

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

OA 1704/2023 with MA 2509/2023

Hav Sanapala Dharma Rao (Retd.)

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Kritendra Tiwari, Advocate

For Respondents : Mr. Sudhir Kumar, Advocate

CORAM :

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

ORDER

MA 2509/2023

MA 2509/2023 filed on behalf of the applicant seeking condonation of 11052 days delay in filing the present OA for reasons mentioned therein. In the interest of justice, in view of the judgments of the Hon'ble Supreme Court in the matter of **UoI & Ors Vs Tarsem Singh (2008) 8 SCC 648** and in **Ex Sep Chain Singh Thr LR. Dhaneshwari Devi Vs Union of India & Ors** in Civil Appeal No. 022965/2017 arising out of Civil Appeal Diary No. 30073/2017 and the reasons

mentioned, the MA 2509/2023 is allowed and the delay of 11052 days in filing the OA is thus condoned. The MA is disposed of accordingly.

OA 1704/2023

2. Invoking the jurisdiction of this Tribunal under Section 14, of the Armed Forces Tribunal Act, 2007 the applicant has filed this application and the reliefs claimed in Para 8 read as under:

(a) Quash and set aside the impugned letter dated 30 Nov 2019 & 04 Mar 2022.

(b) Direct Respondents to grant disability Pension @ 50% after rounding off from 30% for life to the applicant with effect from 01 Apr 1993 i.e. the next date of discharge from service with interest @ 12% p.a. till final payment is made.

(c) Direct Respondents to pay Rs. 5,00,000/- as compensation and Rs. 70,000/- as cost of litigation for loss suffered by the applicant due to gross negligence of non-payment of disability pension despite fully eligible.

(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.

BRIEF FACTS

3. The applicant was enrolled in Indian Army on 31.12.1972 and was discharged from service on 31.03.1993 (AN) and finally struck off strength on 01.04.1993 after rendering 20 years and 03 months of service under sub clause 2A III(v) of table annexed to Rule 13(3) of Army Rules, 1954. The Release Medical Board (RMB) dated 13.03.1993 found the applicant fit to be released in low medical category BEE(P) for the disability of Essential Hypertension assessed @ 30% for two years and the disability was considered as 'aggravated by military service'. However, the net qualifying percentage for the disability pension was assessed @ 30% for two years.

4. 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 NO. G-3/88/207/4/94 dated 21.10.1994. The above fact was communicated to the applicant vide EME Records letter no 14511855/DP-3/Pen dated 02.11.1994 with an advice that he may prefer an appeal to the Appellate

Committee within six months from the date 21.10.1994 on the grounds he deemed fit to put forth.

5. The applicant had preferred appeal dated May 1995 against rejection of disability pension which was processed vide EME Records letter no 14511855/DP-3/Pen dated 03.06.1995. The said appeal was rejected by the Ministry of Defence, vide letter No. 7(1258)/95/D(Pen,A&AC) dated 17.12.1996. The applicant had submitted an application dated 13.06.2019 through an RTI Act 2005 for seeking some information/ documents, which were provided to the applicant vide EME Records letter no 2708/RTI Cell/979 dated 05.07.2019. The applicant submitted a further appeal on 16.09.2019, which was rejected due to delay, as per policy guidelines EME Records communicated the decision vide letter No. 14511855/DP-3/Pen dated 30.11.2019, stating that appeals beyond five years cannot be entertained.

6. Thereafter, the applicant had preferred 1st appeal dated 09.02.2022 for grant of his disability elements of disability pension which was also rejected on similar grounds of delay

vide EME records letter no 14511855F/DP-2/Pen dated 04.03.2022. 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

7. The learned counsel for the applicant submitted that the applicant at the time of enrolment was fully fit medically and physically and no note was made in his medical documents to the effect that he was suffering from any disease at that time, and thus the onset of the disability occurred during service would be presumed to be due to stress and strain of the military service.

8. The learned counsel for the applicant submitted that the instant case is squarely covered by the judgments of the Hon'ble Supreme Court in the case of **Deokinandan Prasad Vs State of Bihar** AIR 1971 SC page 1409, and Civil Appeal No(S) 5970 of 2019 in case of **Commander Rakesh Pande vs. Union of India & Ors.** Reliance was also placed as was held by the Tribunal in TA no. 48 of 2009 in WP(C) No.

