

COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 395/2019

Lt Gen VP Singh **Applicant**
VERSUS
Union of India and Ors. **Respondents**

For Applicant : Mr. Veerendra Mohan, Advocate
For Respondents : Mr. Satya Ranjan Swain, Advocate
with Mr. Ankush Kapoor, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant vide the present OA makes the following prayers:-

"8.1 Allow the application with costs, quash/set aside the decision of the impugned Release Medical Board dated 09/31.10. 2017 in respect of the Applicant, AG's order on the initial claim of the Applicant communicated vide AG's Branch/PS-4(Imp-I), IHQ of MOD(Army), Plot No 108, Church Road, Brassey Avenue, New Delhi-110001 letter No 52334/IC- 38300/Gen/MP-(A)/72/2017/AG/PS-4(Imp-I) dated 07.12.2017 and on his First Appeal communicated vide ADG PS/AG's Branch/PS-4(Imp-II) IHQ of MOD(Army), Plot No 108(West), Church Road, Brassey Avenue, New Delhi- 110001 letter No. 52334/IC-38300/GEN/MP- 6(A)/04/2018/Appeal/AG/PS-4(Imp-II) dated 05.07.2018 and the deemed rejection of the Second Appeal to The Chairman(ACFA), AG's Branch (MP 5 & 6) IHQ of MOD(Army), West Block III, RK Puram, New Delhi-

110068 vide his letter No 38300/VPS/RMB dated 25.07.2018/03.08.2018.

8.2 Declare the disabilities suffered by the Applicant on account of (i) Grade-I Anterolisthesis of L5/S1 with spondylosis LV 5, (ii) Primary Hypertension (I 10.0) and (iii) Type II Diabetes Mellitus (E11.9) as attributable to military service or atleast aggravated by military service in keeping with it's close connection with the service conditions.

8.3 Direct the Respondents to calculate and release composite disability pension as assessed by the impugned Release Medical Board, allowing all consequential benefits with arrears, including rounding off, issue an amendment PPO, and, release the same to the Applicant within a period of three months with interest on arrears @9% per annum until credited in the Pension Accounts of Applicant by Respondent No.3.”

9. Interim prayer:-

9.1 Pending final decision on this Application, the impugned Release Medical Board in respect of the Applicant, AGs's order on the initial claim of the applicant communicated vide AG's Branch/PS-4(Imp-I), HQ of MOD (Army), plot No. 108, Church Road, Brassey Avenue, New Delhi-110001 Letter No. 523334/IC-38300/Gen/MP-(A)/72/2017/AG/PS-4(Imp-I) dated 07.12.2017 and on his First Appeal communicated vide ADG PS/AG's Branch/PS-4(Imp-II) IHQ of MOD(Army), Plot No. 108(west), Church Road, Brassey Avenue, New Delhi-110001 letter No. 52334/IC-38300/GEN/MP-(A)/04/2018/Appeal/AG/PS-4(Imp-II) dated 05.07.2018 and the file of the respondents containing/concerning the Second Appeal to the Chairman(ACFA), AG's Branch (MP 5 & 6) IHQ of MoD(Army), West Block III, RK Puram, New Delhi-110068 vide his letter No. 38300/VPS/RMB dated 25.07.2018, be directed to be brought produced by the concerned respondents.

9.2 Any other interim relief deemed necessary for the ends of justice by this Hon'ble Tribunal.”

BRIEF FACTS

2. Brief facts of the case are that the applicant was commissioned in the Indian Army on 22.12.1979 (PC) and was discharged from service on 31.10.2017 (AN) on attaining the age of superannuation. At the time of discharge, the applicant was placed in low medical category CEE (P). The Release Medical Board (RMB) held on 26.10.2017 assessed the applicant's disabilities of :

- (i) Grade-1 Anterolisthesis of L5/S1 with Spondylosis SIS LV5N @20% for life**
- (ii) Primary Hypertension @30% for life and**
- (iii) Type II Diabetes Mellitus @30% for life**

with composite assessment of the disabilities @ 60% for life, which were held as 'neither attributable to nor aggravated by military service' (NANA). Based on the recommendations of the RMB, the disability pension has been denied to the applicant.

