

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

OA 1358/2017
WITH
MA 1004/2017

Col Deepak Singh Rana (Retd)	Applicant
Versus		
Union of India & Ors.	Respondents
For Applicant	:	Mr. Dhananjai Shekhawat, Advocate
For Respondents	:	Mr. K. K. Tyagi, Sr. CGSC

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER

MA 1004/2017

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay in filing the present OA. In view of the judgment of the Hon'ble Supreme Court in the matter of Union of India and Ors. Vs. Tarsem Singh [2009 (1) AISLJ 371] and the reasons mentioned in the application, the delay in filing the OA is condoned. The MA is disposed of accordingly.

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2. The applicant, Col Deepak Singh Rana, through the medium of the instant Original Application is seeking the following reliefs:

- “(a) Set aside the order dated 05.03.2013 passed by the ADGPS, AG’s Branch, New Delhi 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 benefit 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 Avtar.*
- (d) Direct the respondents 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) Pass any other appropriate order(s) or direction(s) 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.”*

3. Briefly stated facts of the case are that the applicant was commissioned in the Indian Army as a 2nd Lieutenant on 16th December, 1978 in sound physical and mental health. On completion of his term of engagement, the applicant superannuated from service on 31st July, 2006 with the disability of Hypertension I-100. While posted at Nagaland, a counter insurgency area, the applicant is stated to have conducted a successful raid on the live camp of militants and captured three hard core militants and for this gallantry act, he was honoured with Chief of Army Staff Commendation Card.

4. At the time of retirement from service, the Release Medical Board (RMB) held on 15th September, 2005 at INSH Ashwani, Mumbai assessed his disability 'HYPERTENSION' @ 30% for life and opined the disability to be aggravated due to stress and strain of military service. As contended, by way of an appeal before the Chairman, ACFA, MP-5, AG's Branch, the applicant sought constitution of Review Medical Board which was held in the Base Hospital, Delhi between the period 1st February, 2010 to 16th February, 2010 and diagnosed the applicant for disability of Primary Hypertension.

5. The second appeal dated 10th June, 2010 for grant of disability pension was rejected by AG's Branch on the ground that Hypertension is a lifestyle disorder with known familial clustering with no service related causative factors and it was declared as not attributable to military service.

6. Learned counsel for the applicant pleaded that at the time of enrolment in the Army, the applicant was found mentally and physically fit and no note of disability of the applicant is found recorded in his service record at the time of acceptance of military service. The disease of the applicant, as contended by him, was contacted during the

service, hence it is both attributable to and aggravated by Military Service. It is further the contention of the applicant that the act of overruling the recommendations of RMB by higher competent authority, i.e., ADGP, AG's Branch was wrong and, therefore, the order rejecting his prayer for grant of disability pension should be set aside. He further pleaded that in similar cases, the Hon'ble Apex Court and various Benches of this Tribunal have granted disability pension, as such the applicant is entitled to disability pension @ 30% and it's rounding off to 50%.

7. On the other hand, learned counsel for the respondents contended that disability of the applicant, i.e., 'PRIMARY HYPERTENSION' has been assessed @ 30% for life though aggravated but not attributable to by military service. However, ADGP, AG's Branch, New Delhi has rejected the claim of the applicant on the ground that the disability was a life style disorder with no service causative factors neither attributable to nor aggravated by military service. He thus prayed for dismissal of the O.A.

8. We have heard learned counsel for both the parties. We have also gone through the Release Medical Board and the Appeal Medical Board proceedings, so also the documents

(medical) available on record. The only question which needs to be answered is straight and simple, i.e., whether the disability of the applicant, though held to be aggravated, is attributable to by Military Service?

9. We are of the considered view that the opinion of the Medical Board, in this case the Release Medical Board and the Appeal Medical Board, which have examined the applicant, are best placed to decide an attributability or aggravation and since the respondents themselves have already accepted the aggravation of the disease due to military service and there being no contrary view or documents available on record with respect to the applicant's suffering from the disease of "Primary Hypertension" at the time of entry into service when he was extensively medically examined, there is no doubt in our mind that the disease of the applicant, i.e., "Primary Hypertension" is both attributable to and aggravated by military service.

10. In the case before us the RMB as well as the Appeal Medical Board had conceded the disease, i.e., 'PRIMARY HYPERTENSION' @ 30% for life aggravated by Military Service. However, ADGP, AG's Branch has rejected the claim of the applicant on the ground that the disease was life style

disorder with no service causative factors. The Hon'ble Supreme Court in the case of Ex Sapper Mohinder Singh Vs. Union of India in Civil Appeal No 104 of 1993 decided on 14th January, 1993 has made it very clear that the opinion of the Medical Board cannot be overruled by higher chain of command without physical medical examination of the patient by a higher Medical Board. The operative portion of the judgment reads thus:-

“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 Applicant was subjected to any higher medical Board before the Chief Controller of Defence Accounts (Pension) decided to decline the disability pension to the Applicant. 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.”

11. Additionally in view of Hon'ble Supreme Court judgment in the case of Union of India and Ors Vs. Ram Avtar and ors (Civil appeal No 418 of 2012 decided on 10th December 2014), we are of the opinion that the applicant is entitled to the benefit of rounding off from 30% to 50% for life from the date of his discharge.

12. Thus we set aside the order dated 5th March, 2013 passed by ADGPS, AG's Branch, New Delhi rejecting the claim of the applicant for grant of disability pension and are of the considered opinion that the applicant is entitled to disability pension for the disease 'PRIMARY HYPERTENSION' @ 30% for life from the date of his discharge, i.e., 31st July, 2006 to be rounded off to 50% for life in terms of the judicial pronouncement of the Hon'ble Supreme Court in the case of Ram Avtar (supra). However, the arrears will be restricted to three years preceding the date of filing this Original Application or the date of applicant's retirement/discharge, whichever is lesser, in keeping with the law laid down in the case of Union of India and Ors. Vs. Tarsem Singh [(2008) 8 SCC 649].

13. In view of the above the OA deserves to be allowed, hence allowed.

14. The respondents are directed to calculate, sanction and issue necessary PPO to the applicant within four months from the date of receipt of copy of this order, failing which, the applicant shall be entitled to interest @ 6% per annum till the date of payment.

15. No order as to costs.

16. Pending miscellaneous application, if any, stands closed.

Pronounced in open Court on this ²²23 day of April, 2025.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[RASIKA CHAUBE]
MEMBER (A)

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