

# Union Of India And Ors vs Ex Mwo Hfo Bharat Tiwari on 1 April, 2025

**Author: C. Hari Shankar**

**Bench: C. Hari Shankar**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 3966/2025, CM APPL. 18451/2025 & CM APPL. 18452/2025

UNION OF INDIA AND ORS

.....Petiti

Through: Mr. Ankit Raj, SPC with  
Mr. Vikram Kumar, Mr. Ali Mohammed  
Khan and Ms. Insha, Advs.

versus

EX MWO HFO BHARAT TIWARI

.....Respond

Through:

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

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01.04.2025

C. HARI SHANKAR, J.

1. The respondent joined the Indian Air Force 1 on 27 November 1978. 13 years after he had joined service, he was diagnosed, on March 1991, as suffering from Diabetes Mellitus Type II 2 and on February 2010 as suffering from Anaemia (Microcytic Hypochromic). He was, therefore, placed in Low Medical Category A4 G2(P). He was discharged from the Air Force Service on 31 July 2016, on "IAF" hereinafter attaining superannuation, after serving the IAF for over 38 years.

2. The Release Medical Board 3, which assessed the respondent on 1 September 2015, found him suffering from DM Type II and Anaemia (Microcytic Hypochromic). However, as the degree of Anaemia was less than 20%, the respondent sought disability pension on the basis of DM Type II which was certified at 20%. The following features of the report of the RMB are significant:

(i) In the Personal Statement provided by the officer, which is not doubted or disputed by the respondent, he has specifically stated that he did not suffer from any disability before joining the armed forces.

(ii) In the statement of the Commanding Officer, contained in Part-III of the RMB Report, it is acknowledged that the respondent was in low medical category for 22 years prior to the report. No doubt, the statement also states that the duties undertaken by the respondent did not involve severe/exceptional stress or strain.

(iii) Thus, it is an undisputed position that, at the time when the respondent joined the IAF, he was not suffering from DM Type II. It is also undisputed that the ailment was detected, in the case of the respondent, 13 years after he had joined military service.

"DM Type II" hereinafter "RMB" hereinafter

(iv) The reason for opining that the DM Type II, from which the respondent was found to be suffering, was not attributable to military service, as entered by the RMB in its Report, read thus:

#### "OPINION OF THE MEDICAL BOARD

##### 1. Causal Relationship of the Disability with Service conditions or otherwise.

Disability	Attributable to service (Y/N)	Aggravated by Not service (Y/N)	Connecte with Ser (Y/N)
DM TYPE- II E-11.0, Z-09.0	NO	NO	YES

3. A reading of the aforesaid report, states that DM Type-II is a metabolic disorder as there was no close time associate with Fields/CIOPS/HAA and that the onset of the disease was when he was in a peace time area.

Para 26 of chapter IV of GMO 2008, to which the aforesaid RMB refers, 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 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."

4. After superannuation, the respondent claimed disability pension. His claim was rejected by the IAF, on the ground that his disability was not attributable to, or aggravated by, military service.

5. Aggrieved, the respondent approached the Armed Forces Tribunal 4 by way of OA 1404/2019, which stands allowed by the AFT vide order dated 21 November 2023.

"AFT" hereinafter

6. The IAF, through the Union of India, challenges the decision of the AFT before us, by means of the present writ petition.

7. Mr. Vikram Kumar, learned counsel for petitioner, submits that the AFT erred in allowing the respondent's claim, in the teeth of the findings of the RMB.

8. We have already held in *UOI v Ex Sub Gawas Anil Madso* 5, that the mere fact that the onset of the disease was in a peace time area, it cannot be a ground to deny disability pension.

9. We have, in the said decision, examined practically the entire existing body of case law on the subject, and do not intend to burden this order by redoing the exercise. Mr. Vikram Kumar has invited our attention to the report of the RMB, apropos the aspect of attributability of the ailment from which the respondent was suffering to the military service being undergone by him. Some major takeaways from the said decision are, however, the following:

(i) If a disease or ailment was not present at the time of entry of the claimant in military service, it is presumed to be attributable to military service. The longer the military service undergone before the onset of the ailment, the stronger the presumption.

(ii) There are certain diseases which, under the applicable guidelines, are identified as diseases which cannot ordinarily be detected by the tests conducted at the time of induction of the claimant into military service, such as neurological disorders, HIV, asthma with periodic episodes, etc. In such cases, the presumption of attributability under (i) above would not apply.

