

**COURT NO. 2, ARMED FORCES TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**OA 295/2019 with MA 1636/2020 & 58/2023**

**Col Rajashekhar Harsoor (Retd.)**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant : Mr. Ajai Bhalla, Advocate**

**For Respondents : Mr. Rajeev Kumar, Advocate with  
Ms. Shivani Kumari, Advocate**

**CORAM :**

**HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)**  
**HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)**

**ORDER**

**MA 1636/2020**

This is an application filed on behalf of the respondents for condonation of delay of 133 days in filing the Rejoinder. In view of the reasons explained in MA 1636/2020 and in the interest of justice, the MA 1636/2020 is allowed and the delay in filing the Rejoinder is condoned.

**MA 58/2020**

2. This is an application filed on behalf of the respondents for condonation of delay of 297 days in filing the counter

affidavit. In view of the reasons explained in MA and in the interest of justice, the MA 58/2020 is allowed and the delay in filing the counter affidavit is condoned.

**OA 295/2019**

3. 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) ***To declare the action of the respondents as unjust, arbitrary and illegal and set aside the impugned order dated 27 Sep 2018 (Annexure A-1)***
- (b) ***To direct the respondents to treat the disability of hypertension assessed @30% as aggravated by service conditions and accordingly enhance the disability pension from 50% to 75%.***
- (c) ***To grant interest @ 9% on the delayed payment of disability element on account of disability of primary hypertension; and***
- (d) ***To pass such further order or orders, direction/ directions as this Hon'ble Tribunal may deem fit and proper in accordance with law.***

4. The applicant was commissioned in the Indian Army on 20.12.1986 and retired from the service on 30.04.2016 on reaching the age of superannuation. The Release Medical

Board (RMB) as confirmed on 05.10.2015 assessed the disabilities of the applicant viz, (i) Primary Hypertension @ 30% (ii) Type-2 Diabetes Mellitus @ 20% and (iii) Coronary Artery Disease Inferior Wall Myocardial Infarction, Single Vessel Disease @ 30%, and the composite disability for the three ailments has been assessed @ 60% for life. All the three disabilities have been conceded by the RMB as 'aggravated by service' for the reasons mentioned therein.

5. Initially, the claim of the applicant for disability pension was adjudicated by the competent authority which, vide letter No. 13102/IC-44435H/ENGRS/ MP-6(C)/592/ 2015/ AG/PS-4 (Imp-1) dated 12.08.2016, granted disability element of pension to the applicant with regard to the disability 'CAD Inferior Wall Myocardial Infarction, Single Vessel Disease' only as the other two disabilities, namely, Primary Hypertension and Type-2 Diabetes Mellitus, were treated as 'NANA'. The applicant then filed his first appeal dated 06.10.2016 against rejection of the disability pension with regard to these two disabilities and accordingly, the ACFA considered the same

and accepted the disability Type-2 Diabetes Mellitus as 'Aggravated', however, the disability ID 'Primary Hypertension' was again assessed as 'NANA'. Accordingly, the applicant was granted disability element of pension with regard to the two disabilities viz Coronary Artery Disease Inferior Wall Myocardial Infarction, Single Vessel Disease and Type-2 Diabetes Mellitus with rounding-off benefit @ 50% for life from 30.04.2016.

6. The applicant thereafter preferred the second appeal dated 05.02.2018 against rejection of his disability pension claim with regard to the ID 'Primary Hypertension', which was adjudicated and rejected by the Second Appellate Committee on Pensions (SACP) vide their letter No.B /38046A /115/2018/AG/ PS-4 (2<sup>nd</sup> Appeal) dated 27.09.2018. Aggrieved by the same, the applicant has filed the instant OA for seeking the said relief. In the interest of justice, it is considered appropriate to take up the present OA for consideration, in terms of Section 21(2)(b) of the AFT, Act 2007.

7. The learned counsel for the applicant placed reliance on the verdicts of the Hon'ble Supreme Court in the case of **Union of India and others vs. D.S Nakara** AIR 1983 SC 130, Civil Appeal No 5591/2006 titled **KJS Buttar Vs. Union of India & Ors**, in the case of **Vijay Mehrotra vs. State of U.P.** AIR 2000 SC 3513A, and in the case of **Shiv Dass vs. Union of India** AIR 2007 SC 1330.

8. The learned counsel for the applicant also placed reliance on the orders passed by Armed Forces Tribunal in case of **Air Cmde MDM Prasad Vs Union of India & Ors**, in OA 728/2017 decided on 13.07.2018, in case of **Manoj Kumar vs. Union of India** in TA No. 50/2011 decided on 17.07.2013 wherein relief was granted to the similarly situated personnel in that case.

