

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

OA 254/2020

Sgt Rash Bihari Rai (Retd)

.....Applicant

VERSUS

Union of India and Ors.

....Respondents

For Applicant : Mr. Mr. Manoj Kr Gupta, with
Ms. Devangana Sharma, Advocate
For Respondents : Mr. Mr. V Pattabhi Ram, Advocate
Sgt Pradeep Sharma, DAV, Legal Cell

CORAM

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

ORDER

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

"A. To direct the respondents to grant the disability pension @ 30% broad banded to 50% along with arrears by treating the disabilities as attributable and aggravated to Military service.

B. To direct the respondents to pay due arrears of disability pension with interest @ 10% with effect from the date of retirement: and/or pass such further order/orders, direction/directions as this Hon'ble Tribunal may deem fit and proper in accordance with law."

BRIEF FACTS

2. The applicant was enrolled in Indian Air Force as a combatant soldier on 04.02.1999 and was discharged from service on 28.02.2019 under the clause “On fulfilling conditions of his enrolment” after rendering 20 years and 25 days of regular service. The applicant was detected to have raised levels of blood pressure during his evaluation for headache in September 2018 and was placed in LMC A4G4 for ID- **Primary Hypertension** vide AFMSF-15 dated 08.10.2018.

3. The **Release Medical Board**¹ dated 08.10.2018 held that the applicant was fit to be released from service in low medical category A4G4(P) for **ID-Primary Hypertension**². assessed @ 30% for lifelong while the net qualifying element for disability was recorded as NIL on account of his disability being treated as neither attributable to nor aggravated by military service.

4. The RMB considered the disability of the applicant as neither attributable to nor aggravated by service with the following reason:-

“Life style disorder, Onset at peace station, Not associated with stress & strain of service, No delay in diagnosis & treatment, Hence NANA as per para 43 Ch- VI of GMO 2008.”

¹ For short, ‘RMB’

5. The percentage of disablement of the applicant was assessed @30% for life by the RMB but the disability qualifying element for disability pension was assessed as Nil. The RMB of the applicant was approved by JDMS (MB) AIR HQ (RKP), IAF PMO HQ TC, IAF dated 01.11.2018.
6. On adjudication, AOC AFRO has upheld the recommendation of RMB and rejected the disability pension claim of the applicant vide letter No. RO/3305/3/Med dated 31.05.2019. The outcome was communicated to the applicant vide letter No. Air HQ/99798/1/795911/10/16/(DP/RMB) dated 29.06.2019 with an advice that he may prefer an appeal to the Appellate committee within 6 months from the date of receipt of letter.
7. The applicant had preferred his first appeal on 30.06.2019 which had not been replied by the respondents even after a time lapse of 6 months. Thereafter, the applicant has filed the present OA. In the interest of justice thus, in terms of Section 21(2) of the AFT Act 2007, it is considered appropriate to take up the present OA for consideration.

CONTENTIONS OF THE PARTIES

8. Placing reliance on the judgement of the Hon'ble Supreme Court in *Dharamvir Singh v. UOI & Ors [2013 (7) SCC 36]*, learned Counsel for the 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 Air Force at various

places in different environmental and service conditions in his prolonged service, thereby, any disability at the time of his service is deemed to be attributable to or aggravated by Air Force service.

9. Learned counsel for the applicant submitted that throughout his service tenure, the applicant was posted at various locations where the nature of duties, coupled with frequent transfers, subjected him to considerable stress and strain arising from adverse service conditions, fluctuating climatic circumstances, and changes in the social environment. It was further submitted that the applicant was not excused from performing additional duties beyond regular working hours, including on Saturdays, Sundays, and other holidays, which aggravated his physical and mental condition. Learned counsel for the applicant further submitted that the disability of applicant i.e **Primary Hypertension** detected in September 2018 at Delhi after serving for 19 years was due to strain and stress of working in such adverse conditions.

