

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

**O.A. No. 875 of 2022**  
**with**  
**M.A. No. 1161 of 2022**

**In the matter of :**

**JWO Ravindra Bhaskarrao Jadhav (Retd) ... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant : Shri Manoj Kr. Gupta, Advocate**

**For Respondents : Shri Avdhesh Kumar Singh, Advocate**

**CORAM :**

**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON**  
**HON'BLE LT GEN P.M. HARIZ, MEMBER (A)**

**ORDER**

Invoking the jurisdiction of the Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 read as under :

***(a) To direct the respondents to grant disability element @19% broad banded to 50%; by treating the disabilities as attributable and aggravated by the military service in terms of squarely covered***

*Judgments; produced at Annex-A4(Colly), Annex-A5(Colly), Annex-A6, and Annex-A8(Colly); and/or*

*(b) To direct the respondents to produce the relevant records and provisions based on which disability of PH in present case was assessed less than 20% wherein in all other cases, for the same onset of ID ie, PH was assessed @30% including the judgments placed at Annex-A4 to A6; and pay due arrears of disability pension with interest @8% p.a.; and/or*

*(c) To direct the respondents to extend the benefit of disability element with broad-banding, assessed @ 15-19% to make it 20% and further round it off to 50% with applicable interest wef date of discharge, in terms of identical judgments (Annexure-A8/Colly), in alternate direct the respondent to conduct Re-survey Medical Board to assess the disability of the applicant, if not feasible for disability element; and/or*

*(d) To pass such further order or orders, direction/Directions as this Hon'ble Tribunal may deem fit and proper in accordance with law.*

2. The applicant, having been found medically and physically fit, was enrolled in the Indian Air Force on 06.09.1982 and was discharged from service on 30.09.2002 being in low medical category BEE (P). Before his discharge, the applicant was brought before the Release Medical Board (RMB) which was held on 13.12.2001. The RMB assessed the disability of the applicant i.e. PRIMARY HYPERTENSION WITH LVH @ 15-19% for two years and the same was considered to be 'neither attributable to nor aggravated by military service' (NANA), based on which, disability pension has been denied to the applicant.

3. The initial claim of the applicant for disability pension was adjudicated by PCDA (P) Allahabad and upholding the recommendations of the RMB, PCDA (P) rejected the claim of the applicant vide letter dated 17.08.2004. It is the case of the applicant that the appeal-cum-legal notice dated 31.01.2022 sent to the respondents was not considered being time-barred. Hence, this OA.

4. Learned counsel for the applicant submitted that the applicant, at the time of joining the service, was declared medically and physically fully fit and no note was made in his medical record that the applicant was suffering from any disease at that time and any medical disability contracted by him during the course of his service should be treated as attributable/aggravated by the stresses and strains of his service. Learned counsel submitted that the disability in question was a consequence of the duties performed by the applicant in extremely stressful and strenuous conditions being in the trade duties of ADSO and he was responsible for the serviceability of equipment and smooth functioning of fighter aircrafts movements; tasks related to maintenance and upkeep of aircrafts; and the hectic and heavy workload, exhaustion and deprivation of sleep during emergency duties during exercises, deployment during warlike situations etc. and all these put tremendous mental/physical pressure on the applicant which took a toll on his physical and mental health and resultantly, in October, 1994, the applicant was diagnosed with Primary Hypertension.

5. Learned counsel further submitted that while denying the disability pension, the respondents failed to appreciate that the relevant rules of the Entitlement Rules for Casualty Pensionary Awards, 1982 (hereinafter referred to as 'Entitlement Rules, 1982') provide that in case of discharge from service in low medical category, if no note is on record at the time of joining of service, the deterioration in health of the individual is to be presumed due to service conditions. He further relied on various provisions of the Entitlement Rules, 1982 to submit that any disease contracted during service, would be presumed to be attributable to military service.

6. Learned counsel placed reliance on the judgments of the Hon'ble Supreme Court including **Dharamvir Singh Vs. Union of India and Ors. [(2013) 7 SCC 316]**, **Union of India & Ors. Vs. Angad Singh Titaria [(2015) 12 SCC 257]** and **Sukhvinder Singh Vs. Union of India [(2014 STPL (web) 468 SC]** along with various orders of the Tribunal (PB and RBs) and submitted that the respondents' action in denying the disability pension was unjustified and unlawful, when the

disability recorded by the RMB occurred during the military service and was caused due to stress and strain of service.

7. *Per contra*, learned counsel for the respondents contended that the applicant was not entitled to the relief claimed since the RMB, being an Expert Body, found the disability as "Neither Attributable to Nor Aggravated by Military Service" being a constitutional disease. Learned counsel further submitted that the applicant was found to be occasional drinker vide opinion of Classified Specialist, (Medicine) & Cardiologist dated 19.11.1996 and consuming alcohol is the risk factors qua the disability i.e. Primary Hypertension with LVH and thus the disability was rightly held as NANA. It is further contended that the applicant's disability was held as NANA and was assessed @ 15-19% and thus the same does not fulfill the twin conditions in terms of Regulation 153 of the Pension Regulations for the Air Force, 1961 (Part-I) of being considered as 'attributable to or aggravated by military service' and assessed at 20% or more, and, therefore, the applicant is not entitled to disability pension. He prayed that the OA deserves to be dismissed.