3. The claim for the grant of disability element of pension of the applicant was adjudicated and rejected by the Competent Authority vide letter No. 5234/IC-38300/Gen/MP-6(A)/72/2017/AG/PS-4 (Imp-1) dated 07.12.2017 with an advice that if he was not satisfied with the decision of the Competent Authority, he may prefer an appeal to the Appellate Committee on first appeals (AFCA) within six months from the date of receipt of the letter. The applicant submitted the First

Appeal on 10.01.2018 against the rejection of his disability claim which was adjudicated and rejected by the Appellate committee on First Appeal (ACFA) vide their letter No. 52334/IC-38300/GEN/MP-6(A)/04/2018/Appeal/AG/PS-4(Imp-II) Dt. 05.07.2018; thereafter, the applicant preferred a second appeal on 25.07.2018 which was also rejected by the Second Appellate Committee on Pensions (SACP) vide their letter No. B/38046A/365/2018/AG/PS-4(2nd Appeal) dated 04.07.2019. Aggrieved by this, the applicant has filed the instant OA on 01.03.2019, within a period of three years from discharge from service on 31.10.2017. In the interest of justice, in terms of Section 21(1) of the AFT Act, 2007, we take up the same for consideration.

CONTENTIONS OF THE PARTIES

4. The learned counsel for the applicant submitted that the applicant, after having been declared fit in all respects, had joined the service. Placing reliance on the judgment of the Hon'ble Supreme Court in **Dharamvir Singh v. UOI & Ors** [2013 (7) SCC 36], the learned counsel for the applicant submitted that no note of any disability was recorded in the service documents of the applicant at the time of the entry into the service, and that the applicant served the nation for

about 38 years in very demanding conditions, including field areas, high altitude areas and counter-insurgency operations. The applicant submits that during his service, he underwent extremely hard training and operational duties, including commando training, counter-insurgency operations and United Nations peacekeeping missions, which involved continuous physical and mental stress. The learned counsel for the applicant further submitted that the applicant developed the said disabilities only after serving for considerable years of service and these medical conditions appeared during service and did not exist before joining the Army and thus thereby, any disability that arose during his service has to be deemed to be attributable to or aggravated by military service.

5. The learned counsel contended that the applicant, while serving as Col GS of 8 Mountain Division, developed frequent chest discomfort, split headache coupled with blurring of vision, numbness, giddiness and redness of eyes which was controlled by the local medical assistance and medicines without any specialist referral and later on 12.07.2007, when he was found to be suffering from high blood pressure, instead of prescribing regular medication for hypertension, he was temporarily given medicines to bring the same under control

and downgrading of his medical category was not considered and the applicant continued to have spurts of high B.P. and despite this, the applicant was deployed along the LOC with POK Baramulla Sector of J&K.

6. It was further contended by the learned counsel that later the applicant was promoted to rank of Maj General, and was again posted to J&K (Rajouri Sector) to control intense counterinsurgency and infiltrations from LOC with Pakistan and on being posted back to Delhi:-

- ▶ he started losing weight and started feeling lethargic and fatigued;
- ▶ on his blood sugar level being checked on 19.08.2014,
- ▶ it emerged that he was suffering from the disease diabetes with Sugar(F) at 109mg/dl and sugar (PP) at 181 mg/dl;
- ▶ subsequently, on 05.09.2014, his HBA1 count was 6.5% only, yet he was not considered for downgradation of his medical category even on this count and he became a chronic diabetic;
- ▶ that when the applicant was promoted to the rank of Lt Gen, he was posted to desert Corps (12 Corps) as the GOC, due to stress and strain of service, his sugar level

(F) was detected @ 129 and Sugar (PP) @ 258 on 19.04.2016 and he was diagnosed with the disability 'Type-II Diabetes Mellitus'.

