

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

OA 1393/2021

Lt Col B K Subramani (Retd) ..... Applicant  
Versus  
Union of India & Ors. .... Respondents

For Applicant : Mr. I.S. Singh, Advocate  
For Respondents : Gp Capt Karan Singh Bhati, Sr. CGSC

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HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON  
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant filed this OA and the reliefs made by the applicant in Para 8 are as follows:

- (a) *Set aside the order dated 02.02.2021, whereby the applicant's claim for disability pension has been arbitrarily rejected by the respondents, by necessary implications, on the grounds of delay;*
- (b) *Direct the respondents to treat the applicant's disability on account of Primary Hypertension as aggravated by military service, if not attributable to military service.*
- (c) *Direct the respondents to pay disability pension to the applicant at the rate of 50% (40% rounded off to 50% with effect from 01.05.2019 thereby granting the benefit of rounding off/broad-banding policy of the Govt.*
- (d) *Direct the respondents to pay arrears of disability pension, after calculating the same at the rate of 50% with effect from 01.05.2019, with interest at the rate 10% per annum until the date of actual payment.*

2. The applicant was commissioned in The Indian Army on 26.04.1979 and discharged from service on 30.04.2019 on attaining the age of superannuation. The Release Medical Board dated 16.10.2018 held that the applicant was fit to be discharged from service in composite low medical category, i.e. S1H1A1P2E1 for the disability (i) Primary Hypertension @40% for life compositely assessed @ 40% for life while the net 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.

3. The claim of the applicant for grant of disability pension was rejected vide AG/PS (Imp-I) letter No. 13418/SL-04397P/GS/MP-6(E)/218/2019/AG/PS-4 (Imp-I) dated 06.03.2019 with an advice that he may prefer an appeal to the appellate committee with six months from the date of receipt of the letter. Thereafter, on 30.04.2019, he filed an appeal for grant of disability pension and the same was rejected by Appellate Committee on First Appeals (ACFA) vide their letter No. 133418/SL-04397P/GS/MP-6(E)/135/2019/Ist Appeal/AG/PS-4(Imp-II) dated 09.08.2019. Subsequently, he preferred second appeal

on 24.01.2020 against rejection of his disability claim, which was adjudicated and rejected by the Second Appellate Committee on Pension (SACP) vide letter No. B/38046A/80/2020/AG/PS-4 (2<sup>nd</sup> Appeal) dated 02.02.2021. Aggrieved by the rejections of his claims for disability pension by the respondents, the applicant had filed the instant OA. In the interest of justice thus, it is considered appropriate to take up the present OA for consideration, in terms of Section 21(1) of the AFT, Act 2007.

4. Placing reliance on the judgment of the Hon'ble Supreme Court in *Dharamvir Singh v. UOI & Ors [2013 (7) SCC 36]*, learned counsel for the applicant argues that no note of any disability was recorded in the service documents of the applicant at the time of the entry into the service and that he served in the Army at various places in different environmental and service conditions in his prolonged service, thereby, any disability at the time of his service is deemed to be attributable to or aggravated by military service.

5. Per Contra, learned counsel for the respondents submits that under the provisions of Rule 81 of the Pension Regulations for the Indian Army, 2008 (Part-I), the primary condition for the grant of disability pension is invalidation out of service on

account of a disability which is attributable to or aggravated by Army service and is assessed @ 20% or more.

6. Relying on the aforesaid provision, learned counsel for respondents further submits that the aforesaid disability of the applicant was assessed as “neither attributable to nor aggravated” by Army service and not connected with the Army service and as such, his claim was rejected; thus, the applicant is not entitled for grant of disability pension due to policy constraints.

7. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, we find that the disability - Primary Hypertension is the only disability that was assessed to be above 20% which is the bare minimum for grant of disability pension in terms of Regulation 81 of the Pension Regulations for the Indian Army, 2008 (Part-I). Now, the only question that arises in the above backdrop is whether disability suffered by the applicant was attributable to or aggravated by military service.

8. The issue of attributability of disease is no longer res integra in view of the verdict of the Hon'ble Apex Court in Dharamvir Singh Vs. Union of India (supra), wherein it is clearly spelt out that any disease contracted during service is

presumed to be attributable to military service, if there is no record of any ailment at the time of entry into the Military Service.

9. Regarding broadbanding benefits, we find that the Hon'ble Supreme Court in its order dated 10.12.2014 in Union of India Vs Ram Avtar, Civil Appeal No. 418 of 2012 and connected cases, has observed that individuals similarly placed as the applicant are entitled to rounding off the disability element of pension. We also find that the Government of India vide its Letter No. F.No.3(11)2010-D (Pen/Legal) Pt V, Ministry of Defence dated 18th April 2016 has issued instructions for implementation of the Hon'ble Supreme Court order dated 10.12.2014 (supra).

10. Applying the above parameters to the case at hand, we are of the view that the applicant has been discharged from service in low medical category on account of medical disease/disability, the disability must be presumed to have arisen in the course of service which must, in the absence of any reason recorded by the Medical Board, be presumed to have been attributable to or aggravated by Army service.

11. Therefore, in view of our analysis, the OA is allowed and respondents are directed to grant benefit of disability element of

pension @40% for life (for PRIMARY HYPERTENSION @40% for life), rounded off to 50% in view of judgement of Hon'ble Apex Court in Union of India versus Ram Avtar (supra) from the date of his discharge i.e. 30.04.2019. The arrears shall be disbursed to the applicant within four months of receipt of this order failing which it shall earn interest @ 6% p.a. till the actual date of payment.

12. Consequently, the OA 1393/2021 is allowed.

13. No order as to costs.

14. Pending application, if any, stands disposed of.

Pronounced in the open Court on 3<sup>rd</sup> day of April, 2025.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

[LT GEN C.P. MOHANTY]  
MEMBER (A)

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