

**COURT NO. 1, ARMED FORCES TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**O.A. No. 327 of 2019**

**In the matter of :**

**Ex MECH-3 Hrusikesh Dalai**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant : Shri Ved Prakash, Advocate**

**For Respondents : Mr. Shyam Narayan, Advocate**

**CORAM:**

**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON**  
**HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)**

**ORDER**

Invoking the jurisdiction of the Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this OA and the reliefs claimed in Para 8 read as under:

- (a) ***Quash the Impugned Order No. PN/0134/DP/989/2<sup>nd</sup>/17 dated 10.04.2018 and Impugned Order No. PN/0134/DP/989/16 dated 21.02.2017.***
- (b) ***Direct the respondents to grant disability element of pension duly rounded off to 75% w.e.f his date of discharge i.e 01.08.2016.***
- (c) ***Direct the respondents to pay the due arrears of disability element of pension with interest @12% p.a. from the date of retirement with all the consequential benefits.***

- (d) *Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost of the application in favour of the applicant and against the respondents.*

### **BRIEF FACTS**

2. The applicant, having been found medically and physically fit after thorough medical examination, was enrolled in the Indian Navy on 30.07.1996 and was discharged from service on 31.07.2016 in permanent low medical category S3A2(P) PMT after 20 years. The Release Medical Board held on 23.12.2015 assessed the applicant's disabilities '(i) Palmoplantar Hyperhydrosis @ 20% (ii) Type-II Diabetes Mellitus @ 20% (iii) Primary Hypertension @ 30% and (iv) Dyslipidemia @ 20%, with composite assessment of disabilities @ 64.36% rounded off to 60% for life and held the same as 'neither attributable to nor aggravated by military service' (NANA). Based on the recommendations of the RMB, the claim for disability pension has been denied to the applicant.

3. The initial claim of the applicant for grant of the disability pension was rejected by the competent authority and the said decision was

communicated to the applicant vide letter No. PEN/600/D/LRDO/1:07/2016/119116W dated 07.07.2016 with an advice that, in case, the applicant is not satisfied with the decision of the respondents, he may prefer an appeal to the Appellate Committee within six month from the date of receipt of the above mentioned letter. The first appeal preferred by the applicant was rejected by the Appellate Committee and communicated to the applicant vide IHQ MoD (N)/DPA letter No. PN/0134/DP/989/16 dated 21.02.2017 considering the disabilities as neither attributable to nor aggravated by military service. Thereafter the applicant preferred second appeal, and the same was also rejected vide IHQ MoD (N)/DPA letter No. PN/0134/DP/989/2<sup>nd</sup>/17 dated 10.04.2018. Aggrieved by this, the applicant has filed the present OA on 13.04.2023. In the interest of justice, it is considered appropriate to take up the present OA for consideration, in terms of Section 21(1) of the AFT, Act 2007.

#### **CONTENTIONS OF THE PARTIES**

4. The learned counsel for the applicant submitted that the applicant, at the time of joining the service, was declared

fully fit mentally and physically and no note of disability was made in his medical record at the time of entering the service and any medical disability contracted by him during the course of his service should be treated as being attributable and aggravated by the stress and strain of his service. The learned counsel explained about the stressful and challenging conditions of service undertaken by the applicant during his service tenure. The learned counsel submitted that the applicant was posted at various stations (Peace and Field) and had served in tough and different weather and environmental conditions in his career and discharged all assigned duties with utmost dedication in a well-disciplined and professional manner. The learned counsel for the applicant further submitted that the applicant was a technical sailor and was responsible to maintain all the equipment of engine rooms and electrical department and had no defined working hours, as he had to attend to defect rectification any time when a defect was found which caused him sleep deprivation and physical and mental exhaustion, therefore, discharging duties for a prolonged period in such strenuous and challenging conditions of service with

tremendous mental and physical pressure affected the applicant's health adversely and thus, as a ramification of tough service conditions, the applicant developed the disabilities and thereby, any disability that arose during his service has to be deemed to be attributable to or aggravated by military service.

