ..... Applicant
VERSUS
Union of India & Ors ..... Respondents

For Applicant : Mr. K.R. Verma, Advocate
For Respondents : Mr. Neeraj, Sr. CGSC with
Mr. Sanjay Pal, Advocate

Dated: 26th February, 2026

CORAM

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

ORDER

The applicant enrolled in the Indian Navy as a Sailor in 1982 was commissioned as Sub Lt. in the Logistic Branch in the year 1997 and subsequently promoted to the rank of Cdr in 2010. After serving for 36 years, the applicant retired in the year 2018 after attaining the age of superannuation. While posted at INS KADAMBA at Kanwar, the applicant was found to be suffering from Diabetes Mellitus Type II and was put in Medical Category S3A2 (P2(P) T.24) for a period of six months. At the time of retirement the Release Medical Board held the

disability – Diabetes Mellitus Type II assessed @ 20% but neither attributable to nor aggravated by military service. The net assessment of qualifying service was assessed NIL for life. The RMB proceedings had been approved by the higher medical authorities. As his claim for disability pension was rejected, he filed a first appeal, which also ended in rejection. Against such rejection, when he filed a second appeal, despite sending reminders, it is stated that no decision has yet been taken. However, the applicant is in receipt of service pension. Hence he filed the present OA seeking the following reliefs:

> *(a) Quash the Respondent impugned Orders dated 13.04.2018 and dated 27.02.2020, passed by the respondents (Annexure A-1 (Colly)).*
>
> *(b) Direct the Respondents to grant disability element of pension to the applicant w.e.f; 01.04.2018, the date of retirement of the applicant.*
>
> *(c) Direct the Respondents to grant benefit of broad banding of disability pension to 50% and grant all consequential benefits like arrears on account of disability pension and interest on amount due.*
>
> *(d) Direct the Respondents to pay Interest at 12% per annum w.e.f; 01.04.2018, the date of retirement of the Applicant to till the actual date of payment.*
>
> *(e) Pass any other order that this Hon'ble Tribunal may deem fit in the facts and circumstances of the case.*

2. Learned counsel for the applicant contended that the action of the respondents in rejecting the claim for disability pension is illegal and unjustified. It is further contended that as per the Pension Regulations for the Indian Navy, 1964 and Pension Regulations for the Army 1961 Part I, the following two conditions are to be satisfied for the grant of disability pension viz. (i) the disease/ injury sustained must be attributable to or aggravated by the service conditions; and (ii) the disability must be assessed at 20% or more. The disablement of the applicant had been assessed at 20% for life meeting the second condition. As regards the first condition, the ID "Diabetes Mellitus Type-II", which the applicant was found suffering at the time of release from service was acquired during the course of service hence deemed to be attributable to or aggravated by service conditions. Accordingly, it is contended that the applicant fulfils the twin conditions and is thus eligible for grant of disability pension. In support of his contention, the learned counsel for the applicant placed reliance on the decisions of the Hon'ble Supreme Court in ***Dharamvir Singh*** Vs. ***Union of India and others*** [(2013) 7 SCC 36] and ***Union of India and another*** Vs. ***Rajbir Singh*** [(2015)12 SCC 264],

which held that a person who had been found to be suffering from Invaliding Diseases at the time of release from service which had been acquired during the course of service, he is presumed to be invalided out from service for the purpose of pensionary benefits.

3. On the other hand, the respondents filed a detailed reply affidavit, wherein they have raised a preliminary objection stating that after the rejection of the first appeal, the applicant preferred a second appeal for grant of disability pension for "Diabetes Mellitus Type-II". The second appeal filed by the applicant was still pending consideration by the Second Appellate Committee on Disability Pension. Hence the present OA is liable to be rejected on the ground that he has not exhausted the remedies available to him. He drew our attention to Regulation 28 of the Navy Pension Regulations 1964, which states that an officer who is retired from service on account of a disability which is attributable to or aggravated by such service and which is assessed at 20% or over may, on retirement, be awarded a disability pension consisting of a service element and a disability element. In the present case, the RMB of the applicant assessed his disability as neither attributable to nor aggravated by service and the degree of disablement was

assessed @ 20% for life, hence the applicant is not entitled to disability pension. It has also been stated in the reply affidavit that Diabetes Mellitus Type II is a metabolic disorder of idiopathic origin with a strong genetic/ familial preponderance and is therefore not attributable to service. However, aggravation is conceded if the onset occurs while serving in Field/ CI Ops/ HAA and prolonged afloat service or if the individual serves in such areas following onset. The applicant was posted in peace station and he continued to serve till the time of retirement from service. Hence the disability is considered as neither attributable to nor aggravated by military service in terms of Para 26 Chapter VI, GMO (MP) 2002 amended in 2008. It is also stated that as per Rule 5 of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel 2008, the medical test at the time of entry is not exhaustive but its scope is limited to broad physical examination. Therefore, it may not detect certain dormant diseases. Further, certain hereditary constitutional and congenital diseases may manifest later in life irrespective of service conditions. Therefore, the prayer is that in the light of the foregoing submissions, the reliefs prayed for by the applicant are

not admissible and the OA is liable to e dismissed as it lacks substance and is devoid of merits.

