COURT No.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 1983/2019 WITH MA 2860/2019

Col Kiran Kumar Verma (Retd.) ... Applicant
Versus
Union of India and Ors. ... Respondents

For Applicant : Mr. Ajit Kakkar, Advocate with
Ms. Eti, Advocate
For Respondents : Mr. Jagdish Chandra, Advocate

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

ORDER

MA 2860/2019

Keeping in view the averments made in the application and in the light of the decision in *Union of India and others Vs. Tarsem Singh* [(2008) 8 SCC 648), the delay in filing the OA is condoned.

2. MA stands disposed of.

OA 1983/2019

3. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant filed this OA praying to direct the respondents to accept the disabilities of the applicant as attributable to/aggravated by military service and grant disability element

of pension @40% rounded of to 50% with effect from the date of retirement of the applicant; along with all consequential benefits. The applicant has sought the following reliefs:

a) *To direct the respondents to grant disability pension to the Applicant from the date of discharge i.e. 01/06/2015.*

b) *To direct the respondents to grant the benefit of rounding off the disability pension from 40% to 50% from date of discharge.*

c) *To direct respondents to issue a corrigendum PPO with the necessary changes pertaining to the disability and broad banding of the disability pension.*

d) *To direct the respondents to pay arrears of disability pension and broad banded pension along with interest @12%.*

e) *To grant such other relief appropriate to the facts and circumstances of the case as deemed fit and proper.*

BRIEF FACTS OF THE CASE

4. The applicant was commissioned in the Indian Army on 27.08.1983 and retired on 31.05.2015 after serving for approximately more than 31 years of qualifying service. The applicant was re-employed in service from 14.08.2015 to 29.05.2019. At the time of retirement of service and prior to re-employment, the applicant underwent a Release Medical Board dated 15.05.2015 which held that the applicant was fit to be discharged from service in low medical category S1H1A1P3 (T-24) for the disabilities - (i) GOUTY ARTHRITIS

DISEASE @ 20% for life and (ii) PRIMARY HYPERTENSION @30% for life with composite disability @ 40% for life while the qualifying element for disability pension was recorded as 20% for life on account of PRIMARY HYPERTENSION being treated as neither attributable to nor aggravated by military service (NANA).

5. The initial claim of the applicant for grant of disability pension was adjudicated by the competent authority and rejected vide letter 52334/RAJ RIF/C-45277/ MP-6(D)/156/2015/AG/PS-4(Imp-II) dated 16.11.2015 stating that the aforesaid disabilities were considered as neither attributable to nor aggravated by military service. Subsequently, applicant preferred first appeal dated 5.10.2019, which was again rejected vide letter No. A/52334/RAJ 9RIF/IC-45277L/MP-6(D) dated 22.09.2019 Aggrieved by the aforesaid rejection, the applicant has approached this Tribunal.

SUBMISSIONS ON BEHALF OF THE APPLICANT

6. It is the submission of the Applicant that the applicant that the applicant suffered the disability while he was posted at Gulmarg and Dehradun due to posting in high altitude

areas in difficult mountainous Terrains and consequent to three active CI OPS on Sri Lanka and Kashmir valley where he suffered stress and strain due to adverse service conditions.

7. Placing reliance on the judgement of the Hon'ble Supreme Court in ***Dharamvir Singh*** Vs ***UOI & Ors*** [2013 (7) SCC 36], Learned Counsel for 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 Indian Army at various places in different environmental and service conditions in his prolonged service including High Altitude Warfare School at Gulmarg and three active CI OPS in Sri Lanka and Kashmir, thereby, any disability at the time of his service is deemed to be attributable to or aggravated by military service.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

8. Per Contra, Learned Counsel for the Respondents submits that under the provisions of Regulation 81(a) and 53(a) of the Pension Regulations for the Army, 2008, 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 military service and is

assessed @ 20% or more. The respondents further place their reliance on Para-5 of *'Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008,'* and submit that the mere fact that a disease has manifested during military service does not per se establish attributability to or aggravation by military service.

9. Relying on the aforesaid provision, Learned Counsel for respondents further submits that the aforesaid disabilities of the applicant were assessed as "neither attributable to nor aggravated" by military service and not connected with the military service and as such, his claim was rejected; thus, the applicant is not entitled for grant of disability pension due to policy constraints.

