

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

OA 2429/2021

Col Gopal Ramtri (Retd) ... Applicant  
Versus ...  
Union of India & Ors. ... Respondents

For Applicant - Mr. Shakti Chand Jaidwal, Advocate  
For Respondents - Mr. V. Pattabhi Ram, Advocate

CORAM :

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

ORDER

OA 2429/2021

The applicant vide para 8 of the present O.A 2429/2021  
has made the following prayers:-

*“(a) Call for relevant records of the Applicant and after perusal thereof, set aside the impugned order dated 19.02.2021 passed by the Respondents, rejecting first appeal of the Applicant for grant of disability pension.*

*“(b) Direct the Respondents to concede disability of the Applicant, namely, “PRIMARY HYPERTENSION” as Aggravated by military service, since the RMB and RAMB have already conceded the same as aggravated by service.*

*“(c) Direct the Respondents to grant disability pension to the Applicant @30% for life w.e.f. 01.01.2006, as degree of his disablement due to the said disability has been assessed @30% for life by the RAMB;*

*“(d) Direct the Respondents to pay disability pension to the Applicant enhanced rate of 50% for life w.e.f. 01.01.2006 by broad-banding Applicant's disability from 30% to 50% as per Govt Policy dated 31.01.2001;*

*“(e) Direct the Respondents to pay the Applicant an interest @10% p.a. on arrears of the disability pension w.e.f. 01.01.2006 and/or*

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

2. The applicant Col Gopal Ramtri (Retd.) was commissioned in the Indian Army on 11.06.1967 and prematurely retired from service on 18.10.1994. The RMB not solely on medical grounds was held vide AFMSF-16 dated 21.10.1994 and found the applicant fit to be released in low medical category and suffering from the ID Essential Hypertension with the RMB having opined the disability as being neither attributable to nor aggravated by military service.

3. The opinion of the Medical Board in Part VII thereof was to the effect:

**PART III**  
**OPINION OF THE MEDICAL BOARD**

1. Did the disability/ies exist before entering service ? NO

2. (a) In respect of each disability the Medical Board on the evidence before it will express its views as to whether  
(i) it is attributable to service during peace or under field conditions:  
or  
(ii) it has been aggravated thereby and remains so: or  
(iii) it is not connected with service

*The Board should state fully the reasons in regard to each disability on which its opinion is based*

3. □□□□□□□□ Disability	क A	ख B	ग C
ESSENTIAL HYPERTENSION (Old) (ICD No 401 V67)	NO	YES	NO

(b) In respect of each disability shown as attributable under A, the Board should state fully, the specific condition and period in service which caused the disability.

NA

(c) In respect of each disability shown as aggravated under B, the Board should state fully

(i) The specific condition and period in service which aggravated the disability

Due to stress and strain of military service

(ii) Whether the effects of such aggravation still persist.

Yes

(iii) If the answer (ii) is affirmative, whether effect of aggravation will persist for a material period

Yes

4. The percentage of disablement was put forth in the RMB is as under:

3. What is the present degree of disease/disablement as compared with a healthy person of the same age and sex? (Percentage will be expressed as Nil or as follows): 1-5%, 6-10%, 11-14%, 15-19% and thereafter in multiple of ten from 20-100%			
Disease/disability (As numbered in question 1 part III)	Percentage of disablement	Probable duration of disablement	Composite assessment for all disabilities (Max 100% with duration)
ESSENTIAL HYPERTENSION (Old) (ICD No 401 V67)	30% (THIRTY PERCENT)	05 years	30% (THIRTY PERCENT)

5. The applicant underwent Re-assessment Medical Board at Command Hospital, Pune vide AFSMF-17 dated 17.07.2019 on the authority of DGMS-5A letter no 76101/RAMB/DGMS-5(A), vide which Part II is reproduced as under:

1. Is the Board satisfied that the person before them is the pensioner referred to above?

YES

2. Record of Clinical Examination



No, the condition has not improved

6. The opinion of the Medical Board in Para 8(a) thereof was to the effect:

“(a) Assessment of disablement

Disabilities	Whole disablement		Part (disablement) due to non-service factors	Worsening due to natural progress of disability	Net assessment if properly referable to service	Duration of assessment
	Separate assessment	Combined assessment				
PRIMARY HYPERTENSION	30% for life	30% for life	NIL	NIL	30% for life	30% for intervening period wef 01 Jan 2006 to 06 Oct 2019 for life and thereafter

7. The initial disability claim of the applicant was not processed as he has prematurely retired on 18.10.1994, and it was only vide GoI MoD letter no 16(5)/2008/D(Pens/Policy) dated 29.09.2009, disability pension was made admissible to the officers who has become non-effective on or after 01.01.2006. Thereafter, vide GoI MoD letter No 16(5)/2008/D(Pens/Policy) dated 19.05.2017, the benefits of disability pension have been extended to pre-2006 PMR cases.

