

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

**OA 1474/2018**

<b>Capt Rohit Misra (Retd.)</b>	.....	<b>Applicant</b>
<b>VERSUS</b>		
<b>Union of India and Ors.</b>	.....	<b>Respondents</b>

<b>For Applicant</b>	:	Mr. Aditya Singh Paur, Advocate
<b>For Respondents</b>	:	Mr. Avdhesh Kumar Singh, with Mr. Arunender Thakur, Advocate

**CORAM**

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

**ORDER**

Invoking the jurisdiction of the Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA praying to set aside the impugned order of rejection of second appeal dated 14.11.2017 and further to direct the respondents to accept the disabilities of the applicant as attributable to/ aggravated by the military service for grant of the disability element of pension @ 35% rounded off to 50% wef the date of his retirement with all consequential benefits.

## **BRIEF FACTS**

2. The applicant was commissioned in the Indian Army on 17.09.2005 (SSC), and released from service after completion of contractual period on 17.09.2010 (AN). Before his retirement, the applicant was subjected to a Release Medical Board (RMB) held on 21.08.2010. The RMB found the applicant to be fit to be released in low medical category S1H1A1P2(P)E1, for the disabilities of (i) Hypertrophic Non Obstructive Cardiomyopathy @ 30% and (ii) Obesity @ 1-5%, with the percentage of composite disabilities assessed @ 35% for life. However, the net qualifying percentage for the disability pension was Nil for life as both the disabilities were adjudged as neither attributable to nor aggravated by military service.

3. The initial claim for grant of disability pension in respect of the applicant was adjudicated and rejected by the competent authority vide letter dated 11.07.2016 considering his disabilities as NANA. The applicant's first appeal as well as the second appeal for the grant of disability pension was rejected vide letter dated 15.02.2017 and 14.11.2017

respectively stating that the disability which the applicant suffers from is neither attributable to nor aggravated by military service for the reasons mentioned therein. Dissatisfied by the rejections of his claim for disability pension the applicant has filed the present OA.

### **CONTENTIONS OF THE PARTIES**

4. Learned counsel for the applicant has restricted his claim to grant of disability pension for disability Hypertrophic Non Obstructive Cardiomyopathy. It is submitted that at the time of commissioned into the Army, he was made to undergo a thorough medical examination and after having found medically fit, was posted to various places during his service. It is stated that the applicant suffered the present disability after having served at high altitude field are at 'Balbir' Sub Sec (J & K), where he suffered exceptional stress and strain in addition to adverse climatic conditions. It is stated that this disability was first detected June 2010 when an ECG was done at 172 MH, whereas his ECG on commissioning was normal which makes it clear that his disease was not pre-existing and his disability was done to the service.

5. The learned counsel further submitted that while denying the disability pension, the respondents failed to appreciate the provisions contemplated under Rules 5 and 14(b) of the Entitlement Rules for Casualty Pensionary Awards, 1982 (hereinafter referred to as 'Entitlement Rules, 1982'), which provide that in case of discharge from service in low medical category, if no note is on record at the time of joining of service, the deterioration in health is to be presumed due to service conditions. The learned counsel further relied on various provisions of the Entitlement Rules, 1982 to submit that any disease contracted during service, would be presumed to be attributable to service and worsening of the same during service would be treated as aggravated by military service and onus to prove otherwise lies with the respondents only.

6. To content to the effect that in as much as in absence of any cogent reasons recorded by the Medical Board for the cause of the disability that has arisen during the course of service of the applicant and which the applicant did not suffer at the time of commissioned into the service, the same has to be presumed to be attributable to service, the

applicant has placed reliance on the verdict of the Hon'ble Supreme Court in the case of ***Dharamvir Singh v. Union of India and others*** (2013) 7 SCC 316, ***Union of India & Ors. vs. Manjit Singh*** AIR 2015 SC 2114, CA-5605/2010 in ***Sukhvinder Singh vs UOI*** 2014(14) SCC 364, dated 25.06.2014, CA No 2904 of 2011 in ***Union of India & Ors. Vs Rajbir Singh*** dated 13 February, 2015 of the decision by Hon'ble High Court of Delhi in Union of India ***Through the Secretary Ministry of Defence & Ors. Vs Maj Gen Rajesh Chaba (Retd.)*** in WP (C) 5783/2024, it is further submitted that in terms of verdict of Hon'ble Supreme Court in ***Union of India vs Ram Avtar***, the applicant is entitled to rounded off of the disability pension assessed @ 30% to 50% for life.

