

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

OA 1889/2018

Ex Sub Mahendra Singh	Applicant
VERSUS		
Union of India and Ors.	Respondents

For Applicant	:	Mr. VS Kadian, Advocate
For Respondents	:	Mr. Satya Ranjan Swain, Advocate

CORAM

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

ORDER

Invoking the jurisdiction of this Tribunal u/s 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this application seeking the following relief:

- (a) Direct respondents to treat the disability PRIMARY HYPERTENSION of the applicant as attributable to / aggravated by military service and grant disability element of pension from the date of retirement of the applicant along with benefit of broad banding.*
- (b) Direct respondents to pay the due arrears of disability element of pension with interest @12% p.a from the date of retirement with all the consequential benefits.*
- c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.*

2. The facts germane to the filing of the present OA are that the applicant was enrolled in Indian Army on 01.02.1988 and was discharged from service on 31.01.2018 after completing 30 years of qualifying service. During the posting he was posted at various places having different environment and climatic conditions. While being posted at Ranikhet (UK) in November, 2010, he was detected with the disability of Primary Hypertension. At the time of discharge, Release Medical Board (RMB) was conducted on 11.09.2017 at Base Hospital, Lucknow and the applicant was released from service in Low Medical Category S1H1A1P2(P)E1 for the disability of Primary Hypertension (I-10) assessed @ 30% for life while the net assessment qualifying for disability pension was recorded to be NIL for life on account of disability being treated as neither attributable nor aggravated by service conditions (NANA).

3. The initial claim for disability pension was adjudicated and rejected by the Competent Authority vide letter No. JC-540787/DP dt 21.02.2018 stating that in view of the findings recorded by Release Medical Board (RMB), disability of applicant is neither attributable nor aggravated (NANA). Aggrieved by the rejection of his claim for disability pension, the applicant filed the First Appeal on 31.03.2018. The First Appeal filed by the applicant was rejected vide letter No. B/40502/257/2018/AG/PS-4 (Imp-II)

dt. 11.09.2018 giving liberty to the applicant that he may prefer Second Appeal within six months. The applicant, however, did not prefer Second Appeal, instead filed the present OA.

4. The applicant's plea is that at the time of entering into service he was subjected to thorough medical examination and when found fit with no medical ailment, he was enrolled in the Indian Army. The disease of Primary Hypertension, first discovered in November, 2010 at Ranikhet (UK) was due to strain and stress of working in adverse conditions and emotional distress while he was posted in HAA/OP RAKSHAK in J&K from 06.06.2007 to 13.02.2010. As such he is entitled to receive 50% disability pension after broadbanding from 30%. The learned counsel for applicant submitted that, member of force is presumed to be in sound physical and mental conditions upon entering service and any deterioration in his health at the time of retirement/discharge will be presumed as taken place due to service. 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 the law laid down by the Hon'ble Supreme Court in the case of Dharamvir Singh Vs Union of India & Others (Civil Appeal No. 4949/2013); (2013) 7 SCC 316, and in the case of Union of India and others Vs. Rajbir Singh (2015)

12 SCC 264 and catena of other orders of the Armed Forces Tribunal.

5. The assessment of disability @ 30% for Primary Hypertension for life is not disputed by the respondents. However, it is stated that the disability was assessed neither attributable to nor aggravated (NANA) by military service rather, it is a life style disease as onset of the disease was discovered when the applicant was posted in the peace area and no causal connection has been established. It is, further, contended that in the case of *Dharamvir Singh (Supra)* the petitioner was invalidated from service whereas the applicant herein has been discharged in Low Medical Category after completing his service. Moreover, the provisions of the Rules & Regulations of and the Rules 2008 were not considered. The judgment proceeded only with reference to the Regulation of 1961 and Rules of 1982. He pointed out that in the Entitlement Rules, 2008, the presumption of onus has been done away with. Further, it is now required to establish causal connection between disability and military service. It is further argued that Medical Board is an expert body and its opinion would have the primacy and cannot be brushed aside lightly

6. We have heard learned counsel for the parties and perused the Release Medical Board (RMB) proceedings. It is not in dispute that the extent of disability for Primary Hypertension has been assessed to

be 30% for life which is more than the base minimum for grant of disability element of pension and the provisions of the Rules and Regulations of 2008 will be applicable in present case.

