

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

**OA 1372/2017**

**Lt Col Satwant Singh (Retd)**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant** : Mr. Dhananjay Shekhawat, for  
Mr. Adarsh Kumar Tiwari, Advocate

**For Respondents** : Mr. Prabodh Kumar, Sr. CGSC

**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 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 read as under :

- (a) Set aside the order dated 29.11.2007 passed by the learned Defence Minister's Appellate Committee whereby the applicant claim for disability pension was finally rejected.***
- (b) Pass an order directing the respondents to grant disability pension to the applicant from the date of his retirement.***
- (c) Grant the benefits of rounding off the disability pension in light of judgment dated 10.12.2014***

*of Hon'ble Supreme Court in the case of Union of India and Ors vs Ram Avatar;*

- (d) Direct the respondents to pay all the arrears from the date of retirement within 3 months with 12 % interest;*
- (e) Grant all consequential benefits and any other relief suitable in the facts and circumstances of the case;*
- (f) Pas any other appropriate order(s) or directions in favour of the applicant which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case, in the interest of justice."*

### **BRIEF FACTS**

2. The applicant was commissioned in the Indian Army on 20.04.1973 (SSC), granted Permanent Commission wef 29.04.1978 and on attaining the age of superannuation, retired on 30.09.2002 (A/N). Before his retirement, the applicant was subjected to a Release Medical Board (RMB) held on 08.06.2002. The RMB found the applicant to be fit to be released in low medical category S1H1A1P2(P)E1, for the disabilities of (i) IGT @ 6-10% (ii) Obesity @ 1-5% and (iii) Hypertrophic Cardiomyopathy @ 15-19%, with the percentage of composite disabilities assessed @ 20% for life. However, the net qualifying percentage for the disability

pension was Nil for life as both the disabilities were adjudged as neither attributable to nor aggravated by military service.

3. The initial claim for grant of disability pension was rejected by PCDA(P) Allahabad accepting the disability as "neither attributable to nor aggravated by military service" vide letter dated 27.02.2003. The applicant preferred his first appeal dated 11.12.2004 against rejection of disability pension claim, which was rejected by the Appellate Committee of First Appeals. Aggrieved by this, the applicant preferred second appeal dated 16.11.2005. In response thereto, the respondents, in consultation with DGAFMSF, decided to conduct a second appeal medical board (SAMB) of the applicant which was held on 16.10.2006 at Base Hospital, Delhi Cantt and the disabilities of the applicant i.e. IGT, Obesity and Hypertrophic Cardiomyopathy were considered as neither attributable to nor aggravated by military service by the SAMB. On the basis of the recommendations of the SAMB, the Defence Minister's Appellate Committee rejected the second appeal of the applicant. Aggrieved by this, the applicant has filed the

instant OA. In the interest of justice, we take up the same for consideration.

### **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.

5. The learned counsel for the applicant further contended that the instant matter is squarely covered by the judgment of the Hon'ble Supreme Court in the case of ***Dharamvir Singh Vs. Union of India & Ors.*** [2013 (7) SCC 316], wherein it was held that if there is no note on record of an individual at the time of entering into service, any deterioration in his health would be deemed to have taken place due to service and hence, the applicant is entitled to the disability element of pension.

6. Per contra, the learned counsel for the respondents contended that the applicant is not entitled to the relief claimed since the RMB as well as subsequent SAMB, being Expert Body, considered the disabilities of the applicant as "Neither Attributable to Nor Aggravated by Military Service" and not related to service conditions. The learned counsel further submits that under the provisions of Para 53 of the Pension Regulations for the Army 2008, (Part-I) stating that *"an individual released/retired/discharged on completion of terms of engagement or on completion of service limits or on attaining the prescribed age (irrespective of his period of engagement), if found suffering from a disability attributable to or aggravated by military service and so recorded by Release Medical Board may be granted disability element in addition to service pension or service gratuity from the date of retirement/discharge, if the accepted degree of disability is assessed at 20 per cent or more"*. In the instant case, the applicant's disabilities have been considered as neither attributable to nor aggravated by military service and hence, the applicant is not entitled for disability

pension as per rule on the subject case. The learned counsel, therefore, prayed that the OA may be dismissed.

