

COURT NO.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. 543/2022

EX POM Gourav Singh Rana ... **Applicant**
Versus
Union of India and Ors. ... **Respondents**

For Applicant : Shri Ved Prakash, Advocate
For Respondents : Shri Arvind Patel, Advocate

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

ORDER

This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, by the applicant, a retired POM of the Navy, who is aggrieved by the rejection of his appeal for disability pension by the respondents vide order dated 25.05.2022. The applicant has prayed for grant of disability element of pension rounded off to 50%

2. The applicant was enrolled in the Indian Navy on 17.07.2006 and discharged in Low Medical Category (LMC) from service on 31.07.2021 upon completion of 15 years of qualifying service. Prior to

his retirement, his Release Medical Board (RMB) was held on 18.11.2020. The RMB viewed the disabilities as under:

Disease	Percentage of disablement	Composite assessment for all disabilities	Disability Qualifying for Disability Pension	Net Assessment qualifying Disability Pension
Supraventricular Tachycardia(ICD No I47.1)	30% Thirty Percent	30% Thirty Percent for life	Supraventricular Tachycardia(ICD No I47.1)	30% Thirty Percent for life

3. The RMB held the composite assessment of disability @ 30% and held that it was aggravated by military service. The claim of the applicant for disability pension was rejected by the respondents and was communicated to the applicant vide letter dated 08.09.2021. On being discharged he was granted a service pension vide PPO dated 08.09.2021 wherein it mentions that the disability as NANA hence he was not granted disability element of pension.

4. The initial claim of the applicant for grant of the disability pension was rejected by the respondents vide letter dated

08.09.2021 stating that the disability has been found to be neither attributable nor aggravated and was therefore assessed @ NIL% for life. The applicant further submitted a Legal Notice-cum-Representation /Appeal dated 06.09.2021 which was denied vide letter dated 25.05.2022 stating that the appeal was being denied since it was represented by an advocate and not signed by the applicant himself.

5. Aggrieved by the decision of the respondents, the applicant has filed the instant OA.

CONTENTIONS OF THE PARTIES

6. The learned counsel for the applicant submitted that the applicant was enrolled in the Indian Navy on being found medically fit on 17.07.2006 and discharged from service in the low medical category (LMC) for 'Supraventricular Tachycardia (ICD No I 47.1) @ 30% for life assessed as 'Aggravated by service'.

7. The learned counsel for the applicant submitted that the Release Medical Board held on 18.11.2020 at the time of discharge assessed the disability of the applicant @ 30% for life, and further

added that the RMB held the disability of the applicant aggravated by military service, though not attributable.

8. Further, learned counsel for the applicant placing reliance on the judgments of the Hon'ble Supreme Court in the case of **Dharamvir Singh** Vs. **Union of India and Ors.** [2013 (7) SCC 36] and **Sukhvinder Singh** Vs. **Union of India and Ors.** [(2014) 14 SCC 364], in which the Hon'ble Supreme Court held that the disability not recorded at the time of entry into service must be presumed to have been caused by military service.

9. The learned counsel for the applicant submitted that the Release Medical Board assessed the disability percentage @ 30% for life as attributable to military service. Hence, HQWNC cannot give directions to RMB to change its findings and hold the disability as neither attributable nor aggravated.

10. *Per contra*, the learned counsel for the respondents submitted that the claim of the applicant is bound to be dismissed in accordance with Regulation 105-B of Navy Pension Regulation 1964, the relevant paras are extracted below:

105-B. disability at the time of discharge. – (1) A sailor, who is discharged from service after he has completed that period of his engagement and is, at the time of discharge found to be suffering from a disability attributable to or aggravated by naval service may at the discretion of the competent authority be granted in addition to the service pension admissible, a disability element as if he has been discharged on account of that disability.

(2) The disability element of pension will be assessed on the accepted degree of disablement at the time of retirement or discharge on the basis of the rank held on the date on which they would or injury was sustained or in case of a disease on the date of the first removal from duty on account of that disease.

(3) The provisions in sub-regulations (1) and (2) shall also apply to sailors discharged from service on completion of the period of their engagement and who have earned only a service gratuity.

11. The learned counsel for the respondents further submitted that the no infective or primary heart disease as per the service profile was responsible for the onset of the ID hence it was categorised as NANA and the net assessment qualifying for disability pension was also recorded as NIL by the Release Medical Board, therefore, the competent authority has rejected the disability pension claim and the O.A. deserves to be dismissed.

ANALYSIS

12. We have heard the learned counsel for the parties and have gone through the record produced before us. The issue that needs to be answered here are :

- (a) Whether the HQWNC can change the findings of the RMB?
- (b) Whether the applicant is eligible for the disability element of pension for ID 'Supraventricular Tachycardia (ICD No I 47.1)'?

13. The issue of sanctity of the opinion of a Release Medical Board and its overruling by a higher formation is no more Res Integra. The Hon'ble Supreme Court in the case of **Ex. Sapper Mohinder Singh Vs. Union of India & Others**, in Civil Appeal No. 164 of 1993, decided on 14.01.1993, has made it clear that without physical medical examination of a patient, a higher formation, or administrative authority cannot overrule the opinion of a Medical Board. Thus, in light of the observations made by the Hon'ble Apex Court in the case of **Ex Sapper Mohinder Singh**(supra), we are of

the considered opinion that the decision of competent authority i.e. over ruling the opinion of RMB is held incorrect. The relevant part of the aforesaid judgment is quoted below:-

" From the above narrated facts and the stand taken by the parties before us, the controversy that falls for determination by us is in a very narrow compass viz., whether the Chief Controller of Defence Accounts (Pension) has any jurisdiction to sit over the opinion of the experts (Medical Board) while dealing with the case of grant of disability pension, in regard to the percentage of the disability pension, or not. In the present case, it is nowhere stated that the petitioner was subjected to any higher Medical Board before the Chief Controller of Defence Accounts (Pension) decided to decline the disability pension to the petitioner. We are unable to see as to how the accounts branch dealing with the pension can sit over the judgment of the experts in the medical line without making any reference to a detailed or higher Medical Board which can be constituted under the relevant instructions and rules by the Director General of Army Medical Core."

