

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI**

**O.A.NO. 50 of 2017**

WEDNESDAY, THE 01ST DAY OF NOVEMBER, 2017/10TH KARTHIKA, 1939

CORAM:

HON'BLE MR. JUSTICE BABU MATHEW P. JOSEPH, MEMBER (J)

HON'BLE VICE ADMIRAL M.P.MURALIDHARAN, AVSM & BAR, NM, MEMBER (A)

COLONEL AUGUSTIN TV (RETD), AGED 57 YEARS  
(EX IC NO. 44005Y) OF INDIAN ARMY,  
S/O LATE TT VARGHESE,  
FLAT O. 404, PRASANA VIHAR,  
OPP HIGH COURT, MARINE DRIVE,  
KOCHI, KERALA – 682 031.

**..... APPLICANT**

BY ADV. SRI. T.R. JAGADEESH

*Versus*

1. UNION OF INDIA, REPRESENTED BY ITS SECRETARY,  
MINISTRY OF DEFENCE,  
SOUTH BLOCK, NEW DELHI -110 011.
2. THE CHIEF OF THE ARMY STAFF,  
INTEGRATED HEAD QUARTERS (ARMY),  
SOUTH BLOCK, NEW DELHI – 110 011.

**..... RESPONDENTS**

3. ADDITIONAL DIRECTORATE GENERAL PERSONNEL/  
ADJUTANT GENERAL'S BRANCH/PS-4 (LMP II),  
INTEGRATED HEAD QUARTERS OF MINISTRY OF DEFENCE (ARMY),  
PLOT NO.108 (WEST), CHURCH ROACH,  
BRASSERY AVENUE, NEW DELHI – 110 001.
4. PRINCIPAL CONTROLLER OF DEFENCE ACCOUNTS, (PENSIONS),  
OFFICE OF THE P.C.D.A.(P), DRAUPATI GHAT,  
ALLAHABAD - 211 014.

BY ADV. DR. RAJENDRA KUMAR M., SENIOR PANEL COUNSEL

**ORDER**

**VAdm.M.P.Muralidharan, Member (A)**

1. The Original Application has been filed by Colonel Augustin TV, IC No. 44005Y, (Retd) seeking disability element of pension for two of his disabilities with the benefit of broadbanding. The applicant has also sought that Regulation 37(b) of the Pension Regulations for the Army, 2008, be quashed as it denies the benefit of Regulation 94(c) of the Pension Regulations.

2. The applicant was commissioned in the Army on 14 June 1986 and superannuated from service on 31 May 2014. The Release Medical Board held at the time of his discharge, assessed him to have the disabilities of Mechanical Back Pain (Old) at 20%, Primary Hypertension at 30%, Type-2 Diabetes Mellitus (old) at 20%, Sub Acromal Impingement and Bursitis Shoulder (LT) (old) at 30% and PIVD C5/C6 (old) at 30%. The applicant's disabilities of Sub Acromal

Impingement and Bursitis Shoulder (LT) (old) and PIVD C5/C6 (old) were held by the Release Medical Board as aggravated by military service and assessed at 30% each with 50% composite disability for life. The applicant was accordingly granted disability element of pension at 50% for life with effect from the date of his retirement. The other three disabilities of the applicant viz., Mechanical Back Pain, Primary Hypertension and Type-2 Diabetes Mellitus, were held as neither attributable to nor aggravated by military service (Annexure A2).