CONSIDERATION

10. On a consideration of the submissions made on behalf of either side, it is essential to observe that the factum that as laid down by the Hon'ble Supreme Court in ***Dharamvir Singh*** (supra), a personnel of the Armed forces has to be presumed to have been inducted into military service in a fit condition ,if there is no note or record at the time of entrance in relation to any disability, in the event of his subsequently being

discharged from service on medical grounds the disability has to be presumed to be due to service unless the contrary is established, - is no more res integra.

11. We have pursued RMB proceedings qua the applicant wherein opinion of Medical board at Part V reads to the effect:

	Disability	*Attributable to Service (Y/N)*	*Aggravated by Service (Y/N)*	*Not connected with Service (Y/N)*
a)	*Gouty rthritis*	*No*	*Yes*	*No*
b)	*Primary Hypertension*	*No*	*No*	*Yes*

12. With respect to the disability (i), we find that the same has been held to be aggravated by military service, but the same has not been accepted by the Pension Disbursing Authority. We are of the view that the administrative decision taken by the respondents to deny disability element of pension to the applicant is against the decisions of the Hon'ble Supreme Court in ***Ex Sapper Mohinder Singh*** *v.* ***Union of India and another*** (C.A No. 164 of 1993 decided on 14.01.1993) and ***Dharamvir Singh*** *v.* ***Union of India and others*** (2013) 7 SCC 316.

13. Approving the aforesaid observations of the Hon'ble Supreme Court in Mohinder Singh (supra), the IHQ (Army)

has also issued a letter dated 25.04.2011, the relevant portion of which is reproduced below:

> *"2 These alterations in the findings of IMB/RMB by MAP (PCDA(P)) without having physically examined the individual, do not stand to the scrutiny of law and in numerous judgments, Hon'ble Supreme Court has ruled that the medical Board which has physically examined should be given due weightage, value and credence.*
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> ....
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> *4. All Command HQs are requested to instruct all Record Offices under their command to withdraw unconditionally from such cases, notwithstanding the stage they may have reached and such file be processed for sanction."*

14. In a catena of judgments (pointedly, O.A No. 270 of 2016 of Armed Forces Tribunal, Regional Bench, Chandigarh), this Tribunal has reaffirmed with consistency that due credibility and primacy has to be given to medical board proceedings. Whether it be the PCDA or an administrative authority, refutation of a medical opinion can only be by another more competent medical opinion. We do not find any justifiable reason on the part of the respondents in denying the disability element of pension for the disability (i) to the applicant, especially when the Release Medical Board had determined the disease and assessed his disability @ 20%.

15. With respect to disability (ii) - Primary Hypertension, for our consideration, we refer to Para 43 of the GMO (Military Pension), 2008 dealing with the disability of 'Hypertension' is as under:

> *"43. Hypertension- The first consideration should be to determine whether the hypertension is primary or secondary. If secondary, entitlement considerations should be directed to the underlying disease process (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."*
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> *(emphasis supplied)*

16. A perusal of the posting profile of the applicant shows that the first posting of the applicant was an HAA/Fd posting for 2 years in Sikkim. Subsequently, 7 out of the 16 postings of the applicant were either HAA/Fd postings or Fd/CI Ops postings. Not to lose sight of the fact that from Oct 09 to Jun 10, two years before the onset of the second disability, applicant was posted in Gulmarg, J&K, which is HAA/CI Ops posting, involving huge stress and strain.

17. In view of the guidelines laid down vide the verdict of the Hon'ble Supreme Court in ***Dharamvir Singh*** Vs. ***Union of India & Ors.***(Supra) and the factum that the non-existence of the ID of Hypertension at the time when the applicant joined military service is not refuted by the respondents, the contention of the respondents that the disability of hypertension assessed has been rightly opined by the Release Medical Board and the AFCA at 30% as neither being attributable to nor aggravated by military service,- cannot be accepted.