7. The learned counsel placed reliance on the judgments of the Hon'ble Supreme Court in ***Dharamvir Singh Vs. Union of India and Ors.*** [(2013) 7 SCC 316], which has been considered and taken note of by the Hon'ble Apex Court in many judgments, wherein the Hon'ble Supreme Court had considered the question with regard to grant of disability pension and after taking note of the provisions of

the Pension Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers and Para 423 of the Regulations for the Medical Services of the Armed Forces, it was held by the Hon'ble Supreme Court that an Army personnel shall be presumed to have been in sound physical and mental condition upon entering service except as to physical disability noted or recorded at the time of entrance and in the event of his being discharged from service on medical grounds, any deterioration in his health, which may have taken place, shall be presumed due to service conditions. The Apex Court further held that the onus of proof shall be on the respondents to prove that the disease from which the incumbent is suffering is neither attributable to nor aggravated by military service. Referring to Rule 9 of the Entitlement Rules for Causality Pensionary Awards, 1982, the learned counsel for the applicant submitted that the applicant should have been given benefit of doubt and the disability should have been conceded aggravated by service only.

8. *Per contra*, the respondents, through the counter affidavit filed, submitted that since the RMB, being an

Expert Body, has considered the disability of the officer 'Hypertrophic Non Obstructive Cardiomyopathy' as 'idiopathic and thus held it as attributable to nor aggravated by military service', the applicant is not entitled to disability pension. It is further submitted that onset of the disease was in peace area and thereafter the applicant continued into serve in the peace area. Further while rejecting the second appeal filed by the applicant, the SACP has given detailed reasons for rejecting the claim of disability pension. He, therefore, prayed that the OA may be dismissed.

### **ANALYSIS**

9. We have heard the learned counsel for the parties and have also perused the record produced before us.

10. In the present case, the applicant was subjected to a RMB on 21.08.2010 wherein he was found to be suffering from Hypertrophic Non Obstructive Cardiomyopathy assessed @ 30% and obesity assessed @ 1-5% with composite disability assessed @ 35% for life, the medical opinion recorded by the RMB was to the effect that the

disease of neither attributable to nor aggravated by the military service, the reason being idiopathic in nature.

11. Furthermore, we find that the opinion recorded by the RMB is benefit of any reasoning in arriving at the conclusion that the applicant's disability of Hypertrophic Non Obstructive Cardiomyopathy is neither attributable to nor aggravated by military service. Though the applicant was suffering from obesity, however there is no observation by the RMB to indicate that applicant condition of obesity was the cause or basis for onset of Hypertrophic Non Obstructive Cardiomyopathy. A mere reference to the fact that the disease is idiopathic in itself, cannot be treated as relevant factor.

12. The applicant was overweight even at the time of the RMB as the actual weight of the applicant has been indicated as 92 kg against an ideal weight of 65.5 kg. Thus, the applicant has been constantly overweight which indicates that the applicant failed to maintain the ideal weight which can be managed by regular exercise and restricted diet.



13. A perusal of the RMB reveals that applicant was posted at Balbir which was a field posting (HAA), from October 2005 to September 2007. The statement of Commanding Officer in Part III of RMB records that duties of applicant involved exceptional stress and strain, while he served in CI/HAA/LC area in Balbir Sub Sec (J & K) under HQ 268 Inf Bde from Oct 2005 to Sep 2007. It is further noted that from 2007 until the time of his release, the applicant did not suffer from any medical problem. However, in June 2010, he was admitted and treated at CH (WC) MH, Jalandhar, 172 MH during the approximate periods 15 July 2010 to 19 July 2010, 19 July 2010 to 21 July 2010, and 21 July 2010 to 22 July 2010. The RMB conducted for his discharge, assessed his disability as Hypertrophic Non Obstructive Cardiomyopathy @ 30% for life and obesity @ 1-5%, with composite assessment @ 35% for life.

14. In the present case, the applicant was commissioned on 17.09.2005 and while in service, he was detected to be suffering from 'Hypertrophic Non Obstructive Cardiomyopathy' and was released from service after completion of contractual period on 17.09.2010 (AN). The

RMB held the disability as neither attributable to nor aggravated by military service. While rejecting the second appeal, the SACP, vide letter No. B/38046A/126/2017/AG/PS-4 (2nd Appeal) dated 14.11.2017, gave the detailed reasons for rejection, which read as under :

***“Both of the IDs were detected in June 2010 at Tibri Cantt (Peace) during release medical examination when he was found to be obese and had an ECG abnormality. The individual was evaluated at CH (WC), Chandimandir and was found to have Hypertrophic non obstructive cardiomyopathy. He was placed in low medical category and advised life style modification. ID (i) 'Hypertrophic non obstructive cardiomyopathy is a disease of the heart muscle, which is idiopathic in origin. Hence, is per se ID is not attributable to service. Aggravation is conceded when the individual does not get the benefit of sheltered appointment and serves in Field/HAA/CI Ops area / Afloat service following onset of the ID or in case of delayed and inappropriate treatment./in the instant case, the individual was asymptomatic and was incidentally detected to have the ID in a peace station with no close time association with service in Fd/CI Ops/HAA. He continued to serve in the same station after onset. Diagnosis and treatment were prompt and adequate and he was asymptomatic at the time of release. Hence, ID (i) is conceded as neither attributable to nor aggravated by service (Para 8, Chap VI, GMO 2002. Amendment 2008). ID (ii) 'Obesity' is a life style disorder due to high intake to fatty diet and inadequate exercise which is not service related. Hence, the ID (ii) is also conceded as neither attributable to nor aggravated by military service..”***