3. Sri.TR Jagadeesh, the learned counsel for the applicant, submitted that the applicant who was medically fully fit at the time of his commissioning in the Army, was posted at various locations across the country, including the places of adverse climatic conditions, hostile situations and in High Altitude Area. In February 2011, while serving at Arunachal Pradesh, the applicant developed Mechanical Back Pain and was also detected to be suffering from Primary

Hypertension and Type-2 Diabetes Mellitus. The applicant subsequently developed other disabilities and during the recategorisation Medical Board held in June 2013, the applicant was assessed to have the disabilities of Mechanical Back Pain (Old), Primary Hypertension, Type-2 Diabetes Mellitus (old), Sub Acromal Impingement and Bursitis Shoulder (LT) (old), and PIVD C5/C6 (old) (Annexure A1). The Release Medical Board held at the time of superannuation of the applicant also assessed him to have all the five disabilities, and the applicant was sanctioned disability element of pension at 50% composite for the disabilities of Sub Acromal Impingement and Bursitis Shoulder (LT) (old) and PIVD C5/C6 (old). Subsequently, the First Appellate Committee granted him disability element of pension for the disability of Mechanical Back Pain and he was granted composite disability at 60% from the date of his retirement. The learned counsel submitted that, however, the applicant was not granted any disability element of pension for his disabilities of Primary Hypertension and

Type-2 Diabetes Mellitus.

4. The learned counsel submitted that as the applicant was medically fit in all respects at the time of his commissioning and as the disabilities of Primary Hypertension and Diabetes Mellitus arose in March 2011, both those disabilities should also be considered as attributable to or aggravated by military service in keeping with the Entitlement Rules for Casualty Pensionary Awards. The learned counsel further submitted that the Honourable Apex Court in **Dharamvir Singh vs. Union of India and Others, (2013) 7 SCC 316**, had held that a person is presumed to be in sound physical and mental condition upon entering into service and any subsequent deterioration in health should be presumed to have taken place due to service conditions.

5. The learned counsel further submitted that even though the applicant had been granted composite disability

at 60% for three of his disabilities, he had not been granted the benefit of rounding off. The learned counsel further submitted that Regulation 37(b) of the Pension Regulations for the Army, 2008, denies the benefit of broadbanding to those who were discharged on completion of their terms of engagement. The learned counsel contended that such a provision was not in keeping with the decision of the Honourable Apex Court on the issue. The learned counsel, therefore, submitted that the provision be struck down as discriminatory. The learned counsel further prayed that the applicant be given disability element of pension for his disabilities of Primary Hypertension and Diabetes Mellitus and he also be granted the benefit of rounding off.

6. The respondents in their reply statement submitted that the applicant, who was assessed to have five disabilities at the time of his retirement, was granted disability element at 50% for two of his disabilities, which were considered as aggravated by service by the Medical Board. Subsequently,

based on the First Appeal preferred by the applicant, he was also granted disability element for the disability of Mechanical Back Pain, with composite disability at 60%. However, his disabilities of Primary Hypertension and Diabetes Mellitus were considered as neither attributable to nor aggravated by military service by the Medical Board as well as by the Appellate Committees. The respondents further submitted that the benefit of broadbanding was only for those who had been invalidated out and since the applicant had retired on reaching the age of superannuation, he was not eligible to the benefit of broadbanding.

7. Heard rival submissions and perused records.

8. It is not disputed that the applicant, who was assessed to have five disabilities with percentages varying from 20 to 30 percent, was granted disability element of pension at 50% composite, for the disabilities of Sub Acromal Impingement and Bursitis Shoulder (LT) (old) and PIVD C5/C6 (old), which were held as aggravated by service by the Medical Board. Subsequently, the First Appellate

Committee granted him disability element for the disability of Mechanical Back Pain at 20% and composite disability element of the applicant was enhanced to 60% for life. The applicant's disabilities of Primary Hypertension and Diabetes Mellitus assessed at 30% and 20% respectively by the Medical Board, were held by the Medical Board as well as the Appellate Committees as neither attributable to nor aggravated by military service and he was therefore not granted disability element of pension for the same (Annexures A2, A4, A6).

9. Since the applicant superannuated from service in May 2014, Pension Regulations for the Army, 2008, would be applicable. Regulation 37 which specifies the grant of disability element to an officer who retires on attaining the age of superannuation, being relevant is re-produced below:

37.(a) An Officer who retires on attaining the prescribed age of retirement or on completion of



tenure, if found suffering on retirement, from a disability which is either attributable to or aggravated by military service and so recorded by Release Medical Board, may be granted in addition to the retiring pension admissible, a disability element from the date of retirement if the degree of disability is accepted at 20% or more.

