

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 170 of 2024**Thursday, this the 30<sup>th</sup> day of January, 2025**“Hon’ble Mr. Justice Anil Kumar, Member (J)  
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

No. 13826875-P, Ex. Hav. Jag Prasad Dwivedi, S/o Late of Ram Sahay, R/o Village – Purah Gaura, Post Office – Gaura Katari, Tehsil – Musafir Khana, District – Sultanpur – 227813.

**..... Applicant**Ld. Counsel for the : **Shri Manoj Kumar Awasthi**, Advocate  
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence, 101 South Block, New Delhi -110011.
2. Chief of the Army Staff, Integrated Headquarters of the Ministry of Defence (Army), South Block, New Delhi - 110011.
3. The Officer–In-Charge, ASC Records (South), Bangalore - 560007.
4. The PCDA (Pension), Draupadi Ghat, Allahabad (Prayagraj).

**.....Respondents**Ld. Counsel for the : **Shri R.K.S. Chauhan**, Advocate  
Respondents. Central Govt. Standing Counsel

**ORDER****“Per Hon’ble Mr. Justice Anil Kumar, Member (J)”**

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs :-

- (a) *To issue/pass an order to set aside /quash the order No. 13826875P/1<sup>st</sup> App/DP-II dated 22<sup>nd</sup> November 2023 passed by respondent No. 3.*
- (b) *To issue pass an order or directions to the respondents to grant Disability element of Disability Pension i.e. 31.03.1993 for two years in the light of Hon’ble Apex Court judgments.*
- (c) *To issue pass an order or directions to respondents to re-assess the present medical condition by constitution the Re-survey Medical Board of the applicant and accordingly grant disability element of disability of disability pension.*
- (d) *Any other relief which the Hon’ble Tribunal may deem fit and proper in the fact and circumstances of the case is also granted along with cost of the Original Application.*

2. Briefly stated, applicant was enrolled in the Indian Army on 10.03.1969 and discharged on 31.03.1993 in Low Medical Category on fulfilling the conditions of his enrolment after rendering 24 years and 21 days of service under Rule 13 (3) Item III (i) of the Army Rules, 1954. The applicant is in receipt of Service Pension. Before discharge from service, the Release Medical Board (RMB) held at Command Hospital (Central Command), Lucknow on

12.12.1992 assessed his disability '**DIABETES MELLITUS (NIDDM) -250**' @ 30% for two years and opined the disability to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected competent authority vide letter dated 24.10.1993 which was communicated to the applicant vide letter dated 11.11.1993. The applicant preferred First Appeal dated 17.08.2023 which too was rejected vide letter dated 22.11.2023. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. The disease of the applicant was contracted during the service, hence it is attributable to and aggravated by Military Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability element of disability pension for two years and respondents be directed to hold Re-Survey Medical Board to assess his present disablement for the grant of further disability element of disability pension.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant @30% for two years has been regarded as NANA by the RMB, hence as per Regulation 173

of the Pension Regulations for the Army, 1961 (Part-I) which provides that *“Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated -by military service in non-battle casualty and is assessed at 20 per cent or over”* the applicant is not entitled to disability element of disability pension. He further contended that the applicant’s averment that at the time of entry into service he was found medically fit cannot be considered as a logical arguments. All candidates seeking enrolment in the Army undergo Primary Medical Examination at the time of enrolment. This examination is meant to detect physical deformity and no expert medical test is conducted to detect any symptoms of constitutional nature due to the practical constraints. Such diseases are detected on the onsets of symptoms at a later stage only. He further submitted that the Re-Survey Medical Board cannot be conducted after the lapse of more than 30 years from the date of retirement. He pleaded for dismissal of the Original Application.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Release Medical Board proceedings as well as the records and we find that the questions which need to be answered are three folds:-

- (a) Whether the disability of the applicant is attributable to or aggravated by Military Service?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability element of disability pension?
- (c) Whether the applicant is entitled for Re-Survey Medical Board?

6. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Versus Union of India & Others***, reported in (2013) 7 Supreme Court Cases 316. In this case the Apex Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words.

