

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

OA 489/2019 WITH MA 1061/2019

Gp Capt (TS) RSR Sharma (Retd.) ... **Applicant**

Versus

Union of India &Ors. ... **Respondents**

For Applicant : Mr. Ajai Bhalla, Advocate

For Respondents : Mr. YP Singh, advocate

CORAM :

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

O R D E R

MA 1061/2019

MA 1061/2019 has been filed on behalf of the applicant seeking condonation of 2684 days delay in filing the present OA for reasons mentioned therein. In the interest of justice, in view of the judgments of the Hon'ble Supreme Court in the matter of *UoI & Ors Vs Tarsem Singh* 2009(1) AISLJ 371 and in *Ex Sep Chain Singh Vs Union of India & Ors* (Civil Appeal No. 30073/2017 and the reasons mentioned, the MA 1061/2019 is allowed and the delay of 2684 days in filing the OA is thus condoned. The MA 1061/2019 is disposed of accordingly.

OA 489/2019

2. 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:-

“(a) Setting aside of impugned order dated 30.11.2018.

(b) Grant of 50% of disability element of pension by broad banding 20% of disability in terms of order of Hon’ble Supreme Court in the case of Ram Avtar w.e.f. 01 Dec 2012 with interest @9% in arrears. ”

BRIEF FACTS

3. The applicant was commissioned in the Indian Air Force on 04.06.1982 and discharged from the service on 30.11.2012 on attaining the age of superannuation. The Release Medical Board dated 05.04.2012 held that the applicant was fit to be discharged from service in low medical category A4G2 (P) for the disability of Diabetes Mellitus Type-II @20% for life while the qualifying element for disability was recorded as NIL for life on account of the disability being treated as ‘Neither Attributable to Nor Aggravated’ by military service.

4. On adjudication, the AOC AFRO upheld the recommendations of the RMB and rejected the disability pension which was communicated to the applicant vide letter No. Air HQ/24270/3256/PP&R-3(ii) dated 09.07.2012 with an advice that the applicant may prefer an appeal to the Appellate Committee within six months from the date of receipt of the letter. Thereafter, the applicant did not prefer

any appeal however, he made a Representation dated 23.07.2018 after 6 years from rejection of his initial claim which was replied to by the respondents vide letter No. Air HQ/99797/3256/Dis/O/Dav-1(B) dated 30.11.2018 stating that as per the existing policy, the applicant was not entitled for the grant of disability element of pension for the disability Diabetes Mellitus Type-II and that they were unable to reconsider his case at that belated stage as per the existing provisions. Aggrieved by the response of the respondents, the applicant has approached this Tribunal. In the interest of justice, it is considered appropriate to take up the present OA for consideration, in terms of Section 21(2)(b) of the AFT, Act 2007.

CONTENTIONS OF THE PARTIES

5. 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 30 years in at various stations in different parts of the country and had served in tough and different weather and environmental conditions in his career and discharged all assigned duties with utmost dedication in a well-disciplined and professional manner. The learned counsel for the applicant further submitted that the applicant developed the said disability only after serving for considerable years of service and this medical condition appeared during service and did not exist before joining the military service and thus thereby, any disability that arose during his service has to be deemed to be attributable to or aggravated by military service.

6. The learned counsel for the applicant also placed specific reliance on the orders of the Tribunal in OA 387/2019 titled **Gp Capt (TS) IVR Rao** (Retd) vs. **Union of India**, along with various orders passed by the Tribunal, wherein similarly situated personnel were given relief.

7. *Per contra*, the learned counsel for the Respondents submits that as per the provision of Regulation 37 of the Pension Regulations for the Indian Air Force, 1961 (Part-I), the primary condition for the grant of disability pension is invalidation out of service on account of a disability which

is attributable to or aggravated by Air Force service and is assessed @ 20% or more. In other words, disability pension is granted to those who fulfill the following two criteria simultaneously:-

(i) Disability must be either attributable to or aggravated by service.

(ii) Degree of disablement should be assessed at 20% or more.

8. The learned counsel further submits that the RMB has assessed the applicant's disability as neither attributable to nor aggravated by service that does not fulfill the criteria (i) as above and hence the applicant is not entitled for grant of disability pension in accordance with prevailing rules and policies.

9. Learned counsel for the respondents placed reliance on the order of Armed Forces Tribunal (RB), Chennai in OA 121/2021 wherein the similarly situated personnel was not given relief and the OA was dismissed being devoid of merits.