7. It was further argued on behalf of the applicant that he had had suffered a spine injury in his younger days of service while on duty which was not taken seriously by the medical authorities and treated conservatively with pain killers; that on 21.07.2013, while serving as the General Officer Commanding, 25 Infantry Division in counter insurgency area, the applicant while visiting a forward-most post located on undulating ground on the LoC suffered a fall resulting in acute pain and injury with stiffness, tenderness and swelling in entire spine immobilizing him for a considerable time; and thereafter on 22.07.2013, on being taken to 150 General Hospital, Rajouri, the X-ray on the spine showed a degenerative changes in some of the vertebrae, however, he was managed with pain killers including injectibles and additionally with physiotherapy.

8. The learned counsel for the applicant then added that subsequently, while posted to National Defence College, Delhi, on 09.01.2014, he reported at Army Hospital (Research & Referral) as he was unable to bend forward and having

radiating pain in legs, but he was again managed with physiotherapy and injectible pain killers/tablets and further investigations diagnosed him to be suffering from bilateral LV 5 Spondylosis with grade I Anterolisthesis of LV 5 over SV1 besides Cervical and lumbar spondylosis and disc degenerative disease at multiple cervical and lumbar levels with mild neural compromise; that it was only on 23.04.2017, while he was posted at Jabalpur, the MRI scan of Lumbo-Sacral region revealed desiccation in L4-L5 LS1 intervertebral disc, partial desiccation in L3-L4 intervertebral disc and mild posterior bulge of L4-L5 intervertebral disc; that the radiological diagnosis at Military Hospital Jabalpur on 06.05.2017, confirmed Lumbar Spondylosis and Cervical Spondylosis C4/5, C5/6 & C6/7 with reduced inter-vertebral space and degenerative changes in DV 11, DV 12, and LV 5 yet his medical category was not considered for down-gradation restricting his employability to avoid further aggravation and potential impairments; however, while posted as the Director General, Rashtriya Rifles, at Delhi Cantt, in a MRI scan of whole spine, on 31.08.2017 at Army Hospital(Research & Referral), the applicant was found to be suffering from '1. Bilateral LV5 Spondylosis with grade 1 Anterolisthosis of LV 5

over SV1A and 2. Cervical and Lumbar Spondylosis and disc degenerative disease at multiple cervical and lumbar levels with mild neural compromise.

9. The learned counsel for the applicant further submitted that on 01.09.2017, the concerned medical authorities, recommended downgradation for the first time in medical category to 'P3(P)', whereas, for the aforesaid disabilities suffered by the applicant the then concerned authorities at the onset, did not consider it relevant to downgrade his medical category and arrest further aggravation by restricting his employability, but subsequently at Armed Forces Clinic, New Delhi, w.e.f. 05.09.2017, an inchoate Medical Board downgraded his medical classification to SHAPE-3 X on account of all his disabilities conceding the aggravation for Grade-I anterolisthesis L5/S1 with Spondylosis LV5 and Primary Hypertension due to service. However, another Release Categorization Medical Board held from 09.10.2017 to 11.10.2017 followed by the RMB in October 2017, though found the applicant disabled on account of:

- (i) Grade I anterolisthesis of L5/S1 with Spondylosis LV 5,
- (ii) Primary Hypertension
- (iii) Type II Diabetes Mellitus,

but the Commanding Officer (Dy Chief of Army Staff) of the applicant had wrongly recorded the date of onset of the disabilities as 09.10.2017, ignoring the verifiable record of onset of the disabilities, held the disabilities as NANA by the re-categorization Board which was subsequently followed by the RMB dated 26.10.2017, and thus the applicant retired on 31.10.2017 without any disability pension.

