

**COURT NO.2, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

MA 113/2021 IN OA 1404/2017

Ex MCEAR-II Satyavir Singh **Applicant**
VERSUS
Union of India and Ors. **Respondent**

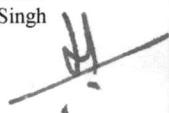
For Applicant : **Mr. J.P. Sharma, Advocate**
For Respondent : **Mr. Y.P. Singh, Advocate**
 Lt Cdr V.S. Guleria, OIC, Navy

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**HON'BLE MS. JUSTICE ANJANA MISHRA,, MEMBER(J)
HON'BLE LT GEN P.M. HARIZ, MEMBER(A)**

O R D E R

1. This misc. application has been filed under Section 29 of the Armed Forces Tribunal Act, 2007 by the applicant, a retired sailor of the Navy, for implementation of the order dated 17.03.2020 passed in OA 1404 of 2017 by this Tribunal.
2. The applicant was enrolled in the Navy on 11.01.1973 and was discharged from Naval Service on 31.07.1992 in low medical category on completion of terms of engagement. At the time of retirement from service, the Release Medical Board held on 29.08.1992 assessed his disabilities (a) "OBESITY @ 20% for 2



years, (b) HYPERTENSION @ 25% for 2 years and (c) HYPERCHOLESTEROLEMIA @ 20 percent for 2 years, composite 30% but only disability (b) HYPERTENSION was considered as aggravated by the service due to stress and strain of service. However, CDA (Naval), Mumbai rejected the claim considering the disability as Neither Attributable to Nor Aggravated by service, which was intimated to the applicant vide Bureau of Sailors letter no Gst/NavyCel/21432/Dis dated 28.05.1993 The first appeal of the applicant was rejected vide IHQ MOD letter no. 7(1159)/93/D(Pen A&C) dated 26.02.1997. Thereafter, the applicant approached this Hon'ble AFT (PB) New Delhi by filling OA No. 1404 of 2017 for grant of disability element of disability pension along with benefit of broad banding. The Hon'ble Tribunal vide judgment dated 17.03.2020 gave directions to the respondents to conduct applicant's Re-Survey Medical Board within four months for further entitlement of his disability pension. Aggrieved from the non execution of the order dated 17.03.2020, the applicant has filed this misc. application on 06.01.2021.

3. During the course of hearing, it was informed by the counsel for the respondents that the RSMB was delayed as the applicant did not report to Military Hospital, Ambala with relevant documents for

undergoing the RSMB. On the direction of the Hon'ble Tribunal, applicant's RSMB was finally carried out on 12.02.2022. The RSMB assessed his disabilities (a) "OBESITY and (c) HYPERCHOLESTEROLEMIA as neither attributable nor aggravated to Naval service (NANA) but assessed disability (b) i.e. HYPERTENSION as aggravated by the service with the present assessment at 50%. But, the RSMB modified the composite assessment to 40% owing to Para 4 (c) of the RSMB (nature of the disease and effect of non-service factors)

4. The counsel for the applicant argued that since the RSMB has assessed the present disability @ 50%, 10% reduction based on Para 4 (c) is not permissible. Therefore, it must be rounded off to 75% as per the ratio laid down by the Supreme Court in **Union of India and Others Vs. Ram Avtar** 2014 SCC OnLine SC 1761. Per contra, the counsel for the Respondents argued that the Medical Board is an expert body and its opinion is to be given due weight, value and credence.

5. Having heard the rival submissions and perused the records, including the RMB & RSMB proceedings, the only question that remains to be answered is, whether the findings of the RSMB can be treated as final?