7. The only question for consideration before us is whether disability of Primary Hypertension suffered by the applicant is attributable to or aggravated by the military service and whether he is entitled for the rounding off the disability pension? Reference at this stage may be made to the relevant provisions governing the matter.

Pension Regulations for the Army 2008 provides:

"37. (a) An Officer who retires on attaining the prescribed age of retirement or on completion of tenure, if found suffering on retirement, from a disability which is either attributable to or aggravated by military service and so recorded by Release Medical Board, maybe granted in addition to the retiring pension admissible, a disability element from the date of retirement if the degree of disability is accepted at 20% or more. (b) The disability element for 100% disability shall be at the rate laid down in Regulation 94 (b) below. For disabilities less than 100% but not less than 20%, the above rates shall be proportionately reduced. Provisions contained in Regulation 94(c) shall not be applicable for computing disability element.

53. (a) An individual released/retired/discharged on completion of term of engagement or on completion of service limits or on attaining the prescribed age (irrespective of his period of engagement), if found suffering from a disability attributable to or aggravated by military service and so recorded by Release Medical Board, may be granted disability element in addition to service pension or service gratuity from

the date of retirement/discharge, if the accepted degree of disability is assessed at 20 percent or more.

(b) The disability element for 100% disability shall be at the rate laid down in Regulation 98 (b) below. For disabilities less than 100% but not less than 20%, the above rates shall be proportionately reduced. Provisions contained in Regulation 98(c) shall not be applicable for computing disability element."

The 'Entitlement Rules for Casualty Pensionary Awards, to Armed Forces Personnel 2008 Rule prescribe:

4. *Invalidment from Service:*

"(a) Invalidation from service with disablement caused by service factors is a condition precedent for grant of disability pension. However, disability element will also be admissible to personnel who retire or are discharged on completion of terms of engagement in low medical category on account of disability attributable to or aggravated by military service, provided the disability is accepted as not less than 20%.

(b) An individual who is boarded out of service on medical grounds before completion of terms of engagement shall be treated as invalided from service.

(c) PBOR and equivalent ranks in other services who are placed permanently in a medical category other than SHAPE 1 or equivalent and are discharged because (i) no alternative employment suitable to their low medical category can be provided, or, (ii) they are unwilling to accept alternative employment, or, (ii) they having been retained in alternative employment are discharged before the completion of their engagement, shall be deemed to have been invalided out of service.

5. *Medical Test at entry stage:*

The medical test at the time of entry is not exhaustive, but its scope is limited to broad physical examination. Therefore, it may not detect some dormant disease. Besides, certain hereditary

constitutional and congenital diseases may manifest later in life. irrespective of service conditions. The mere fact that a disease has manifested during military service does not per se establish attributability to or aggravation by military service."

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.

7. *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."

8. Further as per amendment to Chapter VI of the 'Guide to Medical Officers (Military Pensions) 2008, at para-43, it is provided as under:-

"43. Hypertension – The first consideration should be to determine whether the hypertension is primary or secondary. If (e.g. Nephritis), and it is unnecessary to notify hypertension separately.

As in the case of atherosclerosis, entitlement of attributability is never appropriate, but where disablement for essential hypertension appears to have arisen or become worse in service, the question whether service compulsions have caused aggravation must be considered. However, in certain cases the disease has been reported after long and frequent spells of service in field/HAA/active operational area. Such cases can be explained by variable response exhibited by different individuals to stressful situations. Primary hypertension will be considered aggravated if it occurs while serving in Field areas, HAA, CIOPS areas or prolonged afloat service."