10. The learned counsel for the applicant submitted that the medical board held in October, 2017, ignoring the settled law, wrongly recorded that the onset of the diseases was in peace areas and ignored earlier medical records and even altered the year of the onset of disabilities of the applicant; and that the RMB accepted that the applicant was suffering from the above disabilities but wrongly held that they were neither attributable to nor aggravated by military service; that the Medical Boards and Appellate Authorities failed to consider the applicant's long exposure to stress, harsh terrain and service conditions and the denial of disability pension is unjust and arbitrary, and he is entitled to disability pension and all related benefits as his disabilities were attributable to or aggravated by military service.

11. *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”. The respondents submit that while rejecting the disability element of pension to the applicant, the respondents have given detailed reasons for not assessing the disabilities as neither attributable to nor aggravated by military service in terms of Paras 47 and 26 of Chapter VI of Guide to Medical Officers (Military Pensions) 2002, as amended in 2008 as the disability of Grade-1 anterolisthesis of L5/S1 with spondylolysis LV5 had occurred in peace area. The learned counsel for the respondents submitted that since the applicant’s disabilities do not fulfill one of the twin conditions in terms of Regulation 81 of the Pension Regulations for the Army, 2008 (Part-I) as the same were assessed as ‘Neither Attributable to Nor Aggravated by military service’, therefore, the applicant is not entitled to the grant of the disability pension and the OA thus, deserved to be dismissed.

ANALYSIS

12. We have heard the learned counsel for the parties and have gone through the records produced before us.

13. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, we find that the applicant has suffered as per RMB dated 26.10.2017 from three disabilities viz.

- (i) Grade-1 Anterolisthesis of L5/S1 with Spondylosis SIS LV5N @20% for life
- (ii) Primary Hypertension @30% for life and
- (iii) Type II Diabetes Mellitus @30% for life,

with composite assessment of the disabilities at 60% for life which are more than the bare minimum for the grant of disability pension in terms of Rule 81 of the Pension Regulations for the Army, 2008, (Part-I), and, therefore, the question which is to be considered in this case is whether the disabilities suffered by the applicant are attributable to or aggravated by military service or not.

14. 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.

15. 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.

7. 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:

(a) Injuries:

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

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).

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.”

16. 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 :

(i) 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.

17. On a perusal of the record, we find that in para 17 and Para 18 of Part-II of the Medical Categorization Board

proceedings dated 05.09.2017, the disabilities of the applicant namely (i) Grade-1 Anterolisthesis of L5/S1 with Spondylosis SIS LV5N @20% for life (ii) Primary Hypertension @30% for life were conceded as **'aggravated due to military service as per their respective paras of GMO (MP) 2008.** The same is reproduced to the effect:-

**“Part IV
Statement of Case**

17. Is the disability attributable to service (Y/N)	Dis (i): No, as per para 51, Chapter VI, GMO 2008 Dis (ii) : No, as per para 43, Chapter VI, GMO 2008 Dis (iii) : No, due to lifestyle disorder. Para 26, Chapter VI GMO 2008 refers.
18. If not directly attributable to service, was it aggravated by service? (Y/N)	Dis (i) : Yes, as per para 51, Chapter VI, GMO 2008 due to stress and strain of military service Dis (ii) : Yes, as per para 43, Chapter VI, GMO 2008 due to onset in field area. Dis (iii) : No, due to lifestyle disorder not related to service conditions.
<p>Note1: Injury Report (For Injury Cases)/14 Days Charter of Duties (for IHD cases)/any other relevant. Document required, is to be attached and endorsement made in column 17-18</p> <p>2. Columns 17-18 should be completed only if they are not completed in initial/earlier board.</p>	

However, in the subsequent Medical Categorization Board Proceedings dated 11.10.2017, which was held one month after the 1st categorization board on 05.09.2017, the Medical Board changed the earlier opinion regarding aggravation of the said disabilities of (i) Grade-1 Anterolisthesis of L5/S1 with Spondylosis SIS LV5N @20% for life (ii) Primary

