

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

106.

OA 1823/2018

Rear Admiral Satish Bajaj. AVSM.VSM (Retd) Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. SS Pandey, Advocate
For Respondents : Dr. Vijendra Singh Mahndiyan, Advocate

CORAM

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

ORDER
28.01.2025

Arguments heard. Reserved for orders.

2. Original medical records are taken on record.
3. During the arguments, learned counsel for the parties had produced the medical documents and on going through the same we find that the signatures of the medical board officers concerned on one of the pages are in different sequence in the copy filed by the applicant and the copy produced by the respondents.
4. Learned counsel for the respondents to clarify the ambiguity, if any, in the document filed with respect to the signatures of the medical board officers at the relevant page within a period of three days. The respondents are also directed to file an affidavit as to why the disability of the

applicant was changed from aggravated to NANA in the
second RMB.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

/Ps/

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

O.A. No. 1823 of 2018

In the matter of :

**Rear Admiral Satish Bajaj,
AVSM, VSM (Retd)**

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri S.S. Pandey, Advocate

For Respondents : Dr. Vijendra Singh Mahndiyan, Advocate

CORAM :

**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, 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 and the reliefs claimed in Para 8 read as under :

“(a) Call for the records, instructions including the RMB proceedings as well as all other guidelines, entitlement Rules etc based on which such findings and opinion declaring the disability of the Applicant for the eyes held as

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neither attributable nor aggravated by service which was rendered and approved by the competent authority based on which the Respondents in most illegal manner rejected the claim of the Applicant in respect of disability Biettes Crysalline Corneoretinal Dystrophy Both Eyes and also rejected the First Appeal and Second Appeal vide orders dated 16.01.2018 and order dated 26.09.2018 respectively and thereafter quash all such orders.

- (b) Direct the Respondents to process the claim of the Applicant in respect of disability Biettes Crysalline Corneoretinal Dystrophy Both Eyes and pay him such disability element of pension @ 100% percent along with constant attendant allowance due to inability of the Applicant to manage his life without external assistance w.e.f. the date of retirement along with arrears with an interest @ 12% as expeditiously as possible.*
- (c) Direct the Respondents to process the claim of the Applicant in respect of disabilities Lumbar*

Canal Stenosis L4/5 and Tubercular Osteomyelitis 1st Metatarsal Head (RT) and pay him such disability element of pension @ 50% for life instead of @ 40% for two years only with further direction to continue payment of the same beyond May 2019.

(d) Issue such other order/direction as may be deemed appropriate in the facts and circumstances of the case.”

BRIEF FACTS

2. The applicant, having been found medically and physically fit after thorough medical examination, was commissioned in the Indian Navy on 01.07.1981. On superannuation, the applicant was discharged from service on 31.05.2017 in low medical category S3A2(P&F) PMT. Before superannuation, the applicant was brought before the Release Medical Board (RMB) held on 20.03.2017, wherein the applicant's disabilities, namely, (a) BIETTI'S CRYSTALLINE CORNEO RETINAL DYSTROPHY BOTH EYES and (b) LUMBAR CANAL STENOSIS L4/5 were assessed @ 100% for life and 30% for life respectively, with composite

assessment of the same @ 100% for life and the Net assessment qualifying for disability pension was done @ 100% for life. Both the disabilities of the applicant were conceded as 'Aggravated by military service' by the RMB. However, as the applicant was detected to be suffering from a new disability and he was still in service, another RMB was conducted on 19.05.2017 and the said RMB assessed all the disabilities of the applicant i.e. (a) **BIETTI'S CRYSTALLINE CORNEO RETINAL DYSTROPHY BOTH EYES** @ 100% for life; (b) **LUMBAR CANAL STENOSIS L4/5** @ 30% for life and (c) **TUBERCULAR OSTEOMYLITIS 1ST METATARSAL HEAD (RT)** @ 6-10% for two years; compositely assessed @ 100% for two years, however, net assessment qualifying for disability pension was made @ 40% for two years (for Lumbar Canal Stenosis and Tubercular Osteomyelitis 1st Metatarsal Head), and therefore, the applicant was granted disability element of pension @ 40% for two years from 01.06.2017 to 31.05.2019 and the benefit of broad-banding was also granted to the applicant.