9. A conjoint reading of the aforesaid provisions show that a personnel (Officer/PBOR) retired on attaining superannuation if found suffering from a disability by the Medical Board, either attributable to or aggravated by military service will be entitled to disability element in addition to retiring pension if the degree of disability is assessed at 20% or more. Rule 6 mandates that establishing a causal connection between disability or death and service condition is a must for award of disability pension and Rule 7 deals with shifting of onus of proof. The word 'ordinarily' re-emphasises the position that the initial onus to prove entitlement remains on the military establishment and not on the officer claiming disability pension. This onus would only shift where the claimant approaches with his claim belatedly i.e., after more than 15 years of discharge and when the prescribed period of retention is over.

10. It is necessary to refer to the Regulations for the Medical Services of the Armed Forces passed u/s 192 of the Army Act. Regulation 423 of the Regulations for the Medical Services of the Armed Forces 2010 which relates to 'Attributability to Service'.

"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 favor, 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),___

11. It is pertinent to note that the Hon'ble Supreme Court in Dharamvir Singh framed following two questions for consideration:

“(i) Whether a member of Armed Forces can be presumed to have been in sound physical and mental condition upon entering service in absence of disabilities or disease noted or recorded at the time of entrance?”

“(ii) Whether the appellant is entitled for disability pension?”

The issue whether the concerned officer is invalided out of service, or discharged or retire, was not a factor which was included in the issue as framed. The issue only addresses the question whether a disease or disability of which there is no note recorded at the time of entry, if discovered during the military service can be held attributable to or aggravated by the military service, entitling the officer for disability pension. The issues were decided in affirmative and it was held that the disability must be presumed to be attributable to or aggravated by military service in the absence of any specific reason recorded by the Medical Board. This principle has been followed and applied in granting disability element to even those personnel who have been discharged from service after completing their terms of engagement. There is a catena of orders of Armed Forces Tribunal based on this, which have been upheld by the Hon'ble High Court.

12. 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, 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 more than 30 years and the disability of Primary Hypertension for the first time was noticed in November, 2010 at Ranikhet (UK) i.e. after 22 years of long service. The medical records of applicant show that he was fit having ideal body weight. During this period, as per his service profile, he had 9 field area postings. Taking into account his service profile and the fact that immediately prior to the posting at Ranikhet (UK), where the onset of said disability was discovered, the applicant served in HAA/OP Rakshak at Jammu & Kashmir. In view of his service profile, the accumulated stress and strain of long service on the applicant cannot be ruled out, thus establishing the causal connection between the disease and condition of service. The Release Medical Board (RMB) however, without looking into the service profile of the applicant took note of the fact that the onset of disability of Primary Hypertension was discovered while the applicant was posted in a peace area and

observed that the same cannot be said to be attributable to or aggravated by service conditions. This opinion in itself is not sufficient to deny the disability pension claimed by the applicant.

13. In view of the settled position of law and the facts herein above, we are of the opinion that the applicant has been discharged in Low Medical Category on account of medical disability of Primary Hypertension, which in absence of any reason recorded by the Medical Board presumed to have arisen in the course of military service.

14. As regards broadbanding benefits, the applicant is entitled to rounding off the disability element of the pension in view of the decision of the Hon'ble Supreme Court in its order dated 10.12.2014 in *Union of India v. Ram Avtar, Civil Appeal No. 418 of 2012*.

15. In view of the aforesaid analysis, the OA 1889/2018 is allowed and Respondents are directed to grant benefit of disability element of pension @ 30% rounded off to 50% for life for the disability of Primary Hypertension. Since, there is no delay in filing of the OA, the arrears shall be disbursed to the applicant from the date of discharge within three months of receipt of this order failing which it shall earn interest @ 6% p.a. till the actual date of payment.

Pronounced in the open Court on this 21st day of May, 2025.

(JUSTICE NANDITA DUBEY)
MEMBER (J)

(RASIKA CHAUBE)
MEMBER (A)

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