

**COURT No.3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

OA 701/2021 WITH MA 741/2021

Ex Sub Maj Naik Dipak Gopal **Applicant**

VERSUS

Union of India and Ors. **Respondents**

For Applicant : Mr. Manoj Kr Gupta, Advocate

For Respondents : Mr. Karan Singh Bhati, Sr. CGSC

CORAM

HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER

MA 741/2021

Keeping in view the averments made in the miscellaneous application and finding the same to be bona fide, in the light of the decision in ***Union of India and others Vs. Tarsem Singh***[(2008) 8 SCC 648], the MA is allowed condoning the delay of 287 days in filing the OA. The MA stands disposed of.

OA 701/2021

Invoking the jurisdiction of this Tribunal under Section 14, the applicant has filed this application and the reliefs claimed in Para 8 read as under:

“(a) To direct the respondents to grant the disability pension @30% broad banded to 50% for life in view of the Hon’ble Apex Court Judgment in Rajbir Singh (Supra) and Dharamvir Singh (Supra) by treating the disabilities as attributable and aggravated to Military service.

(b) To direct the respondents to set aside the Impugned Order (Annex-A1) and pay the due arrears of disability pension with interest @10% p.a. with effect from the date of retirement with all the consequential benefits, or

(c) To pass such further order or orders, direction/Directions as this Hon’ble Tribunal may deem fit and proper in accordance with law.”

BRIEF FACTS

2. The applicant was enrolled in Indian Army on 25.04.1990 and was discharged from service on 30.11.2019 (AN) on completion of his service tenure under Army Rule 1954, 13(3) item I(i)(a). The Release Medical Board dated 07.06.2019 held that the applicant was in low medical category S1H1A1P2(P)E1 for the disability of **‘Primary Hypertension’** @ 30% for life compositely assessed @30% for life while the net qualifying element for disability was recorded as NIL for life on account of

disability being treated as neither attributable to nor aggravated by service.

3. On adjudication, competent authority has upheld the recommendations of RMB and rejected the disability pension claim of the applicant vide letter No. Pen/D-9626/R dated 29.11.2019.

4. Applicant's First Appeal dated 13.01.2020 against the rejection of disability pension. The said First Appeal was rejected by the IHQ MoD (Army), ADGPS-4 (Imp-II), AG's Branch vide their letter B/40502/190/2020/AG/PS-4 (Imp-II) dated 22.04.2020. While his Second Appeal dated 23.03.2020 was pending adjudication. Subsequently, the applicant has filed the present OA. In the interest of justice, thus, in terms of Section 21(2) of the AFT Act, 2007, it is considered appropriate to take up the present OA for consideration.

CONTENTIONS OF THE PARTIES

5. The learned counsel for the applicant submitted that the applicant was found physically and medically fit by Recruitment Medical Board in all respect at the time of his entry into service.

After successfully undergoing training, he was posted to different terrain of peace as well as field in the course of active service/duties.

6. It was submitted by the learned counsel for the applicant that, in addition to the conditions of service, the applicant had to work for prolonged periods in hilly terrain and under adverse climatic conditions, including extreme cold, and that the social environment at different locations was a main cause of stress and strain on the applicant. The learned counsel for the applicant further submitted that the disabilities of applicant i.e Primary Hypertension detected in August, 2010 at Meerut (Peace Station) was due to stress and strain of working in adverse conditions. It is further contended that provisions governing the disability pensions are beneficial legal provisions and shall be liberally construed in the welfare of the personnel/applicant. Reliance in this regard is placed on the law laid down by the Hon'ble Supreme Court in the case of **Dharamvir Singh Vs Union of India & Others** (2013) 7 SCC 316, and in the case of **Union of India and others Vs. Rajbir Singh** (2015) 12 SCC

264, in the case of **UoI & Ors. vs. Manjit Singh, JT 2015 (5) SC 255** and catena of other orders of the Armed Forces Tribunal.

7. *Per contra*, the learned counsel for the respondents submitted that the Primary Hypertension disability is basically a lifestyle related disorder and has developed due to habitual reasons and in the case of the applicant it had its onset in peace station on 09.08.2010 at Meerut, and there has been no close time association of military service with onset and progression of the disability and hence, the disability is NANA as per para 43 of GMO (Military Pension) 2008.