14. Moreover, the respondents have not provided any document, order, or policy that permits the approving authority to reverse or alter the opinion of the RMB. A similar observation was made in a case before the AFT Mumbai, vide order dated 08.06.2022, where

the first RMB, which was conceded by HQWNC, was held to be void in law. The relevant paragraphs are extracted below."

13. Thus in light of the aforesaid judgment (supra) as well as non placement of policy/order allowing reversal by the Approving Authority, it is clear that the disability assessed by RMB cannot be reduced/overruled by the HQ WNC. Hence the decision of HQ WNC is held as irregular. We are of the opinion that the disability of the applicant should be considered as aggravated by military service as has been opined by the first RMB.

15. Hence, we upheld the opinion mentioned in the RMB which considered the ID 'Supraventricular Tachycardia (ICD No I 47.1) as aggravated by military service, further HQWNC cannot give directions to RMB to change its findings and hold the disability as neither attributable nor aggravated.

16. Taking into consideration the opinion of the RMB which is extracted below and considering ID of 'Supraventricular Tachycardia (ICD No I 47.1)' we find at this point it is relevant to refer to Para 28 Chapter VI - Assessment of Guide to Medical Officers (GMO) - 2008 (Military Pensions), which is reproduced as under:

28. Disorders of Cardiac Rhythm and Conduction. These are aberrations in heart rate due to varied pathological and physiological states. These conditions may arise from some organic heart disease like rheumatic heart disease, ischaemic heart disease, hypertension, infective endocarditis, myocarditis, vascular disease and drugs. It also occurs as a result of focal sepsis, thyrotoxicosis, and excessive use of tea, coffee, tobacco, alcohol and as a result of flatulent distension of the stomach or intestine. Physical exertion or emotional excitement may predispose to an attack.

Attributability is conceded if arrhythmia and heart blocks develop as sequelae to infections in the heart. Aggravation is awarded based on the primary disease affecting the heart in relevance to service profile.

17. Further referring to para 21, Chapter VI - Assessment of Guide to Medical Officers (GMO) - 2008 (Military Pensions), which signifies that cardiac rhythm is taken into account when assessing the degree of cardiovascular disease. The relevant para is reproduced as under:

DISEASES OF CIRCULATORY SYSTEM

21. Assessment of the degree of cardiovascular diseases should be broad based and should take into account the functional status, left ventricular function, the cardiac rhythm, objective ischaemia (morphological characteristics as echocardiographic/ angiographic evaluation modality offered.

xxx
xxx

xxxx

xxxx

(e) Assessment for IHD.

(a) *Once the clinical diagnosis of IHD is established the individual should be assessed on the following basis:*

(i) *The functional status.*

(ii) *Objective assessment of ischaemia.*

(iii) *Left Ventricular systolic function.*

(iv) *Rhythm abnormalities.*

(iv) *Treatment for IHD.*

(b) Disablement for IHD.

(i) *No Symptoms and or symptoms brought on only by strenuous activity and or No or mild ischaemia and or normal LV function 30%*

(ii) *Symptoms brought on by ordinary activity and or moderate ischaemia and or normal LV function and or mild LV dysfunction 40 – 50%*

(iii) *Symptoms brought on by ordinary activity and or moderate ischaemia, and or moderate LV dysfunction 50 – 60%*

(iv) *Symptoms brought on by less than ordinary activity and or moderate to severe ischaemia, and or moderate LV dysfunction, untreated severe triple vessel or left main disease 60 – 80%*

(v) *Symptoms at rest and or unstable angina, moderate to severe ischaemia, and or severe LV dysfunction with or without congestive cardiac failure 80-100%*

(vi) *Presence of atrial fibrillation or complex ventricular arrhythmias Add 20–30%*

18. It is also observed from the medical studies that 'Supraventricular Tachycardia (ICD No I 47.1)' can be induced by stress and strain. The relevant para is extracted below:

Brain–heart interactions and how stress results in a dynamic alteration in afferent and efferent cardiac signaling. EADs, early after-depolarizations; DADs, delayed after-depolarizations; VT/VF, ventricular tachycardia/ventricular fibrillation; CPVT, catecholaminergic polymorphic ventricular tachycardia, DOR, dispersion of repolarization.

This falls in tandem with the opinion given by the medical experts in the RMB dated 18.11.2020 which held the ID 'Supraventricular Tachycardia (ICD No I 47.1)' can be triggered by anxiety and physical exertion. The relevant paras are reproduced below:

Vide para 28 Chap (VI) of GMO 2008: Onset while serving onboard ship. Anxiety and physical exertion or emotional excitement can trigger the disease.

19. In light of the above mentioned consideration, we allow this application. The impugned order rejecting applicants' claim for grant of disability element of pension is set aside. Further, the disability of applicant is held to be aggravated by Naval Service in concurrence with the RMB. Further, we direct the respondents to grant a disability

element of pension to the applicant for disability 'Supraventricular Tachycardia (ICD No I 47.1)' assessed at 30% for life to be rounded off to 50% for life from the date of retirement i.e. 31.07.2021 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.

20. MA if any, stands disposed.

21. Pronounced in the open Court on 13th day of September, 2024.


[JUSTICE RAJENDRA MENON]
CHAIRPERSON


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

/ashok/