

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

**OA 595/2020**

Lt Col R K Bahal (Retd) ..... Applicant  
Versus .....  
Union of India and Ors. .... Respondents

**For Applicant** : Mr. Rajiv Manglik, Advocate  
**For Respondents** : Mr. Neeraj, Sr. CGSC

**CORAM**

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

**ORDER**

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 read as under:

***"(a) To declare the action of the respondents as unjust, arbitrary and illegal; and***

***(b) To quash and set aside order dated 18 Mar 2020; and***

***(c) To direct the respondents to grant the disability element of the disability pension for life as the disease is permanent in nature and grant the benefit of rounding of disability of the applicant from 30% to 50% in terms of letter dated 31 Jan 2001; and***

***(d) Alternatively; direct the respondents to grant the disability element of the disability pension for two years initially and conduct the re-survey medical board and continue the disability pension as per the outcome of the Re-survey medical board and grant the benefit of rounding of***

**disability of the applicant from 30% to 50% in terms of letter dated 31 Jan 2001**

**(e) To direct the respondent to commute the disability element of the disability pension and pay the arrears of the disability element of the disability pension; and**

**(f) To grant an interest of 18% on the arrears; and**

**(g) To award exemplary costs upon the respondents in the facts and circumstances of the record; and**

**(h) To pass such further order or orders, direction/directions as this Hon'ble Tribunal may deem fit and proper in accordance with law."**

2. The applicant was commissioned in the Indian Army on 06.09.1970. The applicant, thereafter, was discharged from service on 31.05.1997 in low medical category P2 (Permanent). The Release Medical Board (RMB) held on 21.02.1997 assessed the applicant's disability '**IHD FOR RMB-411**' @ 30% for two years and the same was conceded as aggravated by military service. However, based on the recommendations of the RMB, the disability element of pension has been denied to the applicant.

3. The initial claim of the applicant for grant of disability pension was rejected by the competent authority vide Note 4 to 8 of noting sheet dated 11.08.1997 accepting the disability as "neither attributable to nor aggravated by military service". Thereafter, the applicant had preferred a 1<sup>st</sup> Appeal dated 08.12.2019, i.e., after a gap of approximately more than 22 years against rejection of his

disability pension, which was not considered being time barred in terms of Govt. of India, MoD letter No.1(3)/2008/D (Pen/Pol) dated 17.05.2016 and the same was communicated to the applicant vide letter dated 18.03.2020. Further, the applicant had also submitted a letter dated 10.01.2020, requesting the respondents to conduct his Re-survey Medical Board as his disability at the time of RMB was assessed only for a period of two years notwithstanding the fact that later the policy has been changed stating that the permanent disability granted at the time of RMB shall be for life. However, the same has not been replied or considered by the respondents till the filing of this OA on 08.06.2020. Aggrieved by this, the applicant has filed the instant OA. In the interest of justice, we take up the same for consideration.

4. The learned counsel for the applicant submitted that the applicant at the time of enrolment was fully fit medically and physically and no note was made in his medical documents to the effect that he was suffering from any disease at that time, and thus the onset of the disability occurred during service would be presumed to be due to stress and strain of the military service.

5. The learned counsel for the applicant explained about the stressful and challenging conditions of service performed by the

applicant having served in various places in different environmental and geographical conditions in his prolonged service. The learned counsel for the applicant further submitted that the disability of the applicant was aggravated by military service due to the stress and strain of service while he was performing military duties despite having been diagnosed with the IHD. The learned counsel for the applicant, therefore, prayed that the disability in question may be held as attributable to and aggravated by military service and that the disability pension may be granted to the applicant.