3. The applicant preferred an appeal dated 13.07.2017 for grant of disability pension for 'Bietti's Crysalline Corneoretinal Dystrophy both eyes'. The respondents, vide letter dated 16.01.2018 rejected the first appeal of the applicant. The applicant then preferred a second appeal dated 01.02.2018 against rejection of the first appeal. The same was also rejected by the respondents vide letter dated 26.09.2018. Aggrieved by this, the applicant has filed the present OA. In the interest of justice in accordance with Section 21 of the AFT Act, we take up the OA for consideration.

CONTENTIONS OF THE PARTIES

4. The learned counsel for the applicant submitted that the applicant, at the time of joining the service, was declared fully fit medically and physically and no note was made in his medical record that the applicant was suffering from any disease at that time and any medical disability contracted by him during the course of his service should be treated as attributable to or aggravated by the stresses and strains of military service. The learned counsel submitted that, after

serving for 23 years in the Navy, on 31.03.2004, the applicant was detected with the disability 'Biettes Crystalline Corneoretinal Dystrophy both eyes' @ 30%; that the Re-categorisation medical board held on 14.08.2007 placed the applicant in medical category S3A2(E) Pmt and thereafter vide RE-categorisation medical boards dated 14.08.2009 and 27.08.2009 his medical category was indicated as S2A2(E) Pmt w.e.f. 27.08.2009 and certain employment restrictions were also imposed; that for the said disability, Re-categorisation medical board dated 12.08.2011 was held and it assessed the disability @40% and the medical category remained the same and thereafter in subsequent categorisation medical boards also, the assessment of the applicant's disability and medical category remained the same and the applicant was advised many employment restrictions.

5. The learned counsel for the applicant submitted that the applicant's eyesight had been deteriorating and he could not even recognize any single alphabet at all. The learned counsel submitted that the respondents committed grave

error in denying the disability pension with regard to the disability of '**Biettes Crysalline Corneoretinal Dystrophy both eyes**' holding the same as neither attributable to nor aggravated by service; that respondents are unjustified in granting the disability pension @ 40% for two years when the disability of '**Lumbar Canal Stenosis L4/5**' was assessed @ 30% for life and thus the disability pension should have been granted for life.

6. The learned counsel further submitted that while, in the first RMB dated 20.03.2017, copy received by the applicant, conceded the disability 'Biettes Crystalline Cornea Retinal Dystrophy both eyes' as 'Aggravated by service' giving reasons for the opinion, however, the said RMB filed by the respondents held the aforesaid disability as 'neither attributable to nor aggravated by service', whilst, the assessment of the disability was same as 100% for life. The learned counsel submitted that the two pages of opinion and assessment of the RMB dated 19.05.2017 are different from the RMB proceedings held on 20.03.2017.

7. The learned counsel, placing reliance on the judgments of the Hon'ble Supreme Court in **Dharamvir Singh Vs. Union of India and Ors. [(2013) 7 SCC 316]** and **Union of India and Ors. Vs. Rajbir Singh [(2015) 12 SCC 264]** submitted that the respondents' action in denying the disability pension holding the disability as NANA to the applicant is unjustified and unlawful, when the disability recorded by the RMB occurred during the military service and the medical condition of the applicant kept on deteriorating during service due to service conditions. The learned counsel stated that none of the family members from the paternal and maternal sides of the applicant have the ailment i.e. 'Biettes Crystalline Cornea Retinal Dystrophy both eyes' and thus may not be considered as 'hereditary' and, therefore, prayed that the disability in question may be held as attributable to/aggravated by service and the disability pension may be granted to the applicant.

8. *Per contra*, the learned counsel for the respondents submitted that the applicant is not entitled to the relief claimed since the RMB, being an Expert Body, found the

disability “Neither Attributable to Nor Aggravated by Service” and that the ID ‘Bietti’s Crystalline Corneo Retinal Dystrophy both eyes’ is a hereditary condition and was correctly conceded as NANA. The learned counsel further submitted that the disability ‘Tubercular Osteomyelitis 1st Metatarsal Head (Rt)’ is an infectious disease and can be cured and thus is not permanent in nature and the disability pension was rightly granted for two years and also the broad-banding benefit was already granted to the applicant vide letter dated 04.09.2018. It is also contended by the learned counsel that the applicant has been re-employed after retirement and hence it is incorrect that he is not able to recognise any single alphabet. Therefore, the learned counsel for the respondents prayed for dismissal of the OA.