Hypertension @30% for life and declared both the disabilities as 'NANA' stating that 'Aggravation can't be conceded as Gen offr has not produced earlier Medical Boards to corroborate aggravation', to which the applicant had recorded his objection due to lack of sufficient cause to change the opinion. The changed opinion of the Categorization Medical Board dated 11.10.2017 is to the effect:-

**“Part IV
Statement of Case**

17. Is the disability attributable to service (Y/N)	Dis (i): No, as per para 51, Chapter VI, GMO 2008 Dis (ii) : No, as per para 43, Chapter VI, GMO 2008 Dis (iii) : No, due to lifestyle disorder. Para 26, Chapter VI GMO 2008 refers.
18. If not directly attributable to service, was it aggravated by service? (Y/N)	Dis (i) & Dis (ii) : } Aggravation can't be conceded as Gen offr has not produced earlier Medical Boards to Corroborate aggravation. Dis (iii) : No, due to lifestyle disorder not related to service conditions.
<p>Note1: Injury Report (For Injury Cases)/14 Days Charter of Duties (for IHD cases)/any other relevant. Document required, is to be attached and endorsement made in column 17-18</p> <p>2. Columns 17-18 should be completed only if they are not completed in initial/earlier board.</p>	

18. We also find from the record that there is significant change in the year of onset of the disabilities of the applicant in the RMB dated 26.10.2017 in Part IV, Statement of Case by changing the date of origin of the disabilities, rank of the individual and place and unit where serving at the time was

changed. The said part was originally recorded in the RMB dated 26.10.2017 is as follows:-

Disabilities	Date of origin	Rank of the Inld	Place and unit where serving at the time
(i) Grade-I Anterolisthesis of L5/S1 with Spondylolysis LV5	Oct 2013	Maj Gen	Rajouri (J&K)/25 inf Div
(ii) Primary Hypertension (I 10.0)	Oct 2013	Maj Gen	Rajouri (J&K)/25 inf Div
(iii) Type-II Diabetes Mellitus (E 11.9)	Sep 2014	Maj Gen	New Delhi/NDC

Altered record of RMB dated 26.10.2017

Disabilities	Date of origin	Rank of the Inld	Place and unit where serving at the time
(i) Grade-I Anterolisthesis of L5/S1 with Spondylolysis LV5	01 Sep 2017	Maj Gen	New Delhi/DGRR
(ii) Primary Hypertension (I 10.0)	21 Jul 2017	Maj Gen	New Delhi/DGRR
(iii) Type-II Diabetes Mellitus (E 11.9)	Sep 2014 Apr 2016	Maj Gen Lt	New Delhi/NDC

19. Although, the latest RMB dated 26.10.2017, shows the abovementioned details of the disabilities of the applicant, but, it is evident from the earlier Medical Categorization Board Proceedings *qua* the applicant which are part of the record that the onset of the disabilities of:

- (i) Grade-1 Anterolisthesis of L5/S1 with Spondylosis SIS LV5N @20% for life
- (ii) Primary Hypertension @30% for life and
- (iii) Diabetes Mellitus Type-II,

were in the year of 2013 and 2014 respectively and, therefore, different recording of the onset dates of these disabilities in the RMB proceedings dated 26.10.2017 appears ambiguous and doubtful and cannot be accepted.

20. The RMB has failed to show any sufficient ground to come to the conclusion that both the disabilities of:

- (i) Grade-1 Anterolisthesis of L5/S1 with Spondylosis SIS LV5N @20% for life
- (ii) Primary Hypertension @30% for life

are NANA when the same were held aggravated earlier by the Categorization Medical Board dated 05.09.2017.