6. In support of his contentions, the learned counsel for the applicant relied upon the judgments of the Hon'ble Supreme Court including the case of **Dharamvir Singh** Vs. **Union of India & Ors.** [2013 (7) SCC 316] and in **Union of India & Anr.** Vs. **Rajbir Singh** [2015 (2) SCALE 371], wherein the Apex Court had considered the question with regard to grant of disability pension and after taking note of the provisions of the Pension Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers and Para 423 of the Regulations for the Medical Services of the Armed Forces, it was held by the Hon'ble Supreme Court that an Army personnel shall be presumed to have been in sound physical and mental condition upon entering service except as to physical

disabilities noted or recorded at the time of entrance and in the event of his being discharged from service on medical grounds being in low medical category, any deterioration in his health, which may have taken place, shall be presumed to be due to service conditions. The Apex Court further held that the onus of proof shall be on the respondents to prove that the disease from which the incumbent is suffering is neither attributable to nor aggravated by military service.

7. *Per contra*, learned counsel for the respondents submitted that the applicant was retired from service on attaining the age of superannuation with disability '**IHD FOR RMB-411**' which was conceded as 'aggravated by military service' with degree of disablement @ 30% for two years by the RMB. However, the competent authority after examining the case of the applicant had conceded the disability as 'Neither Attributable to Nor Aggravated by Military Service (NANA)' leading to the rejection of the applicant's disability pension claim. The learned counsel for the respondents further submitted that as the applicant was discharged after attaining the age of superannuation and his disability being considered as NANA, he is not entitled to disability pension.

8. We have heard learned counsel for the parties and have perused the record. As the disability in question, i.e., **IHD FOR RMB-411**, has been assessed @ 30% for two years, 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.

9. It is an undisputed fact that at the time of joining the Indian Army on 06.09.1970, the applicant was found medically and physically fully fit and was discharged from service on 31.05.1997 after attaining the age of superannuation. The present disability has admittedly been diagnosed on 15.07.1992 and it is also admitted that the applicant was placed in low medical category 'P2 (Permanent)' at the time of discharge from service.

10. The law on the issue of attributability of a disability is already settled by the Hon'ble Supreme Court in the case of **Dharamvir Singh Vs. Union of India & Ors.** [2013 (7) SCC 316], which has been followed in subsequent decisions of the Hon'ble Supreme Court and in a catena of orders of this Tribunal, wherein the Apex Court had considered the question with regard to grant of disability pension and after taking note of the provisions of the Pension Regulations, Entitlement Rules for Casualty Pensionary

Awards, 1982 and the General Rules of Guide to Medical Officers (Military Pensions), 2002 and Para 423 of the Regulations for the Medical Services of the Armed Forces, it was held by the Hon'ble Supreme Court that an Army personnel shall be presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance and in the event of his being discharged from service on medical grounds, any deterioration in his health, which may have taken place, shall be presumed due to service conditions. The Apex Court further held that the onus of proof shall be on the respondents to prove that the disease from which the incumbent is suffering is neither attributable to nor aggravated by military service. The guidelines laid down vide the verdict in **Dharamavir Singh** (supra) are as under:-

*"28. A conjoint reading of various provisions, reproduced above, makes it clear that:*

*(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 to be presumed due to service. [Rule 5 r/w Rule 14(b)].*

*(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 in service. [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."*

11. The Hon'ble Supreme Court in the case of **Union of India & Ors.** Vs. **Rajbir Singh** [2015 (2) SCALE 371] decided on 13.02.2015, after taking note of its judgement in the case of **Dharamvir Singh** (supra) upheld the decision of this Tribunal granting disability pension and observed as under :

*"15. .... 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....."*

12. In Annexure I to Chapter VI of the Guide to Medical Officers (Military Pensions), 1980, Myocardial Infarction and other forms of IHD along with other diseases have been classified as the diseases

affected by stress and strain of service. However, various factors have been detailed qua the disease IHD in Para 47 of Chapter VI of the Guide to Medical Officers (Military Pensions) 2008, including prolonged stress and strain and physical hardship caused by serving in field and high altitude areas have been given which cause the heart diseases to the army personnel. We find it relevant to refer to Para 47 of the GMO (MP), 2008, which reads as under:-