15. Thus, the RMB which was held on 21.08.2010 had assessed the disabilities of the applicant as : Hypertrophic Non Obstructive Cardiomyopathy assessed @ 30%, and

Obesity @ 1-5% a with composite degree of disablement @ 35%. In so far as the disability of Obesity 1-5% is concerned, it does not fulfill the twin criteria as per Regulation 173 of Pension Regulation for the Army, 1961 (Part-I) and hence are not admissible.

16. With regard to the disability ID 'Hypertrophic Non Obstructive Cardiomyopathy, it is a disease in which the heart muscle becomes thickened and makes the process of pumping blood hard. Reliance, in this regard, is placed on the publication which was published by <https://www.mayoclinic.org> on 03.02.2024 and accessed on 23.10.2024 on the subject namely Hypertrophic Non Obstructive Cardiomyopathy: Overview" which specifies that the cause for the occurrence of Hypertrophic Cardiomyopathy' is usually due to the changes in genes that causes heart muscles to thicken. It is, therefore, safe to say that, this may be the plausible reason which could have led to the said disability of the applicant and which thereby have no connection whatsoever with the military duty.

17. It Para 8 of the Guide to Medical Officers (Military Pensions), 2002 amendment 2008 (hereinafter referred to as 'GMO (MP) 2008'). The same reads as under:-

***"8. Cardiomyopathy are disease of heart muscle of unknown origin. It is a distinct entity by itself and excludes the diseases of heart such as IHD, hypertensive heart disease, congenital heart disease and all forms of specific heart muscle diseases. In hypertrophic cardiomyopathy the role of heredity is convincing. Many forms of specific heart muscle disease produce clinical picture indistinguishable from dilated cardiomyopathy e.g. connective tissue disorder, sarcoidosis and alcoholic heart disease. In contrast amyloidosis and eosinophilic heart disease produce restrictive cardiomyopathy. Myopathies are generally idiopathic diseases. However, aggravation may be examined if the individual did not get the benefit of immediate attention and sheltered appointment. Alcohol induced cardiomyopathy is rejectable."***

18. From the aforesaid provisions, it is clear that in the instant case the disability of 'Hypertrophic Non Obstructive Cardiomyopathy' may have been hereditary disorder caused

due to gene mutation. In the present case, there is also no evidence which could suggest that the applicant's disability has aggravated due to military service. Therefore, the disability of the applicant is neither attributable to nor aggravated by military service and the disability of the applicant have no nexus with service and has no causal connection with the military service since the applicant's disability is likely to be hereditary in nature which has no relationship with the performance of any military duty.

19. Moreover the general medical literature on this disability states the following :

***"Hypertrophic obstructive cardiomyopathy (HOCM) is a relatively common disorder. Historically, it has been referred to as idiopathic hypertrophic subaortic stenosis. HOCM is a significant cause of sudden cardiac death in young people, including well-trained athletes, affecting men and women equally across all races. In most patients, it results from asymmetric septal hypertrophy causing outflow obstruction of the left ventricle. It is difficult to diagnose and presents a challenge to medical health professionals in evaluating at-risk athletes. Unfortunately, hypertrophic obstructive cardiomyopathy is often not diagnosed until a significant cardiac event has occurred. The hypertrophy can occur in any segment of the left ventricle but is most common in the interventricular septum. This often results in obstruction of blood flow through the left ventricular outflow tract. HOCM is a genetic disorder. Defects in several genes***

have been identified that result in septal hypertrophy. The condition is usually asymptomatic in children but may first present with sudden death in teenagers and adolescents."

*[Emphasis supplied]*

20. Thus, in view of the circumstances of the instant matter, we do not find any infirmity in the opinions of both the medical boards considering the disability as neither attributable to nor aggravated by military service and the applicant thus is not entitled to the grant of the disability element of pension.

### **CONCLUSION**

21. In view of the above, the OA 1474 of 2018 stands dismissed being devoid of merits.

22. There is no order as to costs.

Pronounced in open Court on this 26<sup>th</sup> day of August, 2025.

**(JUSTICE NANDITA DUBEY)**  
**MEMBER (J)**

**(RASIKA CHAUBE)**  
**MEMBER (A)**

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