21. For assessing the issue of the attributability or aggravation by the military service of the disability of Grade-1 Anterolisthesis of L5/S1 with Spondylosis SIS LV5N, we may refer to Para 56 of the GMO (MP) 2008 which are to the effect:-

“56. Osteo-arthritis *Osteo-arthritis is a degenerative joint disease, represents the final common pathway of injury to the articular cartilage. Osteoarthritis can be primary or secondary. The designation of primary or idiopathic osteoarthritis is made when no identifiable predisposing condition could be identified. Osteoarthritis is considered secondary when an underlying cause such as trauma, old intra-articular fracture, ligament injury, or previous deformity, septic arthritis, rheumatoid arthritis, a vascular necrosis. The weight bearing joints are more commonly affected such as Knee, Hip, and Spine:*

The spectrum of diseases included in this category are:

(a) Lumbar spondylosis

(b) Cervical spondylosis

(c) Osteoarthritis hip, knee, ankle

Rigours of training and regimental duties and physical activities (Long marching, sentry duty, patrolling, Para jumping active operational activity active operational duties) can overtly/covertly cause continuous trauma to major weight bearing joints.

Uncongenial climate (cold, damp) and hilly terrain can adversely affect the course of the disease. Even when there is no evidence of definite injury, stress or strain associated with duty cannot be excluded. The disease is generally accepted on the basis of aggravation. However the fact that many young soldiers develop the disorder prematurely makes a strong case for attributability in the light of repeated minor trauma. Hence attributability can be considered in those cases where such evidence exists.

(emphasis supplied)

22. From the posting profile placed on record, it is evident that throughout his service career, the applicant was posted to many field area postings including Operational areas, involving difficult terrain. The posting profile of the applicant is reproduced to the effect:-

SNo.	from	To	Place/Ship	P/ F	SNo.	from	To	Place/Ship	P/ F
(i)	Jan 80	Apr 81	Palanwala (J & K)	F	(ii)	Apr 81	Feb 83	Shahjhanpur	P
(iii)	Feb 83	Dec 84	Jodhpur	P	(iv)	Jan 85	Jun 87	Darranga	F
(v)	Jun 87	Jun 89	Dehradun	P	(vi)	Jul 89	Dec 89	Jutogh(HP)	P

(vii)	Dec 89	Jun 91	Gulmarg (J & K)	F	(viii)	Jul 91	May 92	Jaipur	P
(ix)	Jun 92	Jul 93	Combodia (UN Mission)	F	(X)	Jul 93	Nov 94	Jaipur	P
(xi)	Nov 94	Jun 95	BD Bari (J & K)	F	(xii)	Jul 95	Oct 97	Yol camp	P
(xiii)	Oct 97	Dec 98	Bishenpur (Manipur)	F	(xiv)	Dec 98	Jun 99	Port Blair	P
(xv)	Jul 99	Nov 99	Ranautar (Rai) (OP Vijay)	F	(xvi)	Dec 99	Oct 00	Port Blair	P
(xvii)	Oct 00	Jun 01	Binaguri	P	(xviii)	Jul 01	Apr 02	Mhow	P
(xix)	May 02	Jan 05	New Delhi	P	(xx)	Jan 05	Dec 05	Australia	P
(xxi)	Jan 06	Dec 07	Khumbat hang (J & K)	F	(xxii)	Dec 07	Jun 09	OP Rakshak	F
(xxiii)	Jul 09	Dec 09	Bhopal	P	(xxiv)	Jan 10	Dec 12	New Delhi	P
(xxv)	Dec 12	Dec 13	Rajouri (OP Rakshak) (J & K)	F	(xxvi)	Jan 14	Sep 15	New Delhi	P
(xxvii)	Sep 15	Nov 16	Jodhpur	P	(xxviii)	Nov 16	May 17	Jabalpur	P
(xxix)	May 17	Till date	New Delhi	P					

23. From the posting profile mentioned hereinabove, it is evident that throughout his service career the applicant had undergone prolonged exposure to field and operational areas, including postings in Jammu & Kashmir, Manipur, Darranga, participation in Operation Vijay, Operation Rakshak, and deployment on a United Nations Mission where the applicant

had been directed duties such as long marching, patrolling, and continuous physical activity in hostile and uncongenial climatic conditions including cold, damp and hilly regions and in view of the Para 56 of GMO (MP), 2008, wherein it is mentioned that :

