

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

**OA 140/2019 with MA 554/2019**

**In the matter of :**

**Ex Sgt Bitra Durga Prasad** ... **Applicant**

**Versus**

**Union of India & Ors.** ... **Respondents**

**For Applicant** : Mr. VS Kadian, Advocate

**For Respondents** : Mr. Varun Chugh, Advocate

**CORAM:**

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

**ORDER**

**M.A. No. 554 of 2019**

Vide this application, the applicant seeks condonation of 3495 days' delay in filing the OA. In view of the law laid down by the Hon'ble Supreme Court in the case of ***Deokinandan Prasad Vs. State of Bihar [AIR 1971 SC 1409]*** and in ***Union of India & Ors. Vs. Tarsem Singh [2009 (1) AISLJ 371]***, delay in filing the OA is condoned. MA stands disposed of accordingly.

**O.A. No. 1892 of 2019**

3. Invoking the jurisdiction of this Tribunal; under Section 14 of the Armed Forces Tribunal Act, 2007 (AFT Act),

the applicant has filed this application and the reliefs claimed in Para 8 read as under:-

***“(a) Quash and set aside impugned letter No. Air HQ/99798/1/719631/DAV/DP/CC dated 03.01.2019. And/or***

***(b) Direct the respondents to treat the disability Primary Hypertension of the applicant as attributable to/aggravated by military service and grant disability element of pension from the date of retirement along with benefit of broad banding.***

***(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.”***

### **BRIEF FACTS**

4. The applicant was enrolled in the Indian Air Force on 12.05.1989 and discharged from service on 31.05.2009 after rendering a total of 21 years and 19 days of regular service. The Release Medical Board dated 04.08.2008 held that the applicant was fit to be released from service in low medical category A4G4(P) for the disabilities of (i) ‘Primary Hypertension’ @30% for life, (ii) Fracture Medical Epicondyle Humerus Rt OPTD OLD @30% and (iii) Obesity @Nil with composite assessment @50% for life, while the net

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qualifying element for disability was recorded as NIL for life on account of the disability being treated as 'neither attributable to nor aggravated by military service'. However, in the instant OA the applicant is praying for the grant of disability element of pension for the disability of Primary Hypertension (old) only.

5. The applicant neither preferred any claim nor filed any appeal for the grant of disability pension at the relevant time. However, he submitted an appeal-cum-legal notice dated 08.10.2018 seeking the grant of disability pension. The said appeal was rejected and the rejection was duly communicated to the applicant on the ground of delay in filing the appeal. Aggrieved thereby, the applicant has approached this Tribunal by filing the present OA. In the interest of justice, we consider it appropriate to entertain the matter under Section 21(2)(b) of the AFT Act.

### **CONTENTIONS OF THE PARTIES**

6. The learned counsel for the applicant submitted that the applicant was enrolled in Indian Air force on 12.05.1989 and was discharged from the service on 31.05.2009 after

rendering 21 years and 19 days of service in the Air Force during which he suffered with the said disabilities.

7. 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 any 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 and had served in different weather and environmental conditions in his career and discharged all assigned duties with utmost dedication in a well-disciplined and professional manner.

8. The learned counsel for the applicant also placed reliance on the verdict of the Hon'ble Supreme Court of India including the case of JT 2015 (5) SC 255, CA No. 4949/2013 in case of **Dharamvir Singh v. Union of**

**India & Ors., UOI & Anr Vs. Rajbir Singh**, Civil Appeal No. 2904/2011, (2015) (2) SCALE 371, 2015(2) JT 392, 2015 (3) SLR 318, **Union of India and Ors. V. Manjit Singh** AIR 2015 SC 2114, **UoI & Ors. V. Angad Singh Titaria**, 2015(5) JT 478, 2015(2) SCALE 640, 2015 (5) SLR 403, AIR 2015 SC 1998 and various orders passed by the Tribunal, such as OA 1132/2017 titled **Lt Col Sunil Pankaj Sharma (Retd) V. UOI & Ors.**, OA 46/2016 titled **Ex MWO Amar Nath Pandey V. UOI**. etc. wherein the claims for disability pension were allowed.