10. Learned Counsel has further relied on Rule 5 and 9 of Entitlement Rules for Casualty Pensionary Awards, 1982, to contend that the applicant is entitled for benefit of presumption in terms of Para 15 of the said rules. He further relied on Appendix-II to Pension regulations (Entitlement Rule of Casualty Pensionary Awards, 1982) stating that Primary Hypertension is a classified disease which is affected by stresses and strain of service.

11. Per contra, the learned counsel for the respondents submitted that the Primary Hypertension disability is basically a lifestyle related disorder and in the case of the applicant it was detected for the first time in September 2018 by the RMB and there has been no close time association of military service with onset and progression of the disability and hence, the disability is NANA as per para 43 of GMO (Military Pension) 2008.

12. Learned counsel for the respondents contended that the applicant is not entitled to the relief claimed since the Release Medical Board, being Expert Body, after thorough examination of the applicant, found the disability as **“Neither Attributable to Nor Aggravated by Military Service”** on the ground that the said disability of the applicant is not connected with service.

ANALYSIS

13. Heard learned counsel for the parties and perused the record as well as the Release Medical Board (RMB) proceedings produced before us. As the disability in question, i.e., Primary Hypertension, has been assessed @ 30% for life, the only issue which needs to be considered in this case is as to whether the applicant's disability is attributable to/aggravated by the military service or not.

14. The law has by now crystalized that if there is no note or report of the Medical Board at the time of entry into service that the individual suffered from any particular disease, the presumption

would be that the individual got affected by the said disease because of the service conditions. Therefore, the burden of proving that the disease is not attributable to or aggravated by the service rests entirely on the employer/respondents.

15. There is also no gainsaying that the opinion of the Medical Board, being an expert body, has to be given due weight and credence. In the present case we have called for the medical record of applicant for last ten years as we found that the onset of the disability PHT was shown at the time of RMB. After going through the medical record, we found that the individual has been found fit and was placed in category A4G1 ie. shape 1 in all annual medical boards which is conducted every year there was never any complaint regarding any stress or strain. It was only in the RMB conducted on 8 October 2018 that his category was downgraded to A4G4 (P) when he was diagnosed with ID "Primary Hypertension." The chart depicting the details of the medical examinations of the applicant is reproduced hereinbelow :-

Sl No.	Date of Med Exam	Type of Med Exam	Category	Remarks
1.	02 Mar 09	Annual Med Exam (AME)	A4G1	
2.	10 Mar 10	AME	A4G1	
3.	07 Feb 11	AME	A4G1	
4.	17 May 12	AME	A4G1	
5.	13 Mar 13	AME	A4G1	
6.	04 Aug 14	AME	A4G1	
7.	13 May 15	AME	A4G1	
8.	16 May 16	AME	A4G1	
9.	11 May 17	AME	A4G1	
10.	25 Apr 18	AME	A4G1	

11.	08 Oct 18	Categorisation Board	A4G4(P)	DIAGNOSED WITH PHTN
12.	08 Oct 18	RMB	A4G4(P)	

16. Therefore, we find that the disability of Primary Hypertension was diagnosed at fag end of the applicant's career in October 2018 and was assessed @ 30% for life, resulting in the applicant being placed in the low medical category 'A4G2 (P)' at the time of discharge from service. The onset of the disease is recorded during his posting at peace station in Delhi/ AFCAO. There is no record of any causal connection of the disability to the service conditions. On perusal of the RMB, we find that even according to the applicant, there were no incidents of service which had been caused or had made the disability worse. The relevant portions of the Part-1, Personal statement in para 4 is reproduced hereunder:-

4. Give details of any incidents during your service, which you think caused or made your disability worse- No

17. Furthermore, the RMB has opined the disability as Neither Attributable to Nor Aggravated by service. That expert view carries due weight in the absence of cogent medical material demonstrating a service-related causal chain or aggravation. The issue has been dealt by Hon'ble Supreme Court in *Ex CFN Narsingh Yadav v. UoI* (Civil Appeal No. 7672 of 2019), wherein it was held that:-

“21. Though, the opinion of the Medical Board is subject to judicial review but the Courts are not possessed of expertise to dispute such report unless there is strong medical evidence on record to dispute the opinion of the Medical Board which may warrant the constitution of the Review Medical Board. The invaliding Medical Board has categorically held that the appellant is not fit for further service and there is no material on record to doubt the correctness of the Report of the invaliding Medical Board.”