“Rigours of training and regimental duties and physical activities (Long marching, sentry duty, patrolling, Para jumping active operational activity active operational duties) can overtly/covertly cause continuous trauma to major weight bearing joints. Uncongenial climate (cold, damp) and hilly terrain can adversely affect the course of the disease. Even when there is no evidence of definite injury, stress or strain associated with duty cannot be excluded. The disease is generally accepted on the basis of aggravation.”

considering the applicant's long and continuous exposure to strenuous service conditions which is evident in his posting profile, it has to be presumed that operational areas such as J&K, Manipur, Darranga, Operation Vijay, Operation Rakashak and UN Mission would have adversely affected the spine or weight-bearing joint in his back which might have caused him the disability of Grade-1 Anterolisthesis of L5/S1 with Spondylosis SIS LV5N @20%, which presumption has not been rebutted by the respondents. Hence, in view of Para 56 of GMO (MP), 2008, the disability Grade-I Anterolisthesis of L5/S1 with Spondylosis (20%) of the applicant is held to be attributable to and aggravated by military service.

24. With regard to the second disability of the applicant i.e. (ii) Primary Hypertension @30% for life, we may refer to Para 43 of Chapter VI of the Guide to Medical Officers (Military Pensions), 2008, reads as under:-

“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)”

25. As per Paragraph 43 of Chapter VI of the Guide to Medical Officers (Military Pensions), 2008, aggravation of a disability is required to be considered if the onset of the disability occurs during service in field areas, High Altitude Areas (HAA), CI Ops areas, or during prolonged afloat service. It is evident from the posting profile of the applicant that he was posted to Rajouri (OP Rakshak), (J&K) (a field posting) when he was diagnosed with the disability of Primary Hypertension.

Hence, the said disability is to be conceded 'Aggravated' in accordance with Para 43 of Chapter VI of the Guide to Medical Officers (Military Pensions), 2008, which was so recorded in the Categorization Board Proceedings dated 05.09.2017.

26. In so far as the third disability of the applicant i.e. (iii) Type II Diabetes Mellitus @30% for life is concerned, the onset of the said disability was in September 2014, when the applicant was posted at New Delhi (peace station), a posting which was subsequent to his posting at Rajouri (OP Rakshak), (J&K) (field posting) within a span of 8 months of having been posted out from field area (Rajouri (OP Rakshak), J&K). It is therefore reasonable and safe to conclude that the disability was due to the stress and strain of service which occurred during active service in adverse conditions. In this regard, we may refer to Para 26, Chapter VI of the Guide to Medical Officers (Military Pensions), 2008, which reads as under:-

"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 results from severe and acute destruction of Beta cells of pancreas by autoimmunity brought about by various infections including viruses

and other environmental toxins in the background of genetic susceptibility. 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 results from acute beta cell destruction by immunological injury resulting from the interaction of certain acute viral infections and genetic beta cell susceptibility. If such a relationship from clinical presentation is forthcoming, then Type 1 Diabetes mellitus should be made attributable to service. 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.”

27. It is well established under Paragraph 26 of GMO (MP) 2008 that the disability of Diabetes Mellitus Type-II is to be conceded as aggravated by service if its onset occurs during service in field areas, CI Ops, High Altitude Areas (HAA), or prolonged afloat service, where personnel are subjected to

stress and strain, improper diet, non-compliance with therapeutic measures due to service exigencies, and a sedentary lifestyle. These factors are well-recognized contributors that can precipitate diabetes or result in an uncontrolled diabetic state.