(b) The disability element for 100% disability shall be at the rate laid down in Regulation 94 (b) below. For disabilities less than 100% but not less than 20%, the above rates shall be proportionately reduced. Provisions contained in Regulation 94(c) shall not be applicable for computing disability element.

10. Regulation 81 specifies primary conditions for grant of disability pension of which sub-regulation (b) amplifies the aspect of attributability/aggravation by military service and being relevant is re-produced below:

“(b) The question whether disability is attributable to or aggravated by military service shall be determined under the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008 as laid down in APPENDIX -IV of these Regulations.”

11. Regulation 94 referred to in Regulation 37 above, pertains to amount of disability pension. While Regulation 94(b) amplifies how disability element of disability pension is to be computed, Regulation 94(c) lays down aspect of determining the extent of disability or functional incapacity for the purposes of computing disability element and specifies how the disability element is to be rounded off. It emerges from the regulations that for grant of disability element of pension to an officer who retires on attaining the prescribed age of retirement like the applicant, the disability should be assessed at 20% or more and should be attributable to or aggravated by military service. They also specify that persons like the applicant, are not entitled to the benefit of rounding off of disability element as he retired on superannuation.

12. The aspect of attributability or aggravation of a disability has to be decided under the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel,

2008. Rules relevant in deciding the issue are re-produced below:

**4. Invalidment from Service :**

a) Invalidation from service with disablement caused by service factors is a condition precedent for grant of disability pension. However, disability element will also be admissible to personnel who retire or are discharged on completion of terms of engagement in low medical category on account of disability attributable to or aggravated by military service, provided the disability is accepted as not less than 20%.

.....

**5. Medical Test at entry stage:**

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 some dormant diseases. Besides, certain hereditary, constitutional and congenital diseases may manifest later in life, irrespective of service conditions. The mere fact that a disease has manifested during military service does not *per se* establish attributability to or aggravation by military service.

**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) . . . . .**

**(b) Diseases :**

(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) Diseases 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 course 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 claim is not rebutted, attributability should be conceded on the basis of the clinical picture and current scientific medical application.

. . . . .”

**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 Altitudes etc.”

13. It is observed that the Second Appellate Committee considered the disabilities of Primary Hypertension and Type-II Diabetes Mellitus as neither attributable to nor aggravated by military service. Primary Hypertension was considered as an idiopathic disorder with

strong genetic correlation, and therefore, held as not attributable to service. Further, since the onset was in a modified field area, the ID was also held as not aggravated by military service in accordance with Para 43 of Chapter VI of Guide to Medical Officers 2002, amendment 2008. Type-2 Diabetes Mellitus was considered a disorder of carbohydrate metabolism with strong genetic predisposition and interplay with dietary and lifestyle related factors, and was held as not attributable to service. Since the applicant never served in a field area after its detection till his superannuation, it was also considered as not aggravated by military service in terms of Para 26 of Chapter VI of Guide to Medical Officers, 2002, amendment 2008.

14. Para 43 of Chapter VI of Guide to Medical Officers (Military Pensions) as amended in 2008, indicates that "in case of Primary Hypertension, 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.” It further adds that “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.” It therefore emerges that while Primary Hypertension can be considered as aggravated if it occurs while serving in field areas, it also emerges that there are cases where disease has been reported after long and frequent spells of service in field and operational areas. In case of the applicant, the disability of Primary Hypertension was first detected while he was serving in Arunachal Pradesh, which is considered a modified field area, by when the applicant had put in nearly 25 years in the Army and had also served in areas of High Altitude, adverse climatic conditions and hostile situations.

Therefore, in our view, in keeping with the clinical aspects as specified in Guide to Medical Officers (Military Pensions), the applicant's service in field areas could have contributed to Hypertension.