*"29.1. Disability pension to be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).*

*29.2. 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 [Rule 5 read with Rule 14(b)].*

*29.3. 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).*

*29.4. If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service [Rule 14(c)]. [pic]*

*29.5. If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service [Rule 14(b)].*

*29.6. If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons [Rule 14(b)]; and 29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 - "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."*

7. In view of the settled position of law on attributability, we find that the RMB has denied attributability to the applicant only by endorsing that the disability “**DIABETES MELLITUS (NIDDM-250)**’ is neither attributable to nor aggravated (NANA) by service due to endocrinal disorder not connected with service, therefore, applicant is not entitled to disability element of disability pension. However, considering the facts and circumstances of the case, we are of the opinion that this reasoning of Release Medical Board for denying disability element of disability pension to applicant is cryptic, not

convincing and doesn't reflect the complete truth on the matter. The applicant was enrolled in Indian Army on 10.03.1969 and the disability has started after more than 23 years of Army service i.e. on 14.07.1992. We are therefore of the considered opinion 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), and the disability of the applicant should be considered as aggravated by military service.

8. Be it mentioned that the applicant has not claimed for the grant of benefit of rounding off due to the reason that the benefit of rounding off has been extended w.e.f. 01.01.1996, hence, it need not be adjudicated.

9. Further, in the case of ***Union of India & Others Versus Ex. Sep. R. Munusamy***, Civil Appeal No. 6536 of 2021, decided on 19.07.2022, in para 13, 14 and 15 the Hon'ble Supreme Court has observed as under :-

*“13. In the considered opinion of this Court, the Tribunal fell in error in passing its order dated 2nd November 2018 directing the Appellants to convene a Resurvey/Review Medical Board at the Military Hospital, Chennai or a designated hospital for the purpose of examining the applicant and assessing the degree of disability due to “Right Partial Seizure with Secondary Generalisation 345” and the probable duration of disability. The tenor of the order itself shows that even the Tribunal realized that accurate medical opinion could not have been obtained after lapse of 30 years from the date of recruitment of the Respondent and after 20 years from the date of his discharge. The Tribunal, therefore, sought assessment of ‘probable duration of disability’.*

14. *Be that as it may, the Appellants, in compliance of the order of the Tribunal, convened a Review Medical Board as directed and submitted a report. The Tribunal noted :-*

*“7. From the Resurvey Medical Board dated 11.4.2019 held pursuant to our order dated 02.11.2018 placed before us, it is seen that the applicant’s disease “Right Partial Seizure with Secondary Generalisation 345” has now been considered as ‘Remained Static’ and the degree of the disability has been assessed @ 20% for life with effect from 08.04.2019. The Board also assessed the degree of disability for the intervening period from 27.03.1989 and 25.03.1989 @ 20%. The applicant has prayed for grant of disability pension.”*

*15. Significantly, even the Resurvey Medical Board did not opine that the disability, if any, of the Respondent was either caused or aggravated by military service. Even otherwise, the question of entitlement of soldier to disability pension cannot be determined on the basis of medical examination conducted 20 years after his discharge.”*

10. Although the applicant’s RSMB was valid for the period of two years from 31.03.1993 but in view of law laid down by the Hon’ble Apex Court in the case of ***Union of India & Others Versus Ex. Sep. R. Munusamy*** (supra) we are of the considered opinion that after a lapse of more than 30 years from the date of discharge it will not be appropriate to direct the respondents to conduct Re-Survey Medical Board (RSMB) to assess his disability. Even otherwise, the question of entitlement of applicant to disability element of disability pension cannot be determined on the basis of medical examination conducted 30 years after his discharge.

11. As such, in view of the decision of Hon’ble Supreme Court in the case of ***Dharamvir Singh vs Union of India & Ors*** (supra), we are of the considered view that the applicant is entitled for the



grant of disability element of disability pension @30% for two years from the next date of discharge.

12. In view of the above, the **Original Application No. 170 of 2024** deserves to be partly allowed, hence **partly allowed**. The impugned, rejecting the applicant's claim for grant of disability element of disability pension, are set aside. The disability of the applicant is held as aggravated by Army Service. The applicant is entitled to get disability element @30% for two years. The respondents are directed to grant disability element to the applicant @30% for two years. The applicant is not entitled for the Re-Survey Medical Board. The respondents are further directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @8% per annum till the actual payment.

13. No order as to costs.

**(Vice Admiral Atul Kumar Jain)**  
**Member (A)**

**(Justice Anil Kumar)**  
**Member (J)**

Dated : 30 January 2025

Ashok/AKD/-