9. *Per contra*, the learned counsel for the respondents has submitted that the initial claim for disability pension and the first and second appeals have already been considered and the applicant was already granted disability element of pension with regard to the disabilities of 'CAD Inferior Wall Myocardial Infarction, Single Vessel Disease' and 'Type-2

Diabetes Mellitus'. The learned counsel justified denial of the disability pension for the disability of 'Primary Hypertension' as the same was considered as 'NANA' by the Second Appellate Committee on Pensions (SACP) on the ground that the onset of the said disability was at peace station. The learned counsel for the respondents, therefore, prayed for dismissal of the OA.

### **ANALYSIS**

10. We have heard the learned counsel for the parties and have perused the record.

11. It is evident from the record that the RMB has already conceded all the three disabilities of the applicant, namely, Primary Hypertension, Type-2 Diabetes Mellitus and CAD Inferior Wall Myocardial Infarction, Single Vessel Disease as 'Aggravated by service' and the reasons for concluding so have also been mentioned in the proceedings. However, the competent pension sanctioning authority had interfered with the opinion of the RMB with regard to the disabilities, and, initially granted disability element of pension for only one disability i.e. CAD Inferior Wall Myocardial Infarction, Single

Vessel Disease and thereafter on filing the first appeal by the applicant, the disability 'Type-2 Diabetes Mellitus' was also accepted as 'aggravated by service', and the disability 'Primary Hypertension' was considered as NANA.

12. The issue of sanctity of the opinion of the Release Medical Board on its overruling by a higher 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 cannot overrule the opinion of a Medical Board. Thus, in light of the observations made by the Hon'ble Apex Court in the case of **Ex Sapper Mohinder Singh** (*supra*), we are of the considered view that the decision of the administrative authority over-ruling the opinion of RMB held on 17.08.2015 which held all the three disabilities as 'aggravated by service', is void in law and the applicant ought to have been granted the disability element of pension for all

the three disabilities at the initial stage itself. 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 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.”*

13. 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 administrative authority. Hence, the decision of the competent



authority is void. 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.

14. The applicant served in the Indian Army for 29 years and 08 months and the onset of the disability 'Primary Hypertension', occurred in October, 2003 after 16 years and even after being diagnosed with the disability of 'Primary Hypertension', the applicant was posted to three more field postings where the applicant's life was full of stress and strain in performance of day to day duties apart from hostile climatic and environmental factors. Even during the peace area postings, the performance of duties of the applicant had always been highly demanding and full of stress and strain. The accumulated stress and strain of such a long service on the applicant cannot be overlooked and has to be assessed as attributable to and aggravated by military service.

15. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is entitled to the

grant of the disability element of pension in respect of all the three disabilities, as assessed by the RMB, i.e. Primary Hypertension @ 30% for life (ii) Type-2 Diabetes Mellitus @ 20% for life and (iii) Coronary Artery Disease, Inferior Wall Myocardial Infarction, Single Vessel Disease, Primary Angioplasty in Myocardial Infarction to Right coronary Artery @ 30% for life. Therefore, the composite assessment of all the aforesaid three disabilities is re-calculated as per MoD letter No. 16036 / RMB/ IMB /DGAFMS /MA(pens) dated 14.12.2009 as under:-

***Disability (i) = 30%***

***Disability (ii)  $(100-30) = 70 \times 20/100 = 14\%$***

***Disability (iii)  $100 - (30+14) = 56 \times 30/100=16.8=17\%$***

***Composite Assessment =  $30+14+17= 61\%$***

### **CONCLUSION**

16. Therefore, the OA 295/2019 is allowed. The respondents are directed to grant disability element of pension in respect of all the three disabilities 'Coronary Artery Disease, Inferior Wall Myocardial Infarction, Single Vessel Disease, Primary Angioplasty in Myocardial Infarction to Right coronary Artery';


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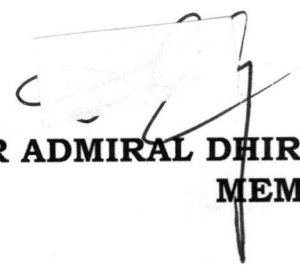
'Type-2 Diabetes Mellitus' and 'Primary Hypertension' @ 61% for life, from the date of retirement, which is to be further rounded off to 75% for life in terms of the judicial pronouncement of the Hon'ble Supreme Court in the case of ***Union of India Vs. Ram Avtar*** (Civil Appeal No. 418/2012), decided on 10.12.2014. The applicant is already in receipt of the disability element of pension with regard to the disabilities 'Coronary Artery Disease, Inferior Wall Myocardial Infarction, Single Vessel Disease, Primary Angioplasty in Myocardial Infarction to Right coronary Artery' and 'Type-2 Diabetes Mellitus', with rounding off benefit @ 50%. Accordingly, the respondents are directed to grant arrears towards the disability element of pension to the applicant, as directed above, after adjusting the amount already paid *qua* the disability element of pension to the applicant.

17. 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 day of 3 April, 2025.

  
**(JUSTICE ANU MALHOTRA)**  
**MEMBER (J)**

  
**(REAR ADMIRAL DHIREN VIG)**  
**MEMBER (A)**

*Pooja*