ANALYSIS

9. We have heard the learned counsel for the parties and have gone through the records produced before us.

10. It is an undisputed fact that at the time of joining the Indian Navy on 01.07.1981, the applicant was found medically and physically fit and the disability ‘Biettes

Crystalline Cornea Retinal Dystrophy both eyes' was detected only in March, 2004 and at the time of discharge, the applicant was in permanent low medical category.

11. With regard to the attributability or aggravation of the disability, we may refer to the judgment of the Hon'ble Supreme Court in the case of **Dharamvir Singh Vs. Union of India** [(2013) 7 SCC 316], which has been followed in subsequent decisions of the Hon'ble Supreme Court and in a catena of orders of this Tribunal, wherein the Hon'ble Apex 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 disabilities 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. The guidelines laid down vide the verdict in *Dharamavir Singh (supra)* are as under:-

“28. A conjoint reading of various provisions, reproduced above, makes it clear that:

(i) Disability pension to be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable or aggravated by military service to be determined under “Entitlement Rules for Casualty Pensionary Awards, 1982” of Appendix-II (Regulation 173).

(ii) A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service. [Rule 5 r/w Rule 14(b)].

(iii) Onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally. (Rule 9).

(iv) If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service. [Rule 14(c)].

(v) If no note of any disability or disease was made at the time of individual's acceptance

for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service. [14(b)].

(vi) If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons. [14(b)]; and

(vii) It is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II of the "Guide to Medical (Military Pension), 2002 - "Entitlement : General Principles", including paragraph 7, 8 and 9 as referred to above."

12. The 'Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel 2008', which take effect from 01.01.2008 provide vide Paras 6,7,10 and 11 thereof as under:

"6. Causal connection:

For award of disability pension/special family pension, a causal connection between disability or death and military service has to be established by appropriate authorities.

Onus of proof:

Ordinarily the claimant will not be called upon to prove the condition of entitlement. However, where the claim is preferred after 15 years of discharge/retirement/invalidment/ release by which time the service documents of the claimant are destroyed after the prescribed retention period, the onus to prove the entitlement would lie on the claimant.

10. Attributability:

(a) Injuries:

In respect of accidents or injuries, the following rules shall be observed:

- i) Injuries sustained when the individual is 'on duty', as defined, shall be treated as attributable to military service, (provided a nexus between injury and military service is established).*

ii) *In cases of self-inflicted injuries while 'on duty', attributability shall not be conceded unless it is established that service factors were responsible for such action.*

(b) Disease:

(i) *For acceptance of a disease as attributable to military service, the following two conditions must be satisfied simultaneously:-*

(a) that the disease has arisen during the period of military service, and

(b) that the disease has been caused by the conditions of employment in military service.

(ii) *Disease due to infection arising in service other than that transmitted through sexual contact shall merit an entitlement of attributability and where the disease may have been contracted prior to enrolment or during leave, the incubation period of the disease will be taken into consideration on the basis of clinical courses as determined by the competent medical authority.*

(iii) *If nothing at all is known about the cause of disease and the presumption of the entitlement in favour of the claimant is not rebutted, attributability should be conceded on the basis of the clinical picture and current scientific medical application.*

(iv) *when the diagnosis and/or treatment of a disease was faulty, unsatisfactory or delayed due to exigencies of service, disability caused due to any adverse effects arising as a complication shall be conceded as attributable.*

11. Aggravation:

A disability shall be conceded aggravated by service if its onset is hastened or the subsequent course is worsened by specific conditions of military service, such as posted in places of extreme climatic conditions, environmental factors related to service conditions e.g. Fields, Operations, High Altitude etc."