8. As far as attributability/aggravation of the disability 'Primary Hypertension' is concerned, the consistent stand taken by this Tribunal is based on the law laid down by the Hon'ble Supreme Court in the case of **Dharamvir Singh Vs. Union of India and others** [(2013) 7 SCC 316], which has been followed in subsequent decisions of the Hon'ble Supreme Court and in the number of orders passed by the Tribunal, wherein the Apex Court had considered the question with regard to grant of disability pension and after taking note of the provisions of the Pension Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers, it was held by the Hon'ble Supreme Court that an Army personnel shall be presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance and in the event of his being discharged from service on medical grounds, any deterioration in his health, which may have taken place, shall be presumed to be due to service conditions. The Apex Court further held that the onus of proof shall be on the respondents to prove that the disease from which the incumbent is suffering is neither

attributable to nor aggravated by military service. Relevant paras are reproduced hereunder :

**"28. A conjoint reading of various provisions, reproduced above, makes it clear that:**

**(i) Disability pension to be granted to an individual who is invalidated 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 or aggravated by military service to be determined under "Entitlement Rules for Casualty Pensionary Awards, 1982" of Appendix-II (Regulation 173).**

**(ii) 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 r/w Rule 14(b)].**

**(iii) 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).**

**(iv) 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)].**

**(v) 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. [14(b)].**

**(vi) 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. [14(b)]; and**

*(vii) It is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II of the "Guide to Medical (Military Pension), 2002 - Entitlement : General Principles", including paragraph 7,8 and 9 as referred to above."*

9. It has already been observed by the Tribunal in large number of cases that military services have their own pressure of rigorous military training and associated stress and strain of the service. It may also be taken into consideration that the most of the personnel of the armed forces, during their service, work in stressful and hostile environment, difficult weather conditions and under strict disciplinary norms. The Coordinate Bench of this Tribunal in the case of **Col R.R. Panigrahi Vs. Union of India & Ors. [O.A. No. 1825 of 2018]** decided on 01.08.2019 allowed the OA granting disability pension for hypertension on the similar grounds. There is no note made in his medical documents that he was suffering from any disease at the time of joining the service.

10. Further, we have gone through the opinion of the Classified Specialist (Medicine) & Cardiologist dated 19.11.1996 which recorded the applicant to be an occasional drinker.

While the adverse effects of drinking alcohol cannot be denied, however, in the aforesaid opinion itself, we find that advising treatment, medications and salt restricted diet were prescribed and thus the stress and strain of military duties cannot be ignored and there being no other record except the above and in these circumstances, giving the benefit of doubt to the applicant in view of above judgment and settled law on the point of attributability/aggravation, the disability of Primary Hypertension suffered by the applicant should be held attributable to/aggravated by the military service.

11. As far as assessment of disablement percentage of the disability in question is concerned, in terms of Para 21 clause (f) of Chapter VII of the GMO, 2008 it is provided that uncomplicated primary hypertension cannot be assessed at less than 30%. Accordingly, the disability in the present case i.e. Primary Hypertension, falls within the ambit of Regulation 153 of the Pension Regulations for the Air Force, 1961 and fulfills twin conditions to be eligible for grant of disability pension of being held as attributable to/aggravated by service and assessed @ 20% or more.

12. Furthermore, with regard to the disability of the applicant, which was considered to be of permanent nature i.e. BEE (P), but assessed for a particular period i.e. for two years, it can be made out from the judgment of Hon'ble Supreme Court in the case of **Commander Rakesh Pande Vs. Union of India & Ors. [Civil Appeal No. 5970 of 2019]** decided on 28.11.2019, wherein the Hon'ble Apex Court while upholding the decision of the Armed Forces Tribunal granting disability pension for five years to the applicant, granted the disability for life and observed as under :

***"Para 7 of the letter dated 07.02.2001 provides that no periodical reviews by the Resurvey Medical Boards shall be held for reassessment of disabilities. In case of disabilities adjudicated as being of permanent nature, the decision once arrived at will be for life unless the individual himself requests for a review. The appellant is afflicted with diseases which are of permanent nature and he is entitled to disability pension for his life which cannot be restricted for a period of 5 years. The judgment cited by Ms. Praveena Gautam, learned counsel is not relevant and not applicable to the facts of this case. Therefore, the appeal is allowed and the appellant shall be entitled for disability pension @ 50% for life.***

**[Emphasis supplied]**

It is pertinent to mention here that the Tribunal has followed the aforesaid judgment of the Hon'ble Apex Court in numerous cases where the duration of disablement was for a particular period and thus was considered to be for life.

13. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is entitled for disability element of pension for the disability 'Primary Hypertension with LVH'. Accordingly, O.A. No. 875 of 2022 is allowed. The respondents are directed to grant the disability element of disability pension to the applicant @ 30% which is to be rounded off to 50% for life from the date of discharge in terms of the judicial pronouncement of the Hon'ble Supreme Court in the case of **Union of India Vs. Ram Avtar** (Civil Appeal No. 418/2012), decided on 10.12.2014. However, the arrears be restricted to three years prior to the date of filing of the OA in view of the judgment in *Tarsem Singh's case (supra)*.

14. The respondents are thus directed to calculate, sanction and issue the necessary Corrigendum PPO to the applicant within a period of three months from the date of receipt of copy of this order and the amount of arrears shall be paid by the

respondents, *failing which*, the applicant will be entitled for interest @ 6% p.a. from the date of receipt of copy of the order by the respondents.

15. In view of the above, pending MAs, if any, stand closed. There is no order as to costs.

Pronounced in open Court on this 4<sup>th</sup> day of September, 2024.

**[JUSTICE RAJENDRA MENON]  
CHAIRPERSON**

**[LT GEN P.M. HARIZ]  
MEMBER (A)**

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