5. The learned counsel for the applicant further contended that the instant matter is squarely covered by a catena of judgments of the Hon'ble Supreme Court such as ***UOI & Ors. Vs. Angad Singh Titaria (AIR 2015 SC 1898)*** CA No. 11208, ***Dharamvir Singh Vs. Union of India & Ors. [2013 (7) SCC 316]***, ***Union of India and Ors. Vs. Rajbir Singh [(2015) 12 SCC 264]***, ***Civil Appeal No. 418/2012 titled as Union of India & Ors. Vs. Ram Avtar and CA-605/2010 titled Sukhvinder Singh Vs. Union of India (2014 STPL9(web)468 SC)*** and the orders passed by this Tribunal and submitted that the respondents' action in denying the grant of the disability pension to the applicant is unjustified and unlawful, when the disabilities recorded by the RMB occurred during the military service and were caused due to stress and strain of service. The learned

counsel, therefore, prayed that the disabilities in question may be held to be attributable to/aggravated by military service and that the disability pension may be granted to the applicant.

6. *Per contra*, the learned counsel for the respondents contended that the applicant is not entitled to the relief claimed since the RMB, being an Expert Body, found the disabilities as being “Neither Attributable to Nor Aggravated by Military Service”. The learned counsel further contended that the applicant was found overweight during the RMB assessment and he developed all these disabilities on account of being overweight. While rejecting the disability element of pension to the applicant, the respondents have given detailed reasons for not assessing the disabilities as attributable to or aggravated by military service as the applicant had no exceptional stress and strain of service and the disabilities were conceded as neither attributable to nor aggravated by military service in terms of Paras 43 and 26 of Chapter VI of Guide to Medical Officers (Military Pensions) 2002, amendment 2008. The learned counsel submitted that since the applicant’s disabilities do not fulfill one of the

twin conditions in terms of Regulations 101 and 105-B of Navy Pension Regulations, 1964, as the same were assessed as neither attributable to nor aggravated by military service, and therefore, the applicant is not entitled to the grant of the disability pension and the OA thus, deserved to be dismissed.

### **ANALYSIS**

7. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, we find that the applicant has been suffering from four disabilities viz. '(i) Palmoplantar Hyperhidrosis @ 20% (ii) Type-II Diabetes Mellitus @ 20% (iii) Primary Hypertension @ 30% and (iv) Dyslipidemia @ 20% which have been attributed as NANA by the RMB.

8. As far as, the disability of the applicant "Palmoplantar Hyperhidrosis @ 20%" is concerned as per medical reviews, it relates to 'profuse perspiration (excessive sweating) of the palm. "Palm Planter Hydrosis is one form of focal hyperhidrosis, meaning profuse perspiration affecting one area of the body. The cause of the disease is not clearly known. Additionally, besides, genetic factors certain infections

are also known to trigger this disease and as per records available, there is no mention of applicant having contracted any infection.

9. It is pertinent to mention that although in Part-I of the RMB, the onset date of the said disability of the applicant is mentioned Sep 2004 but in the Medical Case Sheet, the applicant was also shown to have suffered with the same disease in 1998 i.e. after two years of his service in Indian Navy. Taking note of this, it could also be the possibility that the applicant might have been suffering from the said disability even before 1998 and the disease might have diagnosed or come on record in later stage. We do not find any evidence or record which shows that the applicant was involved in any work which could have led to the said condition of the applicant. In view of the abovementioned facts, it is in great probability that the said disability of the applicant might have not been detected at the time of entering the military service. Hence, there is no causal connection between the disability and the military service.

10. In so far as, the disabilities Primary Hypertension is concerned, the Part II Medical Examination of the RMB

reveals that the applicant was overweight by 20.3% i.e. 12kgs more from ideal weight (59kgs). In Physical Examination Findings of the Opinion of Specialist Part-I, the weight of the applicant is mentioned 71 kgs with a remark **'No Change since last review'** with an advice of lifestyle modification. Hence, it is apparent that the applicant was overweight at least for last two years and advised to reduce his weight before RMB also however, the applicant failed to reduce the weight.