Thus, the ratio of the verdict in ***Dharamvir Singh Vs. Union of India & Ors. [(2013) 7 SCC 316]*** as laid down by the Hon'ble Supreme Court is the fulcrum of these rules as well.

13. Furthermore, Regulation 423 of the Regulations for the Medical Services of the Armed Forces, 2010, which relates to 'Attributability to Service' provides as under:-

"423. (a). For the purpose of determining whether the cause of a disability or death resulting from disease is or not attributable to Service. It is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a Field Area/Active Service area or under normal peace conditions. It is however, essential to establish whether the disability or death bore a causal connection with the service conditions. All evidences both direct and circumstantial will be taken into account and benefit of reasonable doubt, if any, will be given to the individual. The evidence to be accepted as reasonable doubt for the purpose of these instructions should be of a degree of cogency, which though not reaching certainty, nevertheless carries a high degree of probability. In this connection, it will be remembered that proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. If the evidence is so strong against an individual as to leave only a remote possibility in his/her favour, which can be dismissed with the sentence "of course it is possible but not in the least probable" the case is proved beyond reasonable doubt. If on the other hand, the evidence be so evenly balanced as to render impracticable a determinate conclusion one way or the other, then the case would be one in which the benefit of the doubt could be given more liberally to the individual, in case occurring in Field Service/Active Service areas.

(b). Decision regarding attributability of a disability or death resulting from wound or injury will be taken by the authority next to the Commanding officer which in no case shall be lower than a Brigadier/Sub Area Commander or equivalent. In case of injuries which were self-inflicted or due to an individual's own serious negligence or misconduct, the Board will also comment how far the disablement resulted from self-infliction, negligence or misconduct.

(c). The cause of a disability or death resulting from a disease will be regarded as attributable to Service when it is established that the disease arose

during Service and the conditions and circumstances of duty in the Armed Forces determined and contributed to the onset of the disease. Cases, in which it is established that Service conditions did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, will be regarded as aggravated by the service. A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in Service if no note of it was made at the time of the individual's acceptance for Service in the Armed Forces. However, if medical opinion holds, for reasons to be stated that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.

(d). The question, whether a disability or death resulting from disease is attributable to or aggravated by service or not, will be decided as regards its medical aspects by a Medical Board or by the medical officer who signs the Death Certificate. The Medical Board/Medical Officer will specify reasons for their/his opinion. The opinion of the Medical Board/Medical Officer, in so far as it relates to the actual causes of the disability or death and the circumstances in which it originated will be regarded as final. The question whether the cause and the attendant circumstances can be accepted as attributable to/aggravated by service for the purpose of pensionary benefits will, however, be decided by the pension sanctioning authority.

(e). To assist the medical officer who signs the Death certificate or the Medical Board in the case of an invalid, the CO unit will furnish a report on :

- (i) AFMSF - 16 (Version - 2002) in all cases
- (ii) IAFY - 2006 in all cases of injuries.

(f). In cases where award of disability pension or reassessment of disabilities is concerned, a Medical Board is always necessary and the certificate of a single medical officer will not be accepted except in case of stations where it is not possible or feasible to assemble a regular Medical Board for such purposes. The certificate of a single medical officer in the latter case will be furnished on a Medical Board form and countersigned by the Col (Med) Div/MG (Med) Area/Corps/Comd (Army) and equivalent in Navy and Air Force."

(Emphasis supplied)

has not been obliterated.

14. The Hon'ble Supreme Court in the case of **Union of India & Ors. Vs. Rajbir Singh [Civil Appeal Nos. 2904 of 2011]** decided on 13.02.2015, after considering the case in *Dharamvir Singh (supra)* upheld the decision of this Tribunal granting disability pension and observed as under :

"15..... Last but not the least is the fact that the provision for payment of disability pension is a beneficial provision which ought to be interpreted liberally so as to benefit those who have been sent home with a disability at times even before they completed their tenure in the armed forces. There may indeed be cases, where the disease was wholly unrelated to military service, but, in order that denial of disability pension can be justified on that ground, it must be affirmatively proved that the disease had nothing to do with such service....."