(iii) Save and except in cases where the claimant prefers his claim for disability pension 15 years, or more, after his discharge or retirement from service, the initial onus to establish that the disease was not attributable to military service is on the military establishment, and not on the claimant. Rule 7 6 of the 2008 Entitlement Rules, which apply, itself says so.

(iv) The RMB has to give clear and cogent reasons for its decision. Judgments of the Supreme Court, referenced in *Gawas Anil Madso*, have clearly delineated the manner in which the RMB is to examine the case, and frame its opinion.

There can be no compromise on that score.

10. In the present case, despite the fact that the respondent was not suffering from DM Type II at the time of his induction in the Air Force, and the onset of the ailment was 13 years thereafter, the RMB has opined that his ailment was not attributable to military service.

2025 SCC OnLine Del 2018 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 be on the claimant.

11. Para 26 of the Chapter VI of the GMO 2008 7, vivisected into its individual components, specifies that, while dealing with diabetes mellitus:

- (i) DM is a metabolic disease,
- (ii) DM is characterised by hyperglycaemia,
- (iii) DM is of two types, Type I and Type II with the

physiological and pathological reason for the arising of the disease,

(iv) Secondary diabetes is stated to be also attributable to drugs or trauma to pancreas or brain surgery or otherwise, as well as to diseases of the pituitary, thyroid and adrenal gland,

(v) DM Type II would be conceded aggravated if onset occurs serving in Fields/CIOPS/HAA and prolonged afloat service, and

(vi) Diabetes secondary to chronic pancreatitis due to alcohol dependence and gestational diabetes should not be considered attributable to service.

12. Mr. Vikram Kumar, learned Counsel for the petitioners submits that the sequitur of the second last paragraph of the aforesaid instruction is that, if an officer is not serving in Fields/CIOPS/HAA or prolonged afloat service, the DM Type II that he is suffering from would not be treated as attributable to military service.

13. There is no dispute about the fact that the respondent does not suffer from chronic pancreatitis, is not alcohol dependent and that the Refer para 2(iv) supra.

Diabetes diagnosed in his case is not gestational.

14. We are unable to sustain this argument. All that the instruction says that, if the DM Type II is found to have arisen while the officer was serving in Fields/CIOPS/HAA or prolonged afloat service, it would be attributable to military service. The sequitur is not that, in all other cases, it would not be attributable to military service. In other words, if the officer is serving in Fields/CIOPS/HAA or prolonged afloat service, there would be irrebuttable presumption that the DM Type II is attributable to military service.

15. Even in other cases, where no Diabetes Mellitus was recorded at the time when the officer entered the Military Service, there was no re-recording of the fact that he suffered from DM Type II, the onus would be on the RMB, in terms of para 7 or 9 of the 2008 guidelines to provide concrete reasons as to why it does not treat the Diabetes Mellitus as attributable to military service.

16. We have already held, in *Gawas Anil Madso*, that all disorders which can arise owing to lifestyle issues are not, for that reason alone, presumed not to be attributable to the military service undergone by the cadet. If the lifestyle of the cadet during military service was the cause of the ailment, the RMB report has specifically to say so, identifying the exacerbating causes in the claimant's lifestyle.

17. The emphasis, that we find in various RMB reports, on the fact that the onset of the ailment, for which the claimant claims disability pension, was during his posting in a peace area, appears to us to be misguided. The entitlement to disability pension is only dependent on the ailment, or disability, being attributable to, or aggravated by, military service. There is no further requirement that the military service must have been rendered in a disturbed area, or in an atmosphere where the candidate is subjected to stress or tension. We are in agreement with the AFT that military service, even by its very nature, entails a certain degree of stress and strain, both physical and mental. There can be no universal presumption that diabetes mellitus is attributable to military service only if its onset is while the candidate is posted in an area where he is under stress or pressure.

18. As such, in the absence of any findings by the RMB to sustain its conclusion that DM Type II from which the respondent was suffering is actually attributable to military service, we are of the opinion that the respondent would be entitled to disability pension.

19. Given the law in that regard, we are of the opinion that no exception can be taken to the decision of the Tribunal to grant disability pension to the respondent.

20. Accordingly, the order of the Tribunal is upheld. Compliance with the impugned judgment of the AFT be ensured within a period of four weeks.

21. The writ petition is dismissed in limine.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

APRIL 1, 2025 sk [Click here to check corrigendum](#), if any