9. *Per contra*, the learned counsel for the respondents controverts the arguments put forth on behalf of the applicant and contended that the applicant is not entitled to the relief claimed for, since the RMB, being an Expert Body, found the disabilities “Neither Attributable to Nor Aggravated by Military Service” for the reasons that the disability Primary Hypertension (old) is a lifestyle related disorder and onset of disabilities was in peace station and the applicant did not serve in field/CI Ops/HAA during his entire military service. The learned counsel contended in the counter affidavit that the applicant was used to

consume alcohol on daily basis. The learned counsel submitted that the applicant was found over weight during the RMB. The learned counsel further submitted that the applicant's disability does not fulfill the necessary conditions for being eligible to get disability pension in terms of Regulation 153 of the Pension Regulations for the Indian Air Force, 1961 (Part-I), thus the applicant is not entitled to disability pension and, therefore, the OA deserved to be dismissed.

### **ANALYSIS**

10. We have carefully perused the materials available on record and also the submissions made on behalf of the parties. The applicant's disabilities i.e. (i) 'Primary Hypertension' @30% for life, (ii) Fracture Medical Epicondyle Humerus Rt OPTD OLD @30% and (iii) Obesity @Nil with composite assessment @50% for life. However, since the applicant is seeking grant of disability element of pension only in respect of Primary Hypertension assessed @ 30% for life, accordingly, the only question that arises is whether the disability of Primary Hypertension of the applicant was attributable to or aggravated by military service.

11. A contention was made on behalf of the respondents that the applicant suffered the disability of the Primary Hypertension as he was overweight. However, the respondents are unable to produce the weight chart. On perusal of the records of the OA, we find that the onset of the disability of the applicant namely Primary Hypertension (old) was in January 2006 and the medical record dated 06.07.2004 annexed as Annexure R-2 to the counter affidavit of the respondents shows in columns 11 and 13 to the effect:-

“MEDICAL BOARD PROCEEDINGS  
CATEGORIZATION/RE-CATEGORIZATION/SICK LEAVE  
PART-I

11. Past Medical History  
Obesity GD III

PART-II

13.

<b>Principal disability with medical category</b>	<b>date &amp; Place of origin</b>
Obesity GD III CEE (T-24)	19 Sep 03/Pun

it is evident from the above reproduced clauses of medical record dated 06.07.2004 that the applicant was obese in the year 2004 and the applicant in the said medical record was advised to reduce his body weight to ideal body weight by diet and exercise and daily 4-5 Kms walk and was even reviewed fortnightly by AMA for weight record which clearly

indicates that the applicant's weight was above ideal weight required in the military service even before the onset of the said disability. The said medical record bears signatures of the applicant also.

12. A perusal of the medical case sheet dated 18.12.2006 (i.e. after onset of the disability of Primary Hypertension) also reveals that the applicant's actual weight was 84 kg and the applicant was shown as 'obese' which indicates that the applicant failed to maintain the ideal weight which can be managed by regular exercise and restricted diet. Even during the Release Medical Board (RMB), the applicant's actual weight was 76.6 Kg against the ideal weight of 61 Kg which shows him to be over weight by **25.6%**. Hence, it is evident from the above mentioned facts that the applicant was overweight/obese since September 2004 onwards and failed to maintained ideal weight and healthy lifestyle.

13. In this regard, the publication released by World Health Organization titled "Hypertension" assessed through 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.

14. Additionally, this Tribunal, while dealing with disability pension for disabilities ‘Obesity and Hypertension’ in O.A No. 1656/2016, 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.

15. Furthermore, while dealing with disability pension for disability of "Primary Hypertension", in case of **WO Satpal Singh (Retd. vs Union of India & Ors.** , in OA No. 2097/2021 dated 03.07.2023, the claim of disability pension for the disability of Primary Hypertension was disallowed by this Tribunal because the applicant therein was found to be overweight.


#### **CONCLUSION**

16. In view of the aforesaid considerations and the parameters referred to above, and the fact that the applicant was overweight prior to the onset of the Primary Hypertension and the correlation of Primary Hypertension and overweight, we are of the view that the excess weight of the applicant is a contributory factor towards the onset of the primary hypertension and the applicant is not entitled to the grant of disability element of pension. We, therefore, are not inclined to grant any relief to the applicant and the OA 140/2019 stands dismissed.

17. There is no order as to costs.

Pronounced in open Court on this 4<sup>th</sup> day of  
September, 2025.

  
[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

  
[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)

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