

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

OA 2518/2022

Brig Dharmendra Singh Yadav (Retd.) ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Mr. Nasir Mohammad proxy for
Mr. Indra Sen Singh, Advocate

For Respondents : Mr. Anil Kumar Gautam, Sr CGSC

CORAM :

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

ORDER

Invoking the jurisdiction of this Tribunal under Section 14, of the Armed Forces Tribunal Act, 2007 the applicant has filed this application and the reliefs claimed in Para 8 read as under:

- (a) Set aside the order dated 18.07.2022, whereby the Applicant's claim for disability element of pension has been arbitrarily rejected by the Respondents;***
- (b) Direct the Respondents to treat the Applicant's disability on account of "PRIMARY HYPERTENSION" as Aggravated by military service, if not Attributable to military service,***
- (c) Direct the Respondents to pay disability element of pension to the Applicant at the rate of 50% (30%***

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rounded off to 50%) with effect from 31.05.2022 thereby granting the benefit of rounding off/broad-banding policy of the Govt;

- (d) Direct the Respondents to pay arrears of disability element of pension, after calculating the same at the rate of 50% with effect from 31.05.2022, with interest at the rate 10% per annum until the date of actual payment; and***
- (e) Issue such other order(s)/direction(s) as may be deemed appropriate in the facts and circumstances of the case.***

BRIEF FACTS

2. The applicant was commissioned in the Indian Army on 10.06.1989 and superannuated from the service on 31.05.2022. The Release Medical Board (RMB) dated 04.12.2021 found the applicant fit to be released in low medical category P2(P) for the disability of Primary Hypertension assessed @ 30% for life and the disability was considered as 'aggravated by military service'. However, the net qualifying percentage for the disability pension was assessed @ 30% for life.

3. The initial claim for grant of disability pension in respect of the applicant was adjudicated by the AG/MP/ORO and was rejected as the disability was conceded as NANA vide letter no.

No. 52334/IC-48692X/ASC/MP-6(A)/11/21/AG/MP (ORO) dated 18.04.2022. The applicant preferred the first appeal for grant of disability pension dated 06.05.2022 which was rejected by the Appellate Committee on First Appeal (ACFA) vide letter no 52334/IC-48692X/BRIG/MP-6(A) / B / 17 / 2022 / AG/PS-4 (1st Appeal) dated 18.07.2022 stating that the disability which the applicant suffers from is neither attributable to nor aggravated by military service for the reasons mentioned therein.

4. The applicant thereafter preferred the second appeal dated 12.08.2022 against rejection of his disability pension claim with regard to the ID 'Primary Hypertension', but did not await its outcome and has approached this Tribunal by filing the present OA so filed on 31.10.2022. In the interest of justice, in terms of Section 21(2)(b) of the AFT Act, 2007, we take up the same for consideration.

CONTENTIONS OF THE PARTIES

5. The learned counsel for the applicant placed reliance on the verdicts of the Hon'ble Supreme Court in the case of **UOI**

& Anr Vs. Rajbir Singh [Civil Appeal No 2904/2011 decided on 13.02.2015], and in the case of **Dharamvir Singh vs. Union of India & Ors. (2013) 7 SCC 316.**

6. The learned counsel for the applicant also placed reliance on the various orders passed by Armed Forces Tribunal including **Ex MWO Gajodhar Singh Vs Union of India & Ors**, in OA 59/2011 decided on 01.05.2014, in case of **Ravinder Mohan Gaur vs. Union of India & Ors** in OA No. 781/2016 decided on 12.09.2018, in case of **D.P.S. Tomar vs. Union of India & Ors** in OA No. 482/2014 decided on 09.07.2015, wherein relief was granted to the similarly situated personnel in those cases.

7. *Per contra*, the learned counsel for the respondents submitted that the perusal of documents revealed that detection of Primary Hypertension was at Tezpur in June 2018 during evaluation for 'Dysuria' and the applicant was also detected to be overweight with body weight of 79kg and he was managed with oral antihypertensive agents and was placed in LMC. The learned counsel further submitted that at the time of RMB he was stable on medication with BP of 128/84 mmHG and there was no evidence of target organ damage;

Primary Hypertension develops due to complex interplay of genetic, metabolic and environmental, aggravation is conceded if the onset occurs while serving in Fd/CI Ops/HAA/ Prolonged afloat service. The learned counsel further submitted that in the instant case, Hypertension was detected at Tezpur where the applicant was not involved in active CI Ops and was tenanted a staff appointment and accordingly, the disability of primary hypertension of the applicant has been conceded as neither attributable nor aggravated by service in terms of Para 43 of GMO 2002, as amended 2008. The learned counsel for the respondents, therefore, prayed for dismissal of the OA.