28. The applicant was posted to many field and operational areas, including postings in **Jammu & Kashmir, Manipur, Darranga**, participation in **Operation Vijay, Operation Rakshak**, and deployment on a **United Nations Mission** which cannot be ignored while considering the causal connection of the disability of Diabetes Mellitus Type-II with service as the manifestation of service conditions could induce disability in a person after long and frequent spells of service in field/HAA/Active operating areas,

29. It is pertinent to mention that the onset of the disability of Diabetes Mellitus Type-II occurred in 2014 after approx 34 years of long service during which he was posted to different stations including field and peace postings having different climatic, social and environmental conditions. Hence, the accumulated stress and strain of such a long service, as a contributing factor for the onset of the disability of Diabetes Mellitus Type-II, cannot be overlooked.

30. Furthermore, as regards the contention raised on behalf of the respondents that the onset of the disabilities had been in peace station, the same cannot be accepted as it has already been observed by this Tribunal in a catena of cases that peace stations have their own pressure of rigorous military training and associated stress and strain of the service. It may also be taken into consideration that most of the personnel of the armed forces have to work in the stressful and hostile environment, difficult weather conditions and under strict disciplinary norms.

31. 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 disability due to hereditary or unhealthy lifestyle nor is there any family history of the applicant placed on record. We are, therefore, of the considered view that in these circumstances in view of the settled law and provisions on the point of attributability/aggravation, the disability suffered by the applicant has to be held/ to be attributable to and aggravated by the military service.

32. 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 Pande vs UOI & Ors.**, dated on 28.11.2019, wherein the decision of the AFT, PB granting disability pension to the applicant thereof who was suffering from Non-Insulin Dependent Diabetes Mellitus (NIDDM) @ 20% broad banded to 50% for life was upheld by the Hon'ble Supreme Court.

33. Furthermore, we are further fortified in our view in view of the verdict dated 27.03.2025 of the Hon'ble High Court of Delhi in W.P. (C) 3545/2025 in **Union of India & Ors. vs. Ex Sub Gawas Anil Madso** and the verdict dated 01.07.2025 of the Hon'ble High Court of Delhi in W.P. (C) 5783/2024 in **Union of India through the Secretary Ministry Of Defence & Ors. vs. Maj Gen Rajesh Chaba (Retd.) and other connected petitions** and the verdict dated 01.07.2025 of the Hon'ble High Court in W.P. (C) 140/2024 in **Union of India & Ors. Vs. Col Balbir Singh (Retd)** which adhere to the law laid down by the Hon'ble Supreme Court in **Dharamvir Singh** (Supra).

34. A word before we conclude this judgment. The applicant has brought out through the OA as brought out from Para 5 to

Para 8 in this order about the casual approach of the Army medical authorities in not downgrading his medical category in the initial phase when he was afflicted with various ailments due to which he continued to suffer and all his ailments got aggravated. The applicant was promoted to various ranks even reaching the high rank of Lt. General despite such grave ailments which the applicant kept informing the authorities from time to time. There seems to be a complete casual attitude taken by the army authorities in dealing with the applicant's medical condition and knowing well his medical condition, he was posted to challenging appointments and promoted from time to time. There is a need to check such lapses in future so that the fittest man both professionally and physically is allowed to climb the ladder and lead our gallant armed forces. We however make it clear that the above observations are no reflection on the professional capabilities of the applicant. A copy of this be sent to the Chief of the Army Staff and the DGAFMS to arrest such loopholes in future.

CONCLUSION

35. In view of the aforesaid judicial pronouncements and parameters, the applicant is entitled for disability element of pension. Therefore, the OA 395/2019 is allowed as under:

The respondents are thus directed to grant the disability element of pension to the applicant for the disabilities of :

- (i) Grade-I Anterolisthesis of L5/S1 with Spondylosis SIS LV5N @20% for life;
- (ii) Primary Hypertension @30% for life; and
- (iii) Type II Diabetes Mellitus @30% for life,

with composite assessment of the disabilities at 60% for life, which be rounded off to 75% for life, in terms of the judicial pronouncement of the Hon'ble Supreme Court in the case of **Union of India Vs. Ram Avtar (supra)**.

36. 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.

Pronounced in open Court on this 16th day of February, 2026.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/nmk/