18. It is essential to observe that the verdict of the Hon'ble Supreme Court in ***Rajbir Singh*** (supra) vide Paras 12 to 15 lays down to the effect:-

> *"12. Reference may also be made at this stage to the guidelines set out in Chapter-II of the Guide to Medical Officers (Military Pensions), 2002 which set out the "Entitlement: General Principles", and the approach to be adopted in such cases. Paras 7, 8 and 9 of the said guidelines reads as under:*
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> *"7. Evidentiary value is attached to the record of a member's condition at the commencement of service, and such record has, therefore, to be accepted unless any different conclusion has been reached due to the inaccuracy of the record in a particular case or otherwise. Accordingly, if the disease leading to member's invalidation out of service or death while in service, was not noted in a medical report at the commencement of service, the inference would be that the disease arose during the period of member's military service. It may be that the inaccuracy or incompleteness of service record on entry in service was due to a non-disclosure of the essential facts by the member e.g. pre-enrolment history of an injury or disease like epilepsy, mental disorder, etc. It may also be that*

owing to latency or obscurity of the symptoms, a disability escaped detection on enrolment. Such lack of recognition may affect the medical categorisation of the member on enrolment and/or cause him to perform duties harmful to his condition. Again, there may occasionally be direct evidence of the contraction of a disability, otherwise than by service. In all such cases, though the disease cannot be considered to have been caused by service, the question of aggravation by subsequent service conditions will need examination.

The following are some of the diseases which ordinarily escape detection on enrolment:

(a) Certain congenital abnormalities which are latent and only discoverable on full investigations e.g. Congenital Defect of Spine, Spina bifida, Sacralisation,

(b) Certain familial and hereditary diseases e.g. Haemophilia, Congential Syphilis, Haemoglobinopathy.

(c) Certain diseases of the heart and blood vessels e.g. Coronary Atherosclerosis, Rheumatic Fever.

(d) Diseases which may be undetectable by physical examination on enrolment, unless adequate history is given at the time by the member e.g. Gastric and Duodenal Ulcers, Epilepsy, Mental Disorders, HIV Infections.

(e) Relapsing forms of mental disorders which have intervals of normality.

(f) Diseases which have periodic attacks e.g. Bronchial Asthma, Epilepsy, Csom, etc.

8. The question whether the invalidation or death of a member has resulted from service conditions, has to be judged in the light of the record of the member's condition on enrolment as noted in service documents and of all other available evidence both direct and indirect.

In addition to any documentary evidence relative to the member's condition to entering the service and during service, the member must be carefully and closely questioned on the circumstances which led to the advent of his disease, the duration, the family history, his pre-service history, etc. so that all evidence in support or against the claim is elucidated. Presidents of Medical Boards should make this their personal responsibility and ensure that opinions on attributability,

aggravation or otherwise are supported by cogent reasons; the approving authority should also be satisfied that this question has been dealt with in such a way as to leave no reasonable doubt.

9. On the question whether any persisting deterioration has occurred, it is to be remembered that invalidation from service does not necessarily imply that the member's health has deteriorated during service. The disability may have been discovered soon after joining and the member discharged in his own interest in order to prevent deterioration. In such cases, there may even have been a temporary worsening during service, but if the treatment given before discharge was on grounds of expediency to prevent a recurrence, no lasting damage was inflicted by service and there would be no ground for admitting entitlement. Again a member may have been invalided from service because he is found so weak mentally that it is impossible to make him an efficient soldier. This would not mean that his condition has worsened during service, but only that it is worse than was realised on enrolment in the army. To sum up, in each case the question whether any persisting deterioration on the available [pic]evidence which will vary according to the type of the disability, the consensus of medical opinion relating to the particular condition and the clinical history."

13. In Dharamvir Singh's case (supra) this Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words:

"29.1. Disability pension to be granted to an individual who is invalided 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 to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).

29.2. 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 read with Rule 14(b)].

29.3. The 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).

29.4. 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)]. [pic] 29.5. 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 [Rule 14(b)].

29.6. 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 [Rule 14(b)]; and 29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 - "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."

14. Applying the above principles this Court in Dharamvir Singh's case (supra) found that no note of any disease had been recorded at the time of his acceptance into military service. This Court also held that Union of India had failed to bring on record any document to suggest that Dharamvir was under treatment for the disease at the time of his recruitment or that the disease was hereditary in nature. This Court, on that basis, declared Dharamvir to be entitled to claim disability pension in the absence of any note in his service record at the time of his acceptance into military service. This Court observed:

"33. In spite of the aforesaid provisions, the Pension Sanctioning Authority failed to notice that the Medical Board had not given any reason in support of its opinion, particularly when there is no note of such disease or disability available in the service record of the appellant at the time of acceptance for military service. Without going through the aforesaid facts the Pension Sanctioning Authority mechanically passed the impugned order of rejection based on the report of the Medical Board. As per Rules 5 and 9 of the Entitlement Rules for Casualty Pensionary Awards, 1982, the appellant is entitled for presumption and benefit of presumption in his favour. In the absence of any evidence on record to show that the appellant was suffering from "generalised seizure (epilepsy)" at the time of acceptance of his service, it will be presumed that the

appellant was in sound physical and mental condition at the time of entering the service and deterioration in his health has taken place due to service."