8. Post the conduct of RAMB dated 17.07.2019, the initial claim of the officer was adjudicated by the Competent Authority and the same was not approved vide AG PS-4(Imp-1) letter No.12656/IC-17651/T-4/MP-6(B)/523/2019/AG/PS-4(Imp-1) dated 20.07.2020. The Applicant preferred a first

appeal dated 18.11.2020 against the rejection of the disability claim but the same was rejected by Appellate Committee on First Appeals vide their letter No 12656/IC-17651/T-MP-5(B)/154/2020/1stAppeal/AG/PS-4 (Imp-II) dated 19.02.2021. Subsequently, second appeal was preferred by the applicant, which was rejected by the Second Appellate Committee on Pension (SACP) vide letter no B/38046A/176/2021/AG/PS-4 (2nd Appeal) dated 27.09.2021. We thus take up this OA instituted on 15.01.2021 for consideration in terms of Section 21(1) of the AFT Act 2007, in the interest of justice.

#### ***CONTENTIONS RAISED***

9. The applicant submits that the disability of - Essential Hypertension @30% was held as aggravated by the military service by the Release Medical Board and the assessment was continued by the Re-assessment Medical Board dated 17.07.2019, and thus, he is entitled for grant of disability pension. The applicant also submits that in terms of the verdict dated 10.12.2014 of the Hon'ble Supreme Court in UOI & Ors Vs Ram Avtar in Civil Appeal No.418/2012, the applicant is entitled to rounding off of the disability pension assessed @30% for life to 50% for life from the date of discharge.

10. The respondents through the counter affidavit dated 20.09.2023 filed on their behalf submit to the effect that as per Rule 48 of the Pension Regulations for Army, 1961 (Part-I), the primary conditions for the grant of disability pension are *"Unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by Army Service and is assessed at 20% or over."*

In other words, disability pension is granted to those who fulfill the following two criteria simultaneously:-

*(i) Disability must be either attributable to or aggravated by service.*

*(ii) Degree of disablement should be assessed at 20% or more.*

11. The respondents further place 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.

#### **ANALYSIS**

12. On a consideration of the submissions made on behalf of either side, it is essential to observe that the Release Medical Board dated 21.10.1994, the disability of the applicant - Essential Hypertension was assessed @30% and held to be "aggravated by military service". Additionally, the RAMB dated 17.07.2019

assessed the disability @30%, while noting that the aforesaid disability was static in nature vide Para 6 of Part II of the RAMB. We further observe that the RAMB has observed vide Para 7 of Part II to the effect that *“the condition of the applicant has not improved”*, and vide Para 2(c) of the Part II, it observes that *“no improvement is anticipated.”*

13. On a perusal of the reply to the first appeal of the applicant, we find that the reasoning given by the Appellate Committee on First Appeals is that the onset was in peace station (Deolali), therefore, the claim for grant of disability pension has been rejected. We find it pertinent to observe that the reply of the Appellate Committee on First Appeals lost sight of the fact that the disability of the applicant was held as ‘aggravated by military service’ and thus, it has adjudicated on the issue of attributability, without disputing the fact that the disability was held as ‘aggravated by military service’.

14. 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 Vs. Union of India and another* (C.A No. 164 of 1993 decided on 14.01.1993) and *Dharamvir Singh Vs. Union of India and others* (2013) 7 SCC 316. 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.*

.....

*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."*

15. 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 to the applicant, especially when the Release Medical Board had determined the disease and assessed his disability @ 30%.

16. Further, in view of the judgment of the Hon'ble Supreme Court in Union of India and others Vs. Ram Avtar in C.A No. 418 of 2012 dated 10.12.2014, the applicant is entitled to get the disability element of pension broad banded to 50%, based on the Government notification dated 31.01.2001.

17. Thus, the OA 2429/2021 is allowed and the applicant is held entitled to the grant of the disability element of pension qua

the disability of Primary Hypertension @ 30% for life which in terms of the verdict of the Hon'ble Supreme Court of India in Civil Appeal 418/2012 dated 10.12.2014 titled as UOI & Ors. Vs. Ramavtar (supra), is rounded off to 50% for life from the date of discharge. However, the arrears will be restricted to three years from the date of filing of this OA on 22.10.2021 in view of the law laid down in the case of Union of India and others Vs. Tarsem Singh [2008 (8)SCC 649].

18. The respondents are directed to calculate, sanction and issue the necessary Corrigendum PPO to the applicant within three months from the date of receipt of the copy of this order and in the event of default, the applicant shall be entitled to the interest @6% per annum on the arrears till the date of payment.

19. No order as to costs.

20. Pending miscellaneous application, if any, stands disposed of.

Pronounced in the open Court on the 13 day of January, 2025.

(JUSTICE RAJENDRA MENON)  
CHAIRPERSON

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

/Akc/