### ANALYSIS

7. We have heard the learned counsel for the parties and have also perused the record produced before us.

8. It is not in dispute that the RMB has considered the disabilities of the applicant as 'neither attributable to nor aggravated by military service' and assessed the same at less than 20%. It is also not in dispute that in response to the second appeal of the applicant, a Second Appeal Medical Board (SAMB) was held on 16.10.2006 and after examination of the applicant by a specialist, all the three disabilities of the applicant were held as 'neither attributable to nor aggravated by military service' for the reasons mentioned therein. The opinion and reasons mentioned in the Part V of the SAMB proceedings with regard to the disabilities are reproduced as under :

| <b>PART V</b><br>OPINION OF THE MEDICAL BOARD<br>(Not to be communicated to the individual) |                               |                             |                                  |  |
|---|-------------------------------|-----------------------------|----------------------------------|--|
| 1. Causal relationship of the disability with Service conditions or otherwise.              |                               |                             |                                  |  |
| Disability  | Attributable to service (Y/N) | Aggravated by service (Y/N) | Not connected with Service (Y/N) | Reason/Cause/ Specific condition and period in service |
|   |                               |                             |                                  |  |

|                             |   |   |   |  |
|-----------------------------|---|---|---|--|
| IGT                         | N | N | Y | Metabolic disorder under good control till RMB. No aggravatory factors due to service. Hence NANA              |
| Obesity                     | N | N | Y | Due to indl own dietary indiscipline. Hence, NANA  |
| Hypertrophic Cardiomyopathy | N | N | Y | Constitutional disorder unaffected by service condition. Hence, NANA (ID is known to have onset in adult life) |

9. Thus, the SAMB held on 16.10.2006 did not make any assessment with regard to the percentage of the disabilities in question. However, the RMB which was held on 08.06.2002 had assessed the disabilities of the applicant as : IGT @ 6-10%, Obesity @ 1-5% and Hypertrophic Cardiomyopathy @ 15-19% with composite degree of disablement @ 20%. In so far as the disabilities of IGT @ 6-10% and Obesity 1-5% is concerned, it does not fulfill the twin criteria as per Regulation 173 of Pension Regulation for the Army, 1961 (Part-I) and hence are not admissible.

10. With regard to the disability ID 'Hypertrophic Cardiomyopathy', it is a disease in which the heart muscle becomes thickened and makes the process of pumping blood hard. Reliance, in this regard, is placed on the publication which was published by

7 of 10

<https://www.mayoclinic.org> on 03.02.2024 and accessed on 23.10.2024 on the subject namely "Hypertrophic Cardiomyopathy: Overview" which specifies that the cause for the occurrence of Hypertrophic Cardiomyopathy' is usually due to the changes in genes that causes heart muscles to thicken. It is, therefore, safe to say that, this may be the plausible reason which could have led to the said disability of the applicant and which thereby have no connection whatsoever with the military duty.

11. It would be pertinent to refer to Para 8 of the Guide to Medical Officers (Military Pensions), 2002 amendment 2008 (hereinafter referred to as 'GMO (MP) 2008'). The same reads as under:-

***"8. Cardiomyopathy are disease of heart muscle of unknown origin. It is a distinct entity by itself and excludes the diseases of heart such as IHD, hypertensive heart disease, congenital heart disease and all forms of specific heart muscle diseases. In hypertrophic cardiomyopathy the role of heredity is convincing. Many forms of specific heart muscle disease produce clinical picture indistinguishable from dilated cardiomyopathy e.g. connective tissue disorder, sarcoidosis and alcoholic heart disease. In contrast amyloidosis and eosinophilic heart disease produce restrictive cardiomyopathy. Myopathies are generally idiopathic diseases. However, aggravation may be***

*examined if the individual did not get the benefit of immediate attention and sheltered appointment. Alcohol induced cardiomyopathy is rejectable."*

12. From the aforesaid provisions, it is clear that in the instant case the disability of 'Hypertrophic Cardiomyopathy' may have been hereditary disorder caused due to gene mutation. In the present case, there is nothing on record to show specifically that the applicant suffered with the disability of 'Hypertrophic Cardiomyopathy' due to any service conditions. There is also no evidence which could suggest that the applicant's disability has aggravated due to military service. Therefore, the disability of the applicant is neither attributable to nor aggravated by military service and the disability of the applicant have no nexus with service and has no causal connection with the military service since the applicant's disability is likely to be hereditary in nature which has no relationship with the performance of any military duty.

13. Thus, in view of the circumstances of the instant matter, we do not find any infirmity in the opinions of both the medical boards considering the disability as neither attributable to nor aggravated by military service and the

applicant thus is not entitled to the grant of the disability element of pension.

### CONCLUSION

14. In view of the above, the OA 1372 of 2017 stands dismissed being devoid of merits.

15. There is no order as to costs.

Pronounced in open Court on this 12<sup>th</sup> day of November, 2024.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)

/pooja/