11. There are various medical reviews available suggesting that those who are overweight or obese, are at risk of having high blood pressure in life. The publication released by World Health Organization titled "Hypertension" available on the internet on 16.03.2023 was examined by us and which reads to the effect:-

**"Hypertension (high blood pressure) is when the pressure in your blood vessels is too high (140/90 mmHg or higher). It is common but can be serious if not treated.**

**People with high blood pressure may not feel symptoms. The only way to know is to get your blood pressure checked.**

**Things that increase the risk of having high blood pressure include:**

- older age
- genetics
- being overweight or obese
- not being physically active

- high-salt diet
- drinking too much alcohol

**Risk factors**

- **Modifiable risk factors include unhealthy diets (excessive salt consumption, a diet high in saturated fat and trans fats, low intake of fruits and vegetables), physical inactivity, consumption of tobacco and alcohol, and being overweight or obese.”**

This bulletin of WHO specifically brings out the effect of overweight/obesity on hypertension. Thus, it can be considered that the Primary Hypertension can be the result due to applicant being overweight.

12. In so far as the disability of Diabetes Mellitus Type 2 is concerned, there is correlation of the disease and the weight of the person. The publication released by the National Library of Medicine (National Center for Biotechnology Information) NLM, titled “Diabetes” assessed through internet on 17.11.2023 was examined by us and which reads to the effect:-

**“The accumulation of an excessive amount of body fat can cause type 2 diabetes, and the risk of type 2 diabetes increases linearly with an increase in body mass index. Accordingly, the worldwide increase in the prevalence of obesity has led to a concomitant increase in the prevalence of type 2 diabetes. The cellular and physiological mechanisms responsible for the link between obesity and type 2 diabetes are**

complex and involve adiposity-induced alterations in  $\beta$ -cell function, adipose tissue biology, and multi-organ insulin resistance, which are often ameliorated and can even be normalized with adequate weight loss.”

This bulletin of NLM specifically brings out the effect of overweight/obesity on Diabetes.

13. Additionally, this Tribunal, while dealing with disability pension for disabilities ‘Obesity and Hypertension’ in O.A No. 1656/2019, titled ***Ex HFO Gyanendra Singh vs Union of India & Ors***, has dismissed the case on merit which was also upheld by the Hon’ble Supreme Court in Civil Appeal Diary No. 21017/2019 decided on 08.07.2019 and also disability pension for disability of “Diabetes Mellitus Type 2” in case of ***Ex MWO Ravi Kant Gupta vs Union of India & Ors.***, in OA No. 47/2020 dated 06.12.2023, wherein the claim of disability pension for the disability of Diabetes Mellitus was disallowed because the applicant therein was found to be overweight.

14. The disability of the applicant Dyslipidemia as indicated by the website <https://www.ncbi.nlm.nih.gov> is ***“the imbalance of lipids such as cholesterol, low-density***

**lipoprotein cholesterol, (LDL-C), triglycerides, and high-density lipoprotein (HDL). This condition can result from diet, tobacco exposure, or genetic and can lead to cardiovascular disease with severe complications.**" Therefore, it is clear that the said disability is

a lifestyle disease and is inter-linked to the weight and lifestyle of the person who is suffering from the said disease.

It is also evident from the records before us, that the applicant is obese or overweight and failed to maintain a good lifestyle even during his service in Indian Navy. Hence, there is no causal connection between the disability and the military service and the abovementioned facts cannot be overlooked.

15. Thus, in view of the circumstances of the instant matter, we do not find any infirmity in the opinion of the Release Medical Board denying the disability element of pension to the applicant for all the three disabilities being neither attributable to nor aggravated by military service and the applicant thus is not entitled to the grant of the disability element of pension for which the applicant is himself

responsible for being overweight and for not maintaining a healthy lifestyle.

### CONCLUSION

16. In view of the aforesaid analysis and the parameters referred to above, there being no infirmity in the opinion of the RMB. Accordingly, the OA 327/2019 stands dismissed being devoid of merits.

17. There is no order as to costs.

Pronounced in the open Court on this <sup>Hk</sup> 16 day of May, 2024.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]  
MEMBER (J)

/nmk/