8. It is further submitted that onset of the disability Primary Hypertension is in peace area and is not linked to any service related causative factors. It is idiopathic in nature, with strong genetic correlation. The learned counsel for the respondents contended that the applicant is not entitled to the relief claimed since the Release Medical Board, being Expert Body, after thorough examination of the applicant, and due to onset of disability in peace station, as per Para 43, Chapter VI, GMO

2008, found the disability as "Neither Attributable to Nor Aggravated by Military Service" on the ground that the said disability of the applicant is not connected with service. The learned counsel further submitted that the Original Application instituted by the applicant is liable to be dismissed at the initial stage itself as the same is devoid of any merit and his disability being neither attributable to nor aggravated by military service, does not meet the criteria for grant of disability pension as given under *ibid* rules/regulations, particularly Para 53(a) of Pension Regulations for the Army, 2008 (Part-I). Thus the applicant is not entitled to disability pension and, therefore, the OA deserved to be dismissed. It is argued that case of ***Dharamvir Singh (Supra)*** is with regard to invalidation whereas the applicant was discharge on attaining age of superannuation, hence not applicable to the facts of present case.

ANALYSIS

9. We have heard learned counsel on both sides. We have also gone through the Release Medical Board proceedings as well as the records.

10. The present case is not a case of invalidation wherein the applicant will be granted disability pension. However, the present claim is limited to the entitlement to the disability element of the pension, provided the disability is considered as attributable to or aggravated by military service.

11. It is not in dispute that the extent of disability of 'Primary Hypertension' has been assessed at 30% for life, which is more than the bare minimum for the grant of the disability element of pension. Accordingly, the issue which is to be considered now is *whether the disability suffered by the applicant is to be held attributable to and aggravated by military service or not?*

12. After going through the opinion of the medical Board in Part-VII of the RMB proceedings, we have noted that the only reason for declaring the disease '**Primary Hypertension**' as NANA is that the disability is idiopathic and detected in peace area and has no close time association with stress or strain or dietary compulsions of field. However, on further scrutiny, it is observed that this disability was initially detected in 2010, i.e., after about nineteen years of service. We are therefore of the

considered opinion that the reasons given in RMB for declaring disease as NANA are very brief and cryptic in nature and do not adequately explain the denial of attributability. Respondents have also produced the weight chart of the applicant from which it is seen that the applicant has maintained his body weight as per the standards prescribed under the Rules and Regulations.

13. We may also note that this Tribunal in a catena of cases under similar circumstances has granted relief to the applicants. Hence, we are inclined to give benefit of doubt to the applicant and are of the view that the disability of **“Primary Hypertension”** @ 30% is to be considered as aggravated by military service.

14. There is no gainsaying that the opinion of the Medical Board which is an expert body has to be given due weight and credence. But the opinion of the Medical Board cannot be read in isolation and has to be read in consonance with the Entitlement Rules for Casualty Pensionary Awards & General Rules of Guide to Medical Officer. A mere statement that onset of disease was

during a peace posting is clearly insufficient to discharge this onus. In the present case, the applicant has served in the Indian Army for a total of 29 years and 07 months and the onset of the disability of 'Primary Hypertension' occurred in 09 August 2010 after 20 years of service, whilst he was posted in peace station.

15. The Tribunal has also observed in large number of cases that military services in peace stations have their own pressure of rigorous military training and associated stress and strain, physically and mentally, of the service and the contention that there is no evidence of stress and strain of service in peace station should not be considered for the purpose of granting disability element of pension.

16. It may also be taken into consideration that the most of the personnel of the Armed forces, during their service, work in the stressful and hostile environment, difficult weather conditions and under strict disciplinary norms. Moreover, there is no note made in the applicant's medical documents that he was suffering from any disease at the time of joining the service. There is no record to show that the applicant has suffered the disability due

to hereditary or unhealthy lifestyle nor there is any family history placed on record. Further, on perusal of the medical records we find that the weight of the applicant is also within the permissible limit. In view of the settled law we are, therefore, of the considered view that the disability suffered by the applicant has to be held to be attributable to and aggravated by the military service.

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 '**Primary 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 superannuation i.e. 30.11.2019, 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, failing which, the applicant will be entitled for interest @ 6% per annum from the date of receipt of copy of the order by the respondents.

Pronounced in the open Court on this ^{23rd}..... December, 2025.

(JUSTICE NANDITA DUBEY)
MEMBER (J)

(RASIKA CHAUBE)
MEMBER (A)

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