15. In the present case, it is not disputed that the onset of the disability was recorded while he was posted in peace station, however, it is not out of place to mention that the peace stations to which the applicant had been posted were in different and difficult climatic and environmental conditions and after having been detected with the disability, he performed military duties although with certain employment restrictions. It has already been observed by the Tribunal in large number of cases that military services in Peace stations also have their own pressure of rigorous

military training and associated stress and strain of the service and that statement that there is no evidence of stress and strain of service should not be considered for the purpose of granting disability pension. 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.

16. Moreover, there is no note made in his medical documents that he was suffering from any disease at the time of joining the service. Even in various categorisation and re-categorisation medical boards held and the RMB proceedings, it was also evident that the eyesight of the applicant got worsened during the passage of time as the said disability was first assessed @ 30% for life and then 40% which was finally assessed as 100% for life at the time of RMB.

17. That apart, the applicant was placed before the RMB on 20.03.2017 and as per the copy of the RMB held with the applicant in Part V, the disability 'Biettes Crystalline Cornea

Retinal Dystrophy both eyes' was conceded as 'aggravated by service' giving reasons for the same, duly signed by the Board members, whereas the copy of the RMB filed by the respondents as well as the original RMB which was produced by the respondents at the time of hearing, mentions disability as NANA. It would thus be important to reproduce Part V of the RMB dated 20.03.2017 from the copy possessed by the applicant and the one filed/produced by the respondents:

As per copy received by the applicant :

"PART V

OPINION OF THE MEDICAL BOARD

1. Causal Relationship of the disability with service conditions or otherwise				
Disability	Attributable to service (Y/N)	Aggravated by service (Y/N)	Not Connected with service (Y/N)	Reasons/causes/ specific conditions and period in service
(a) BIETTI'S CRYSTALLINE CORNEO RETINAL DYSTROPHY BOTH EYES	No	Yes	No	Onset of ID in Mar 2004 (peace area). Although Bietti's Crystalline Corneo Retinal Dystrophy is a hereditary condition, the corneal component being sub-epithelial can be worsened by exposure to environmental conditions of mil service. Hence ID conceded as aggravated due to mil service.
(b) LUMBAR CANAL STENOSIS L4/5	No	Yes	No	Onset of ID in 2011 at Mumbai. The physical stress and strain

				of mil service is known to aggravate the condition. Hence ID conceded as aggravated due to stress and strain of mil service vide Para 51, Chap VI, GMO.2008 amended.
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Sd/-
(SHAILZA CHAUDHARY)
Maj
Resident Pathology
Officer
BHDC

Sd/-
(Dhruv Sharma)
Medical Officer

Sd/-
(D K Badwal)
Col
President Medical
Base Hospital, Delhi Cantt

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As per copy and original of the RMB filed by the Respondents :

"PART V

OPINION OF THE MEDICAL BOARD

1. Causal Relationship of the disability with service conditions or otherwise				
Disability	Attributable to service (Y/N)	Aggravated by service (Y/N)	Not Connected with service (Y/N)	Reasons/causes/ specific conditions and period in service
(a) BIETTI'S CRYSTALLINE CORNEO RETINAL DYSTROPHY BOTH EYES	No	No	Yes	Onset of ID in Mar 2004 (peace area). The ID (ie. Bietti's Crystalline Corneo Retinal Dystrophy Both Eyes) is a hereditary condition not related to mil service. The ID has no causal connection with mil service in Fd/ CI Ops/HAA and also not aggravated by service conditions. Hence the ID conceded neither attributable to nor aggravated by mil service.

(b) LUMBAR CANAL STENOSIS L4/5	No	Yes	No	Onset of ID in 2011 at Mumbai. The physical stress and strain of mil service is known to aggravate the condition. Hence ID conceded as aggravated due to stress and strain of mil service vide Para 51, Chap VI, GMO.2008 amended.
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Sd/-
(Dhruv Sharma)
Capt AMC
Medical Officer

Sd/-
(SHAILZA CHAUDHARY)
.....illegible....

Sd/-
(D K Badwal)
.....unclear.....