15. The disability of Diabetes Mellitus Type-II was held by the Second Appellate Committee as a metabolic disorder with dietary and lifestyle related factors. Further, it was also observed therein that, there was no close time association of the disability with service in field, counter insurgency operations and in High Altitude Areas. It was hence held as neither attributable to nor aggravated by military service, in terms of Para 26 of Chapter VI of Guide to Medical Officers 2002, amendment 2008. As observed, the disability was first detected in March 2011, when the applicant was serving in Arunachal Pradesh in a modified field area. It is also observed from Para 26 of Chapter VI of Guide to Medical Officers that Diabetes Mellitus is a metabolic disease of unknown origin and environmental



factors interact with genetic susceptibility to determine the onset of different variants of diabetes.

16. It is also observed that the Honourable Apex Court while considering the case of **Union of India and Another v. Rajbir Singh, Civil Appeal No.2904 of 2011**, also considered Civil Appeal Nos. 5840 of 2011 and 5819 of 2012, wherein the respondents (original applicants) were suffering from Primary Hypertension. The Honourable Apex Court also considered Civil Appeal Nos. 7368 of 2011 and 7479 of 2011, wherein the respondents (original applicants) were suffering from Diabetes Mellitus. In all these cases, the Honourable Apex Court held that the respondents therein were eligible for disability pension. Further in the same judgment, the Honourable Apex Court referring to its decision in **Dharamvir Singh** (supra) observed thus:

“15. . . . . Last but not the least is the fact that the provision for payment of disability pension is a beneficial provision which ought to be interpreted liberally so as to benefit those who

have been sent home with a disability at times even before they completed their tenure in the armed forces . . . .”

17. Therefore, based on our observations and in keeping with the principles enunciated by the Honourable Apex Court, the disabilities of Primary Hypertension and Type-2 Diabetes Mellitus of the applicant should also be held as attributable to/aggravated by military service, making him eligible for grant of disability element of pension for them. The decision of the Second Appellate committee (Annexure A6) is therefore quashed.

18. As regards the claim of the applicant for the benefit of rounding off of disability element of pension, we need to look at the impact of Regulation 37(b), which denies the benefit of rounding off to personnel who retired on attaining the age of superannuation. The issue is no more res integra as this Tribunal in **O.A. No.93 of 2016, Jadhav Maruti Bhau vs. Union of India & Others**, had

examined the issue and struck down Regulation 37(b), in keeping with the principles enunciated by the Honourable Apex Court in **Union of India & Others vs Ram Avtar, Civil Appeal No.418 of 2012**. In our view therefore, the applicant is also eligible for the benefit of rounding off of disability element of his pension.

19. In view of the foregoing, the Original Application is disposed of directing the respondents to grant disability element of pension to the applicant for his disabilities of Primary Hypertension and Type-2 Diabetes Mellitus, which were assessed at 30% and 20% respectively by the RMB, from the date of his superannuation ie with effect from 01 June 2014. Since the applicant is already in receipt of composite disability element at 60% for three of his other disabilities, viz., Mechanical Back Pain, Sub Acromal Impingement and Bursitis Shoulder (LT), and PIVD C5/C6, the respondents are directed to grant him composite disability element in accordance with law, taking into

consideration the disabilities of Primary Hypertension and Diabetes Mellitus. The applicant would also be eligible for the benefit of rounding off of his disabilities in accordance with law, based on the composite disability element granted for all his five disabilities from his date of superannuation, ie with effect from 01 June 2014. The respondents are further directed to issue the necessary modified PPO, and pay the arrears due to the applicant, within a period of four months from the date of receipt of a copy of this order, failing which the unpaid amount will carry simple interest at the rate of 8% per annum.

20 There will be no order as to costs.

21. Issue free copy to the parties.

Sd/-  
VICE ADMIRAL M.P. MURALIDHARAN,  
MEMBER (A)

Sd/-  
JUSTICE BABU MATHEW P. JOSEPH  
MEMBER (J)

(true copy)