ANALYSIS

10. On the careful perusal of the materials available on record and also the submissions made on behalf of the

parties, we are of the view that it is not in dispute that the extent of disability was assessed to be 20% which is the bare minimum for grant of disability pension in terms of Regulation 37 of the Pension Regulations for the Indian Air Force, 1961 (Part-I). The only question that arises is whether disability suffered by the applicant was attributable to or aggravated by military service.

11. 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.

12. Applying the above parameters to the case at hand, we are of the view that the applicant has been discharged from service in low medical category on account of medical disease/disability, - 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. Furthermore, 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.

(emphasis supplied),__

has not been obliterated.

13. Furthermore, Para 26, Chapter VI of the Guide to Medical Officers (Military Pensions), 2008 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.”

14. 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:

- i) 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).***
- ii) 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.”

Thus, the ratio of the verdicts in **Dharamvir Singh Vs Union of India &Ors** (Civil Appeal No. 4949/2013) (2013) 7 SCC 316, **Sukhvinder Singh vs UOI &Ors**, dated 25.06.2014 reported in 2014 STPL (Web) 468 SC, **UOI &Ors. vs Rajbir Singh** (2015) 12 SCC 264 and **UOI &Ors versus Manjeet Singh** dated 12.05.2015, Civil Appeal No. 4357-4358 of 2015, as laid down by the Hon'ble Supreme Court are the fulcrum of these rules as well. The verdict 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** dated 27.03.2025, and in **Union of India & Ors. vs. Col Balbir Singh (Retd)** dated 01.07.2025

in W.P. (C) 140/2024 whilst taking into account the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008, observe specifically that the medical board must identify some other factors apart from military service as the cause of the disease and that the RMB cannot merely assert without adequate reasons, that the disease though contracted during military service is not attributable to such service.

15. The disability of 'Diabetes Mellitus Type 2' (Old) in respect of Gp Capt (TS) RSR Sharma (Retd), though having originated in the year 1997, while he was posted at New Delhi, a peace station, arose after more than 14 years of military service. The applicant served in the military for a total period of 30 years, discharging his duties across varied terrains and under diverse environmental conditions while managing the said health condition. In such circumstances, his prolonged and continuous service, coupled with the inherent demands and stress of military life, cannot be overlooked while adjudicating the issue of attributability and/or aggravation of the disability. Moreover, it has already been observed by the Tribunal in large number of cases that armed forces services, whether peace areas or

field/HAA areas, have their own pressure of rigorous military training and associated stress and strain, physically and mentally, of the service. It may also be taken into consideration that the most of the personnel of the armed forces, during their service, work in the stressful and hostile environment, difficult weather conditions and under strict disciplinary norms.

16. Furthermore, there is no note made in the medical documents of the applicant 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 disabilities due to hereditary or unhealthy life style or there is any family history. Therefore, we are of the considered view that the benefit of doubt in these circumstances be given to the applicant in view of the settled law on the point of attributability/aggravation and thus we hold the aforesaid disability suffered by the applicant as attributable to or aggravated by the military service.

17. Regarding broadbanding benefits, we find that 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 and connected cases, has observed that individuals similarly

placed as the applicant are entitled to rounding off the disability element of pension. We also find that the Government of India vide its Letter No. F.No.3(11)2010-D (Pen/Legal) Pt V, Ministry of Defence dated 18th April 2016 has issued instructions for implementation of the Hon'ble Supreme Court order dated 10.12.2014 (supra).

18. 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 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.**

CONCLUSION

19. Therefore, in view of our analysis, the OA 489/2019 is allowed and the Respondents are directed to **grant benefit of disability element of pension @20% for life** (for Type 2 Diabetes Mellitus (old), rounded off to 50% for life to the applicant, in view of judgment of the Hon'ble Apex Court in **Union of India versus Ram Avtar (supra)** from the date of discharge i.e. 30.11.2012. The arrears shall be disbursed to

the applicant within three months of receipt of this order failing which it shall earn interest @ 8% p.a. till the actual date of payment. However, in as much as the instant OA has been filed with delay, the arrears in view of the verdict of **UOI & Ors Vs. Tarsem Singh** (supra) shall commence from the period of three years prior to institution of the present OA, instituted on 27.03.2019.

20. No order as to costs.

Pronounced in the open Court on 13th day of April, 2026.


(REAR ADMIRAL **DHIREN VIG**)
MEMBER (A)


(JUSTICE ANU MALHOTRA)
MEMBER (J)

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