18. Now, from the perusal of the above, it is evident that the contents in Part V of both the copies (the one held with the applicant and the other filed/produced by the respondents) of the RMB proceedings dated 20.03.2017 are different as the disability was conceded 'as aggravated by service' in the copy held by the applicant and reasons for the same has also been recorded therein, however, as per copy of the respondents, the opinion is NANA. Moreover, the sequence of the signatures members of the Medical Board in both the versions is not the same. This inconsistency in the RMB proceedings dated 20.03.2017 leads us to doubt about the credibility of the entire medical board proceeding held on 20.03.2017. Thereafter, when the applicant was reported to

have suffered with another disability namely 'Tubercular Osteomyelitis 1st Metatarsal Head (Rt)', as the applicant was still in service, the first RMB dated 20.03.2017 was cancelled by the respondents as is evident vide the IHQ, MoD (Navy) letter No. MH/0812/Med-II dated 25.05.2017 (9A-original file) and a second RMB was conducted incorporating the new disability on 19.05.2017, wherein all the three disabilities, namely, 'Biettes Crystalline Cornea Retinal Dystrophy both eyes'; 'Lumbar Canal Stenosis L4/5' and 'Tubercular Osteomyelitis 1st Metatarsal Head (Rt)', have been assessed by the RMB.

19. From the above, there are two issues which have been noticed. Firstly, the RMB dated 20.03.2017 has two versions of Part V, i.e., the one held with the applicant in which the disability 'Biettes Crystalline Cornea Retinal Dystrophy both eyes' was conceded as 'aggravated by service' with the reasons for the opinion, and the other filed/produced by the respondents, wherein the same disability was opined as 'neither attributable to nor aggravated by service conditions' with reasoning therefor. Now the issue which remains is that

how come there are two versions of the same RMB dated 20.03.2017. Secondly, in the RMB dt 19.05.2017, the medical board has not assigned any convincing reason or ground to come to the different opinion vis-a-vis with regard to the disability 'Biettes Crysalline Cornea Retinal Dystrophy both eyes', holding it as NANA. However, the percentage of disablement in the RMB dated 19.05.2017 has remained as 100% for life.

20. Moreover, at the time of final hearing on 28.01.2025, when this query was put to the learned counsel representing the respondents about the different versions of the RMB dated 20.03.2017, they were not able to explain or clarify about the controversy and, therefore, while reserving the matter for orders, the respondents were directed to file an affidavit in this regard. However, the respondents have not filed any affidavit to explain the position. We, therefore, take a very serious note of the conduct of the respondents in this regard and in these circumstances of the matter as also the disability having been assessed permanent at 100% for life and aggravated by service as per the copy of the RMB held with applicant dated 20.03.2017, in our view, the applicant

may be given benefit of doubt making him entitled for grant of disability pension with regard to the aforesaid disability.

21. It is important to note that armed forces personnel give most of the years of their life to the armed forces staying in difficult and challenging conditions and even at times, lay down their lives in the line of duty to safeguard national security. It is, therefore, unfortunate to note that even after serving in the armed forces for more than two or three decades, when any disability is suffered by any armed forces personnel, they are not given their due. The Government provides disability pension to the armed forces personnel who have suffered disability(ies) while serving in the armed forces, which is a monthly financial support system for armed forces personnel who retire or are discharged from service with a disability. The morale of the armed forces will be severely affected if genuine cases of disability pension are denied in a routine manner.

CONCLUSION

22. Therefore, the OA 1823 of 2018 is allowed. The respondents are directed to grant the disability element of pension to the applicant for the disabilities "Biettes

Crystalline Cornea Retinal Dystrophy both eyes' and 'Lumbar Canal Stenosis L4/5' @ 100% for life from the date of superannuation i.e. 31.05.2017, along with Constant Attendant Allowance (CAA) on fulfilling the conditions as per Regulation 44 of the Navy (Pension) Regulations, 1964, after adjusting the amount already paid towards the disability element of pension to the applicant.

23. Accordingly, the respondents are directed to calculate, sanction and issue necessary PPO to the applicant within a period of three months from the date of receipt of a copy of this order, *failing which*, the applicant shall be entitled to interest @ 6% per annum till the date of payment.

24. There is no order as to costs.

Pronounced in open Court on this 28th day of

Feb
March, 2025.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)