***"47. Ischaemic Heart Disease (IHD). IHD is a spectrum of clinical disorders which includes asymptomatic IHD, chronic stable angina, unstable angina, acute myocardial infarction and sudden cardiac death (SCD) occurring as a result of the process of atherosclerosis. Plaque fissuring and rupture is followed by deposition of thrombus on the atheromatous plaque and a variable degree of occlusion of the coronary artery. A total occlusion results in myocardial infarction in the territory of the artery occluded. Prolonged stress and strain hastens atherosclerosis by triggering of neurohormonal mechanism and autonomic storms. It is now well established that autonomic nervous system disturbances precipitated by emotions, stress and strain, through the agency of catecholamines affect the lipid response, blood pressure, increased platelet aggregation, heart rate and produce ECG abnormality and arrhythmias. The service in field and high altitude areas apart from physical hardship imposes considerable mental stress of solitude and separation from family leaving the individual tense and anxious as quite often separation entails running of separate establishment, financial crisis, disturbance of child education and lack of security for family. Apart from this, compulsory group living restricts his freedom of activity. These factors jointly and severally can become a chronic source of mental stress and strain precipitating an attack of IHD. IHD arising in while serving in Field area/HAA/CI Ops area or during OPS in an indl who was previously in SHAPE-I will be considered as attributable to mil service....."***

13. In the present case at hand, it is not disputed that the onset of the disability of the applicant occurred while he was posted in peace area and the same was conceded as aggravated by military service

due to stress and strain of the military service. However, as per Para 47 of the GMO (MP) 2008, the disability of IHD occurring due to stress and strain will be attributable to military service. We, therefore, hold the disability suffered by the applicant as attributable to military service.

14. In so far as the disability of the applicant, which was considered to be of permanent nature, but assessed for a particular period, i.e., for two years is concerned, it is important to refer to the judgement of Hon'ble Supreme Court in the case of **Commander Rakesh Pande Vs. Union of India & Ors.** [Civil Appeal No.5970 of 2019] decided on 28.11.2019, wherein the Hon'ble Apex Court while interfering with the decision of the Armed Forces Tribunal granting disability pension for five years to the applicant, granted the disability for life and observed as under :

*"Para 7 of the letter dated 07.02.2001 provides that no periodical reviews by the Resurvey Medical Boards shall be held for reassessment of disabilities. In case of disabilities adjudicated as being of permanent nature, the decision once arrived at will be for life unless the individual himself requests for a review. The appellant is afflicted with diseases which are of permanent nature and he is entitled to disability pension for his life which cannot be restricted for a period of 5 years. The judgment cited by Ms. Praveena Gautam, learned counsel is not relevant and not applicable to the facts of this case. Therefore, the appeal is allowed and the appellant shall be entitled for disability pension @ 50% for life.*

*[Emphasis supplied]*

It is pertinent to mention here that the Tribunal has followed the aforesaid judgement of the Hon'ble Apex Court in numerous cases

where the duration of disablement was for a particular period, but still was considered to be for life.

15. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is held entitled for disability element of pension in respect of disability, i.e., '**IHD FOR RMB-411'** @ 30% for life.

16. Therefore, 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 discharge 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.

17. Accordingly, the respondents are 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. The amount of arrears, however, are directed to commence to run from a period of three years prior to the institution of the present OA, in terms of the verdict of the Hon'ble Supreme Court in the case of **Union of India and others** Vs. **Tarsem Singh** [(2008) 8 SCC 648] which shall be paid by the respondents within a period of

three months, failing which the applicant will be entitled to interest @ 6% per annum till the date of payment.

18. No order as to costs.

19. Pending miscellaneous application(s), if any, stands closed.

Pronounced in open Court on this 10<sup>th</sup> day of March, 2025.

**(JUSTICE RAJENDRA MENON)  
CHAIRPERSON**

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

**Neha**