ANALYSIS

8. We have heard the learned counsel for the parties and have perused the record.
9. It is evident from the record that the RMB, which is an expert body, has already conceded the disability of the applicant 'Primary Hypertension' as 'Aggravated by service' and the reasons for concluding so have also been mentioned in the proceedings. However, the competent authority had

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interfered with the opinion of the RMB with regard to the disability of 'Primary Hypertension' and considered the same as NANA.

10. The issue of sanctity of the opinion of the Release Medical Board on its overruling by a higher administrative authority formation is no more *Res Integra*. The Hon'ble Supreme Court in the case of **Ex. Sapper Mohinder Singh vs Union of India & Others**, in Civil Appeal No. 164 of 1993, decided on 14.01.1993, which has been followed in large number of cases by the Tribunal, has made it clear that without physical medical examination of a patient, a higher formation/administrative authority cannot overrule the opinion of a Medical Board. The relevant part of the aforesaid judgment is quoted below:-

"From the above narrated facts and the stand taken by the parties before us, the controversy that falls for determination by us is in a very narrow compass viz. whether the Chief Controller of Defence Accounts (Pension) has any jurisdiction to sit over the opinion of the experts (Medical Board) while dealing with the case of grant of disability pension, in regard to the percentage of the disability pension, or not. In the present case, it is nowhere stated that the Applicant

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was subjected to any higher medical Board before the Chief Controller of Defence Accounts (Pension) decided to decline the disability pension to the Applicant. We are unable to see as to how the accounts branch dealing with the pension can sit over the judgment of the experts in the medical line without making any reference to a detailed or higher Medical Board which can be constituted under the relevant instructions and rules by the Director General of Army Medical Core."

11. Therefore, in light of the aforesaid judgment in **Ex Sapper Mohinder Singh** (*supra*) as well as records of the RMB, it is clear that the opinion qua the disability Primary Hypertension of the RMB cannot be overruled by the administrative authority. Hence, the decision of competent authority is void in law. Moreover, it is evident from the record that the onset of the disability in question occurred while the applicant was posted in Tezpur, which is a field station and was mightily the disability was conceded as 'aggravated' by the RMB as per para 43 of Chapter VI of the 'Guide to Medical Officers (Military Pension), 2008 (amended). In so far as the issue regarding the applicant being overweight as stated by the counsel for the respondents is concerned, we have perused the record and found that the applicant's weight as mentioned in

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the RMB is within the stipulated limit and no other evidence or document in this regard has been filed by the respondents in support of their submission. Therefore, we are of the view that the disability i.e. 'Primary Hypertension' of the applicant be considered as aggravated by military service as has been opined by the RMB. As the disability of Primary Hypertension has been assessed @ 30%, the said disability of the applicant meets the twin conditions of Regulation 53(a) of the Pension Regulations for the Army, Part-1, 2008 and is thus admissible.

CONCLUSION

12. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is entitled for disability element of pension in respect of disability 'Primary Hypertension'. Accordingly, we allow this application holding that the applicant is entitled to disability element of pension @ 30% rounded off to 50% for life with effect from the date of his superannuation i.e. 31.05.2022, in terms of the judicial pronouncement of the Hon'ble Supreme Court in the case of **Union of India Vs. Ram Avtar** (Civil Appeal No. 418/2012), decided on 10.12.2014.

13. The respondents are thus directed to calculate, sanction and issue the necessary PPO to the applicant within a period of three months from the date of receipt of copy of this order, *failing which*, the applicant will be entitled for interest @ 6% per annum from the date of receipt of copy of the order by the respondents.

Pronounced in the open Court on this 15 day of April, 2025.


(JUSTICE RAJENDRA MENON)
CHAIRPERSON


(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

/Pooja/