15. The legal position as stated in Dharamvir Singh's case (supra) is, in our opinion, in tune with the Pension Regulations, the Entitlement Rules and the Guidelines issued to the Medical Officers. The essence of the rules, as seen earlier, is that a member of the armed forces is presumed to be in sound physical and mental condition at the time of his entry into service if there is no note or record to the contrary made at the time of such entry. More importantly, in the event of his subsequent discharge from service on medical ground, any deterioration in his health is presumed to be due to military service. This necessarily implies that no sooner a member of the force is discharged on medical ground his entitlement to claim disability pension will arise unless of course the employer is in a position to rebut the presumption that the disability which he suffered was neither attributable to nor aggravated by military service. From Rule 14(b) of the Entitlement Rules it is further clear that if the medical opinion were to hold that the disease suffered by the member of the armed forces could not have been detected prior to acceptance for service, the Medical Board must state the reasons for saying so. 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. The burden to establish such a disconnect would lie heavily upon the employer for otherwise the rules raise a presumption that the deterioration in the health of the member of the service is on account of military service or aggravated by it. A soldier cannot be asked to prove that the disease was contracted by him on account of military service or was aggravated by the same. The very fact that he was upon proper physical and other tests found fit to serve in the army should rise as indeed the rules do provide for a presumption that he was disease-free at the time of his entry into service. That presumption continues till it is proved by the employer that the disease was neither attributable to nor aggravated by military service. For the employer to say so, the least that is required is a statement of reasons supporting that view. That we feel is the true essence of the rules which ought to be kept in view all the time while dealing with cases of disability pension."

(emphasis supplied)

19. Furthermore, the 'Entitlement Rules for Casualty Pensionary Awards, to the Armed Forces Personnel 2008, which take effect from 01.01.2008 vide Paras 6, 7, 10, 11 thereof state as under:-

> *"6. Causal connection:*
>
> *For award of disability pension/special faraily 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.*
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> *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.*
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> *(b) Disease:*
> *(i) For acceptance of a disease as attributable to military service, the following two conditions must be satisfied simultaneously:-*
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> *(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 contacted prior to enrolment or during leave, the incubation period of the disease will be taken into consideration on the basis of clinical course 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. Altitudes etc."

20. Thus, the ratio of the verdicts in ***Dharamvir Singh*** Vs ***UOI & Ors*** (Civil Appeal No. 4949/2013) [(2013) 7 SCC 316], ***Sukhvinder Singh*** Vs ***UOI & Ors***, dated 25.06.2014 reported in 2014 STPL (Web) 468 SC, ***UOI & Ors.*** Vs ***Rajbir Singh*** [(2015) 12 SCC 264] and ***UOI & Ors*** Vs ***Manjeet Singh*** dated 12.05.2015, (Civil Appeal no. 4357-4358 of 2015), as laid down by the Hon'ble Supreme Court are the fulcrum of these rules as well.

21. Moreover, 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 v. Union of India (supra),* with specific reliance on the observations in para-28 of the said verdict which are to the effect:-

> *"28. A conjoint reading of various provisions, reproduced above, makes it clear that:*
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> *(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 tobe presumed due to service. [Rule 5 r/w Rule 14(b)].*
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> *(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 inservice. [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."

22. 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).

23. 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 air force service.

24. Therefore, in view of our analysis, the OA is allowed and Respondents are directed to ***grant benefit of disability***

element of pension compositely @ 40% for life (for GOUTY ARTHRITIS @20% and (ii) PRIMARY HYPERTENSION @30 %,) *rounded off to 50% in view of judgement of Hon'ble Apex Court in Union of India versus Ram Avtar (supra).* However, the arrears shall be restricted to three years prior to the date of filing of OA, which is 13.11.2019, thereby, signifying that the payment of arrears shall be from 13.11.2016. 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.

25. Consequently, the OA 1983/2019 is allowed.

26. No order as to costs.

Pronounced in open Court on this 3rd day of March, 2025.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

/Akc/