18. At this point, it is also relevant to refer to the observations made by Hon'ble Supreme Court in *Secretary, Ministry of Defence and others vs A.V.Damodaran (dead) through LRs and others* [(2009) 9 SCC 140], clearly brings out the following principles with regard to primacy of medical opinion have been laid down:-

“8. When an individual is found suffering from any disease or has sustained injury, he is examined by the medical experts who would not only examine him but also ascertain the nature of disease/injury and also record a decision as to whether the said personnel is to be placed in a medial category which is lower than 'AYE' (fit category) and whether temporarily or permanently. They also give a medical assessment and advice as to whether the individual is to be brought before the release/invalidating medical board. The said release/invalidating medical board generally consists of three doctors and they, keeping in view the clinical profile, the date and place of onset of invaliding disease/disability and service conditions, draws a conclusion as to whether the disease/injury has a causal connection with military service or not. On the basis of the same, they recommend (a) attributability, or

(b) aggravation, or (c) whether connection with service. The second aspect which is also examined is the extent to which the functional capacity of the individual is impaired. The same is adjudged and an assessment is made of the percentage of the disability suffered by the said personnel which is recorded so that the case of the personnel could be considered for grant of disability element of pension. Another aspect which is taken notice of at this stage is the duration for which the disability is likely to continue. The same is assessed/recommended in the form of AFMSF-16. The Invalidating Medical Board forms its opinion/recommendations on the basis of the medical report, injury report, court of enquiry proceedings, if any, charter of duties relating to peace or field area and, of course, the physical examination of the individual.

9. The aforesaid provisions came to be interpreted by the various decisions rendered by this Court in which it has been consistently held that the opinion given by the doctors or the medical board shall be given weightage and primacy in the manner for ascertainment as to whether or not the injuries/illness sustained was due to or was aggravated by the military service which contributed to invalidation from the military service.”

19. With the issue of primacy of medical opinion no longer res integra as held by Hon'ble Supreme Court in *Ex CFN Narsingh Yadav (supra)* we must reiterate that we are not medical specialists to scrutinize the opinion of medical boards, and it would not only be beyond our jurisdiction but also hazardous if this Court were to examine the accuracy of such expert opinion, based on competing

medical opinions. The scope of judicial review does not entail the Court embarking upon such misadventures. As far as judicial review of decisions based on medical expert opinion is concerned, there is no doubt that wide latitude is provided to the executive in such matters and the Court does not have the expertise to appreciate and decide on merits of medical issues on the basis of divergent medical opinion.

20. The medical records does not reveal any medical data, service document, or corroborative material establishing a causal or aggravating nexus between the applicant's duties and the onset or development of the ailment. Therefor single existence of PHT cannot be made the basis for grant of disability element of pension. The disability, therefore, is assessed as purely constitutional and unconnected with military service exigencies. In the absence of any demonstrable link between duty conditions and disease progression, this Court finds no justification to interfere with the opinion of the competent medical board. Consequently, the Original Application, being devoid of merit, stands dismissed.

CONCLUSION

21. In view of the aforesaid analysis, this Court concludes that there is no demonstrable causal or aggravating link between the applicant's service and the onset or progression of his disability. The opinion of

the RMB warrants no interference. The present Original Application is, therefore, devoid of merit and is liable to be dismissed.

22. There shall be no order as to costs.

23. Pending miscellaneous application(s), if any, stand closed.

Pronounced in open Court on 19th day of November, 2025.

(JUSTICE NANDITA DUBEY)
MEMBER (J)

(RASIKA CHAUBE)
MEMBER (A)

/Sp/