

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 458 of 2024**Monday, this the 17<sup>th</sup> day of February, 2025**“Hon’ble Mr. Justice Anil Kumar, Member (J)  
Hon’ble Maj. Gen. Sanjay Singh, Member (A)”**Gnr. NK Mishra (Retd) (Army No. 15206893L), R/o Village – Kalli,  
PO – Kalli, Tehsil – Mishrit, District – Sitapur, UP-261001.**..... Applicant**Ld. Counsel for the Applicant : **Shri Dhiraj Kumar**, Advocate  
**Shri Tatsat Shukla**, Advocate  
**Shri Rahul Pal**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, Room No. 101 A, South Block, DHQ PO, New Delhi, Pin-110011.
2. OIC Records, Artillery Records, Nashik Road Camp.
3. PCDA (P), Draupadi Ghat, Prayagraj, UP-211012.

**.....Respondents**Ld. Counsel for the Respondents. : **Dr. Shesh Narain Pandey**, Advocate  
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 direct the respondents to decide the representation of the Applicant dated 14 Oct 2023 and reassess his disability in the light of Para 17A of Chapter VII of GMO 2008.*
- (b) *To direct the respondents to consider the disability ID (iii) Type 2 Diabetes Mellitus as per RMB to be attributable to service.*
- (c) *To direct the respondents to award the disability pension after reassessing the disability in light of Para 17A of Chapter VII of GMO 2008 with benefit of broad-banding to 75% along with arrears & interest @10% p.a. from the date of discharge, by treating disease as attributable to and aggravated by military service with all consequential benefits, in view of the Hon’ble Apex Court Judgment in Rajbir Singh (Supra) and Dharamvir Singh (Supra), or*
- (d) *To pass such orders, direction/directions as this Hon’ble Tribunal may deem fit and proper.*

2. Briefly stated, applicant was enrolled in the Regiment of Artillery of Indian Army on 03.09.2003 and discharged on 31.07.2019 in Low Medical Category due to unwilling to continue in alternative employment under Rule 13 (3) Item III (iii) (a) (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 02.07.2019 assessed his disabilities (i) **'IDIOPATHIC GENERALISED EPILEPSY'** @20% for life as **aggravated by service**, (ii) **'PERIPHERAL SPONDYLOARTHRITIS'** @20% for life as **aggravated by service**, (iii) **'TYPE 2 DIABETES MELLITUS'** @20% for life as neither attributable to nor aggravated (NANA) by service. **Composite disabilities for first and second disabilities have been assessed @36% rounded upto 40% for life.** Accordingly, the applicant was granted disability element of disability @40% rounded off to 50% for life. The applicant's claim for grant of disability element of disability pension for the third disability was not granted. The applicant preferred Representation dated 14.10.2023 but of no avail. 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 composite first and second disabilities have been assessed @36% rounded upto @40% for life as **aggravated by service**, accordingly, the applicant was granted disability element of disability pension. He further submitted that the third disability of the applicant was contracted during the service, hence it is also

attributable to and aggravated by Military Service. As per Para 17A of Chapter VII of Guide to Medical Officer (Military Pensions), 2008, if the disabilities have no overlapping function, their composite assessment should be arithmetic sum of all the individual disease. The composite assessment of all the disabilities ought to have been assessed according to Para 17A of Chapter VII of Guide to Medical Officer (Military Pensions), 2008 as there is no overlapping function of the applicant's disabilities. 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 and its rounding off to 75%.

4. On the other hand, Ld. Counsel for the respondents conceded that since the composite first and second disabilities of the applicant @36% rounded upto @40% for life have been regarded as **aggravated by service** by the RMB, hence, the applicant was granted disability element of disability pension @40% rounded off to @50% for life. He further submitted the applicant's disability @20% for life has been regarded as NANA by the RMB, hence as per Regulation 53(a) of the Pension Regulations for the Army, 2008 (Part-I) which provides that "*An individual released/retired/ discharged on completion of terms of engagement or on completion of service limits or on attaining the prescribed age (irrespective of his period of engagement), if found suffering from a disability attributable to or aggravated by military*

*service and so recorded by Release Medical Board, may be granted disability element in addition to service pension or service gratuity from the date of retirement/discharge, if the accepted degree of disability is assessed at 20% or more”* the applicant is not entitled to disability element of disability pension for the third disability. 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 two folds:-

- (a) Whether the third disability of the applicant is attributable to or aggravated by Military Service?
- (b) Whether the composite assessment for the disabilities have been done in accordance with Para 17A of the Chapter – VII of Guide to Medical Officers (Military Pensions) or not?

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 third disability '**TYPE-2 DIABETES MELLITUS**' is neither attributable to nor aggravated (NANA) by service on the ground of life style disorder, therefore, applicant is not entitled to disability element of disability pension for third disability. 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. Even Peace Stations have their own pressure of rigorous military training and associated stress and strain of military service. The applicant was enrolled in Indian Army on 03.09.2003 and the the third disability has started after more than 14 years of Army service i.e. in the year 2018. 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 third disability of the applicant should also be considered as aggravated by military service.

8. In para 17 A (a) of Chapter VII of the Guide to Medical Officer (Military Pensions), 2002 the provision for composite assessment has been mentioned which reads as under :-

**“17A. Composite Assessment**

*(a) Where there are two or more disabilities due to service, compensation will be based on the composite assessment of the degree of disablement. Generally speaking, when separate disabilities have entirely different functional effects, the composite assessment will be the arithmetical sum of their separate assessment. But where the functional effects of the disabilities overlap, the composite assessment will be reduced in proportion to the degree of overlapping. There is a tendency for some Medical Boards to reduce the composite assessment in the former group of cases. This is not correct.”*

9. In the instant case there are functional effects of the second and third disabilities overlapping, as such composite assessment is to be reduced in proportion to the degree of overlapping. The degree of first disability is @20% and second disability is @20%. The composite assessment of first and second disabilities has been assessed @36% rounded upto 40% by the RMB. The third disability has been assessed @20% for life. We are of the opinion that there is some overlapping in between first, second and third disabilities, which has not been disputed by the Ld. Counsel for the applicant during the course of argument. Further, as per formula, the net composite assessment is  $20\% + (100-20) \times 20\% + (80-16) \times 20\% = 20\% + 16\% + 12.8\% = 48.8\%$ . Accordingly, we hold that composite assessment of all the disabilities is less than @50% for life. We also hold that composite assessment for the disabilities have been done in accordance with Para 17A of the Chapter – VII of Guide to Medical Officers (Military Pensions).



10. Although the applicant's third disability has been held as aggravated by us, but since the composite assessment of all the disabilities comes to less than 50% and the applicant is already in receipt of disability element of disability pension @36% rounded upto 40% which has been rounded off to @50%, hence, he is not entitled for the grant of further disability element of disability pension as prayed by him.

11. In view of the discussions made above, **Original Application No. 458 of 2024** lacks merit and same is accordingly **dismissed**.

12. Pending application, if any, stands disposed of.

13. No order as to costs.

**(Maj. Gen. Sanjay Singh)**  
**Member (A)**

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

Dated : 17 February, 2025

AKD/-