

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

OA 2006/2020

Nk Arun Vishwanath Chinckar (Retd)	Applicant
Versus		
Union of India & Ors.	Respondents
For Applicant	:	Mr. Manok Kr Gupta, Advocate
For Respondents	:	Ms. Jyotsna Kaushik, Advocate

CORAM

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

ORDER

O.A No. 2006 of 2020:

The applicant has filed this Original Application being aggrieved by the denial of disability pension on the ground that the disability "Essential Hypertension – 401" was considered by the authorities as neither attributable to nor aggravated by military service, being constitutional in nature and unrelated to service.

2. The brief facts of the case are as follows: The applicant was enrolled in the Indian Army (Corps of EME) on 14.02.1975 and was discharged from service w.e.f. 31.08.1996 upon completion of the terms of engagement, under Item III (i) of the Table annexed to Rule 13(3) of the Army Rules, 1954. At the time of discharge, the applicant was placed in Low Medical Category BEE (P) due to the disability "Essential Hypertension – 401". Accordingly, he

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was examined by the Release Medical Board, which opined that the disability was aggravated by military service due to the stress and strain of service and assessed the disability at 30% for two years, with a composite assessment of 30%. Upon discharge, the applicant was granted service pension for life w.e.f. 01.09.1996 along with Death-cum-Retirement Gratuity and Commutation of Pension. However, his claim for disability pension was rejected by the Principal Controller of Defence Accounts (Pensions), Allahabad, vide communication dated 31.03.1997 on the ground that the disability was considered as neither attributable to nor aggravated by military service. After a gap of approximately 22 years, the applicant submitted a representation seeking grant of disability pension, which was also rejected. Subsequently, a legal notice dated 21.11.2020 was issued through counsel, which too met with rejection. Aggrieved thereby, the applicant has preferred the present Original Application.

3. The learned counsel for the applicant contends that the assessment of "Essential Hypertension" for a limited duration of two years is contrary to settled legal principles. It is submitted that Essential Hypertension is a permanent medical condition and therefore, the disability ought to have been

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considered for disability pension for life. In support of this contention, reliance is placed on the judgment of the Hon'ble Supreme Court in *Commander Rakesh Pande v. Union of India and Others* (Civil Appeal No. 5970 of 2019).

4. Per contra, the learned counsel for the respondents vehemently argues that the action of the respondents in rejecting the applicant's claim for disability pension is valid and justified. It is submitted that although the Release Medical Board assessed the disability at 30% for two years, it categorically opined that the disability was neither attributable to nor aggravated by military service. Therefore, according to the respondents, the PCDA (P), Allahabad was fully justified in rejecting the applicant's claim for disability pension.

5. In *Cdr Rakesh Pande* (supra), the Hon'ble Supreme Court dealt with the issue of temporary assessment of disability despite the condition being permanent in nature. Referring to Government of India Letter dated 07.02.2001 (para 7), the Court held that where a disability is found to be permanent, the assessment of the percentage of disability must also be permanent, and not confined to a limited period. This Tribunal, in a catena of decisions, has consistently held

that Primary Hypertension is a permanent ailment, and even if assessed for a limited period, the applicant is entitled to disability pension for life, provided other eligibility conditions are satisfied.

6. In the present case, the RMB proceedings indicate that the applicant was suffering from Essential Hypertension, which was assessed at 30% for two years with the remark that it was neither attributable to nor aggravated by military service. However, we find no justification for limiting the duration of a permanent condition such as Essential Hypertension to only two years. Once the condition is certified as permanent, the assessment should logically be for life, unless a subsequent review suggests improvement or remission, which is not the case here.

7. In light of the consistent legal position adopted by the Hon'ble Supreme Court as well as this Tribunal, we are of the considered view that the applicant is entitled to disability pension for Essential Hypertension, assessed at 30%, which shall be broad-banded to 50% and shall be payable for life.

8. Accordingly, the Original Application is allowed and the respondents are directed to:

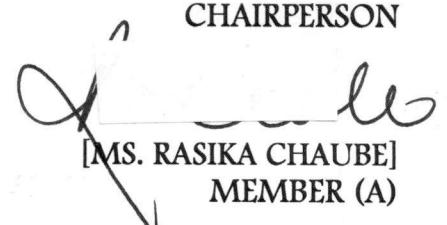
(a) Grant the applicant the disability element of pension for Essential Hypertension assessed at 30% and rounded off to 50% to be paid for life, along with arrears for a period of three years preceding the date of filing of the present O.A., i.e., 07.12.2020;

(b) Release all consequential arrears to the applicant within a period of four months from the date of receipt of a copy of this order. In the event of failure to release the arrears within the stipulated period, the respondents shall be liable to pay interest at the rate of 8% per annum on the accrued amount, from the date it became due till the date of actual payment.

9. No order as to costs.

10. Pronounced in open Court on this the 4th day of August, 2024.


[JUSTICE RAJENDRA MENON]
CHAIRPERSON


[MS. RASIKA CHAUBE]
MEMBER (A)

/JYOTI/