6. The Supreme Court in **Union of India and Others Vs. Ex-Serviceman R. Munusamy** 2022 SCC OnLine SC 892 held that-

25. "What exactly is the reason for a disability or ailment may not be possible for anyone to establish. Many ailments may not be detectable at the time of medical check-up, particularly where symptoms occur at intervals. Reliance would necessarily have to be placed on expert medical opinion based on an in-depth study of the cause and nature of an ailment/disability including the symptoms thereof, the conditions of service to which the soldier was exposed"

7. In the case of **Secretary, MoD and others vs A.V. Damodaran and others** (2009) 9 SCC 140, the Hon'ble Supreme Court has brought out the following principles with regard to primacy of medical opinion:

8. When an individual is found suffering from any disease or has sustained injury, he is examined by the medical experts who would not only examine him but also ascertain the nature of disease/injury and also record a decision as to whether the said personnel is to be placed in a medical category which is lower than 'AYE' (fit category) and whether temporarily or permanently. They also give a medical assessment and advice as to whether the individual is to be brought before the release/ invalidating medical board. The said release/invalidating

medical board generally consists of three doctors and they, keeping in view the clinical profile, the date and place of onset of invaliding disease/disability and service conditions, draws a conclusion as to whether the disease/injury has a causal connection with military service or not. On the basis of the same they recommend (a) attributability, or (b) aggravation, or (c) whether connection with service. The second aspect which is also examined is the extent to which the functional capacity of the individual is impaired. The same is adjudged and an assessment is made of the percentage of the disability suffered by the said personnel which is recorded so that the case of the personnel could be considered for grant of disability element of pension. Another aspect which is taken notice of at this stage is the duration for which the disability is likely to continue. The same is assessed/ recommended in view of the disease being capable of being improved. All the aforesaid aspects are recorded and recommended in the form of AFMSF- 16. The Invalidating Medical Board forms its opinion/ recommendation on the basis of the medical report, injury report, court of enquiry proceedings, if any, charter of duties relating to peace or field area and of course, the physical examination of the individual.

9. The aforesaid provisions came to be interpreted by the various decisions rendered by this Court in which it has been consistently held that the opinion given by the doctors or the medical board shall be given weightage and primacy in the matter for ascertainment as to whether or not the

injuries/illness sustained was due to or was aggravated by the military service which contributed to invalidation from the military service.

8. Moreover, as per Para 7 of Govt. of India letter No.1(2)/97/D(Pen-C) dated 07.02.2001, there will be no periodical reviews by the RSMB for re-assessment of disabilities. In cases of disabilities adjudicated as being of a permanent nature, the decision once arrived at will be final and for life, unless the individual himself requests for a review. In cases of disabilities which are not of a permanent nature, there will be only one review of the percentage by a Reassessment Medical Board, to be carried out later, within a specified time frame. The percentage of the disability recommended by the Reassessment Medical Board will be final.

9. In the instant case, the first appeal of the applicant was rejected vide IHQ MOD letter no. 7(1159)/93/D(Pen A&C) dated 26.02.1997. But, the applicant approached this Tribunal only in the year 2017 (i.e. after two decades). That being so, once the RSMB was permitted by this Tribunal and it gave a finding, the Tribunal will not sit in appeal over the expert opinion of a medical board. There is no reason for the Tribunal not to accept or modify the opinion of the RSMB held on 16.03.2022. Moreover, the reduction of 10% has also

been done by the RSMB in consideration of the fact that the RSMB was being carried out 20 years after the initial RMB. We, therefore, find no infirmity in this.

10. As far as the benefit of broad banding is concerned, it was introduced in Jan 2001 and stands extended w.e.f. 01.01.1996.

Since the RSMB dated 16.03.2022 has held the composite disability @40%, the applicant is entitled to broad banding for life from the date of RSMB.

11. In view of the above, the MA is disposed of. The disability of the applicant is held as aggravated by military service. The applicant is entitled to get disability pension @40% for life to be rounded off to 50% from 16.03.2022; the date on which the RSMB was approved.

12. The respondents are thus directed to calculate, sanction and issue the necessary corrigendum PPO to the applicant within three months from the date of receipt of a certified copy of this order, failing which the respondents shall be liable to pay interest @ 6% per annum till the date of actual payment.

13. No order as to costs.

Pronounced in the open Court on this day of 18th May,
2023.

(ANJANA MISHRA)
MEMBER(J)


(P M HARIZ)
MEMBER(A)

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