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

(i) ***Ex Sep Kartar Singh*** *Vs.* ***Union of India and others*** (OA No.284 of 2023 decided by AFT (PB) on 24.08.2023)

(ii) ***Hav Bhagwan Singh (Retd)*** *Vs.* ***Union of India and others*** (OA No.1572 of 2023 decided by AFT (PB) on 28.03.2024)

(iii) ***Union of India and others*** *Vs.* ***Ex Nb Sub Ram Pravesh Singh Yadav*** (WP (C) No.4659 of 2025 decided by Delhi High Court on 15.04.2025)

(iv) ***Union of India*** *Vs.* ***Ex Sub Gawas Anil Madso*** (2025 SCC Online Del 2018)

(v) ***Union of India and others*** *Vs.* ***Ex LME Dheeraj Kumar Singh*** (WP (C) No.3865 of 2025 decided by the Delhi High Court on 04.04.2025).

5. We have heard the learned counsel for the parties and perused the records made available to us.

6. With regard to the preliminary objection of the respondents that the applicant has not fully exhausted the remedy available to him is not correct. He has filed the second appeal, which has not

been disposed of by the competent authority for the reasons best known to it. When the OA was filed the respondents had not disposed of the second appeal though more than nine months had elapsed at that time. When the respondents are not considering the second appeal for months together, the blame cannot be put on the applicant. Therefore, their preliminary objection does not stand. There is already a time limit to dispose of the claim, first appeal and the second appeal. The respondents are supposed to take a decision within a time prescribed, which they have not done.

7. The issue of attributability of disease is no longer res integra in view of the decision of the Hon'ble Supreme Court in ***Dharamvir Singh*** (supra), wherein it has been clearly held 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 military service. Further, in ***Cdr Rakesh Pandey*** Vs. ***Union of India and others*** (C.A No. 5970 of 2019 decided on 28th November, 2019), the Hon'ble Supreme Court has held that Diabetes Mellitus is a disease which is of permanent nature and will entitle the applicant to disability

pension. It has also been observed by the Hon'ble Supreme Court that in case where the disability is of permanent nature, the disability assessed by the Medical Board shall be treated for life and cannot be restricted for specific period.

8. There is no dispute that the applicant was enrolled in the Indian Navy as a Sailor on 24th December, 1982 and was commissioned on 1st April, 1997 in medically fit condition While in service, in January 2012, he was found to be suffering from Diabetes Mellitus Type-II. His categorization/ Re-categorization Board held in August 2012 held his disability as neither attributable to nor aggravated by service. Further, at the time of his retirement, the applicant was stated to be suffering from Diabetes Mellitus Type II. However, the RMB held that the disability of the applicant is neither attributable to nor aggravated by military service and assessed his disablement @ 20%, the net assessment qualifying for disability pension at "Nil" for life disentitling the applicant disability pension. Against the rejection of his claim for disability pension, the applicant has filed a first appeal, which was also rejected. He thereafter filed a second

appeal, which the respondents have not considered and has been pending since long.

9. This being the position, the only question that needs to be considered is, whether the disability of the applicant viz. Diabetes Mellitus Type II is attributable to or aggravated by military service.

10. In a catena of decisions, the Hon'ble Supreme Court, the High Courts and this Tribunal have held 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 military service. In the case of the applicant, at the time when he was entered into service, he was in Shape-I (S1A1). Further, it has been held by the Hon'ble Supreme Court and has been followed by this Tribunal that Diabetes Mellitus Type is a disease which is of permanent nature and will entitle the applicant to disability pension and that in case where the disability is of permanent nature, the disability assessed by the Medical Board shall be treated for life and cannot be restricted for specific period. Therefore, in our considered view, the applicant's case squarely falls in this category entitling him for disability pension.

11. Therefore, the finding of the respondents that the said ID is neither attributable to nor aggravated by Naval service assessing the net assessment qualifying for disability pension @ Nil for life is not justified. In light of the decision in ***Union of India and Others*** Vs. ***Ram Avtar*** (C.A No. 418 of 2012) the applicant is also entitled to the benefit of rounding off. Accordingly, his disability is to be rounded off to 50% from the date of his superannuation.

12. In the light of the decisions relied upon by the learned counsel for the applicant, we find that the issue involved in the present OA is no longer *res integra.* The consistent view taken by this Tribunal and affirmed by the Hon'ble High Court of Delhi is that pensionary and service benefits of ex-servicemen must receive a liberal and purposive interpretation and that denial of such benefits to similarly situated personnel amounts to hostile discrimination. The respondents have failed to place on record any distinguishing feature to justify a departure from the aforesaid settled position of law. Consequently, the impugned action cannot be sustained and the applicant is held entitled to the relief claimed.

13. Considering the above, we are of the view that the applicant is entitled to disability pension at the rounded off rate of 50% from the date of his superannuation viz. 31st March, 2018. The respondents are, therefore, directed to grant disability pension to the applicant @ 50% from the date of his superannuation, failing which the respondents are directed to pay interest @ 6% on the arrears till actual payment.

14. The OA is allowed accordingly. No order as to costs.

Pronounced in open Court on this 26th day of February, 2026.

(JUSTICE NANDITA DUBEY)
MEMBER (J)

(RASIKA CHAUBE)
MEMBER (A)

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