6324/2007 in case of **Nakhat Bharti Vs UOI & Ors.**, and OA No. 90 of 2014 in case of Ex AC (U/T) **Naresh Kumar Rana Vs UOI & Ors** dated 25.09.2014, wherein similarly situated personnel were given relief.

9. Per contra, the learned counsel for the respondents controverted the submissions made by the learned counsel for the applicant and contended that while rejecting the disability element pension claim of the applicant vide letter dated 21.10.1994, by Medical Advisors (Pension) i.e MA (P), the PCDA(P) Allahabad granted liberty to the applicant to prefer an appeal in case he was not satisfied with the said decision. Thereafter, the applicant filed an appeal dated May 1995. The same was forwarded by the PCDA(P), Allahabad to the Ministry of Defence for consideration. The said appeal was rejected by the Ministry of Defence vide letter dated 17.12.1996.

10. Thereafter, the applicant submitted an application dated 13.06.2019 under the RTI Act, 2005 seeking certain documents, which were provided to him vide letter dated 05.07.2019. Thereafter, the applicant had preferred an appeal

dated 16.09.2019 for grant of disability element which was replied vide letter dated 30.11.2019 stating that, appeals beyond five years cannot be entertained.

11. As such, after careful examination in consultation with the Medical Advisor (Pension) by reviewing the findings of the RMB, the claim for disability pension was rightly rejected by PCDA (P) Allahabad under the powers vested to them by the Ministry of Defence. Thus, the action taken by PCDA (P) Allahabad by rejecting the disability pension to the applicant is just, fair and according to prevalent rules at that time.

ANALYSIS

12. We have heard the learned counsel for the parties and have perused the record.

13. It is evident from the record that the RMB, which is an expert body, has already conceded the disability of the applicant 'Essential Hypertension' as 'Aggravated by service' and the reasons for concluding so have also been mentioned in the proceedings. However, the competent authority had interfered with the opinion of the RMB with regard to the

disability of 'Essential Hypertension' and considered the same as NANA.

14. The issue of sanctity of the opinion of the Release Medical Board on its overruling by a higher administrative authority 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, which has been followed in large number of cases by the Tribunal, has made it clear that without physical medical examination of a patient, a higher formation/administrative authority cannot overrule the opinion of a Medical Board. 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 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."

15. Therefore, in light of the aforesaid judgment in **Ex Sapper Mohinder Singh** (*supra*) as well as records of the RMB, it is clear that the opinion qua the disability Essential Hypertension of the RMB cannot be overruled by the administrative authority. Hence, the decision of competent authority is void in law. Therefore, we are of the view that the disability i.e. 'Essential Hypertension' assessed @ 30% for two years of the applicant be considered as aggravated by military service as has been opined by the RMB, the said disability of the applicant meets the twin conditions of Regulation 53(a) of the Pension Regulations for the Army, Part-1, 2008 and is thus admissible.

16. In so far as the disability of the applicant, which was considered to be of permanent nature, but assessed for a

particular period i.e. for two years is concerned, it is important to refer to 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 interfering with 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]

Thus, a person afflicted with diseases which are permanent in nature is entitled to disability pension for life which cannot be restricted for a period of time and the assessment/ percentage of disability as made by the Medical Board has to be treated for life.

CONCLUSION

17. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is entitled for disability element of pension in respect of disability 'Essential Hypertension'. Accordingly, we allow this application holding that the applicant is entitled to disability element of pension @ 30% for life rounded off to 50% for life with effect from the date of his 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.

18. The respondents are thus directed to calculate, sanction and issue the necessary PPO to the applicant within a period of three months from the date of receipt of copy of this order. The amount of arrears however are directed to commence to run from a period of three years prior to the institution of the present OA, in terms of the verdict of the Hon'ble Supreme Court in **Union of India & Ors Vs Tarsem Singh** reported in 2008 8 SCC 648 which 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.

Pronounced in the open Court on this ²⁸ day of May, 2025.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

/Pooja/