

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

OA 1116/2015 with MA 1055/2015

In the matter of :

Ex Dfr Birender Singh Rawat

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant :

Mr. VS Kadian, Advocate

For Respondents :

Mr. VS Mahndiyan, Advocate

CORAM:

HON'BLE Ms. JUSTICE ANU MALHOTRA, MEMBER (J)

HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

MA 1055/2015

MA 1055/2015 is filed on behalf of the applicant seeking condonation of 7071 days delay in filing the present OA for reasons mentioned therein. In the interest of justice, in view of the judgments of the Hon'ble Supreme Court in the matter of ***UoI & Ors Vs Tarsem Singh*** (2008) 8 SCC 648 and in ***Ex Sep Chain Singh Thr LR. Dhaneshwari Devi Vs Union of India & Ors*** in Civil Appeal No. 022965/2017 arising out of Civil Appeal Diary No. 30073/2017 and the reasons mentioned, the MA 1055/2015 is allowed and the delay of 7071 days in filing the OA is thus condoned.

2. The MA 1055/2015 is disposed of accordingly.

O.A. No. 1116 of 2015

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

“(a) Direct respondents to treat the disease of the applicant Essential Hypertension assessed @11-14% as attributable to/or aggravated by military service and grant disability pension @50% for life after rounding off/broad banding in terms of Govt of India, Min of Defence letter No. 1(2)/97/D(Pen-C) dated 31.01.2001 and law settled by Hon’ble Supreme Court in Civil Appeal No. 418/2012 titled UoI & Ors. vs. Ram Avtar vide judgment dated 10.12.2014. And/or

(b) Direct respondents to pay the due arrears of disability pension with interest @12% p.a. from the date of discharge with all the consequential benefits.

(c) Any other relief which the Hon’ble Tribunal may deem fit and proper in the fact and circumstances of the case.”

BRIEF FACTS

4. The applicant was enrolled in the Indian Army on 10.03.1979 and was discharged from service on 31.01.1996. The Release Medical Board (RMB

hereinafter) dated 09.10.1995 held that the applicant was fit to be released from service in low medical category 'BEE (P)' for the disability of 'Mild Idiopathic Hypertension' @11-14% for life. Although the disability was assessed @11-14%, the RMB nevertheless recorded the condition of 'Mild Idiopathic Hypertension' as 'Aggravated by military service'. However, the Competent Authority subsequently classified the said disability as 'Neither Attributable to Nor Aggravated by military service' (NANA).

5. The initial claim for the grant of the disability pension of the applicant was rejected by the competent authority vide PCDA (P) letter No. G-3/51/48/2/96 dated 24.06.1996 which was intimated to the applicant vide letter No. 1062328/DP/05/Pen dated 03.07.1996 with an advice to prefer an appeal to Government of India against rejection of Disability element claim by the PCDA (P) Allahabad within a period of six months from 24.06.1996, if he is not satisfied with the decision of the sanctioning authority. Against this, the applicant preferred first appeal on 12.08.1996 which was also rejected by the competent authority and communicated to the applicant vide letter dated 07.04.1998. Thereafter, after a long time, the

applicant preferred legal notice dated 23.10.2015 which was rejected by the respondents vide letter No. 1062328/LN/LC/NER(BS RAWAT) dated 19.11.2015 rejecting the same. Aggrieved by the same, the applicant has filed the instant OA and thus, in the interest of justice, we take up the matter under Section 21(2)(b) of the AFT Act for consideration.

CONTENTIONS OF THE PARTIES

6. The learned counsel for the applicant submitted that at the time of joining the service, the applicant was found mentally and physically fit for service and there is no note in the service documents that he was suffering from any disease at that time and the disability of the applicant was detected during the service, hence, the same is attributable to and aggravated by military service, and the respondents erred in rejecting the claim of disability pension stating that the RMB held the disability as neither attributable to nor aggravated by military service as the disability of the applicant was assessed @11-14%. The learned counsel for the applicant contended that the instant matter is squarely covered by a catena of decisions of the Hon'ble Supreme Court including ***Dharamvir Singh Vs. Union of India &***

Ors. [2013 (7) SCC 316 and that the claim of the applicant is also supported by relevant rules.

7. The learned counsel for the applicant also placed reliance on the verdict of the Hon'ble Supreme Court of India in the case of **UOI & Ors Vs. Ram Avtar** in Civil Appeal 418/2012, **UoI & Anr. V. Rajbir Singh** (Civil Appeal No. 2904/2011 vide judgment dated 13.02.2015), **Union of India & Ors. vs. Manjit Singh** AIR 2015 SC 2114 and various orders passed by the Tribunal, such as OA 59/2011 titled **Ex MWO Gajodhar Singh v. UoI** vide order dated 01.05.2014 etc. wherein the law laid down by the Apex Court in *Dharamvir Singh (supra)* was followed and the petitions for disability pension were allowed. The learned counsel for the applicant further placed specific reliance on the order of the AFT (PB), New Delhi dated 12.05.2023 in OA 514/2020 titled as **Gp Capt Vijay Arvind Kulkarni (Retd.) vs Union of India & Ors.** wherein similarly situated personnel was given the relief.

8. *Per contra*, the learned counsel for the respondents controverts the arguments put forth on behalf of the applicant and contended that the applicant is not entitled to the relief claimed for, since the disability of the applicant

was assessed @11-14% and does not fulfill the necessary conditions for being eligible to get disability pension in terms of Regulations 173 of the Pension Regulations for the Army, 1961 (Part-I), thus the applicant is not entitled to disability pension and, therefore, the OA deserves to be dismissed.

ANALYSIS

9. We have heard the learned counsel for the parties and have gone through the records produced before us.

10. In the present case, it is an undisputed fact that the applicant's disability, namely 'Mild Idiopathic Hypertension', has been assessed @ 11-14% for life and was also held to be 'Aggravated by Military Service' by the RMB. However, the Administrative authority (PCDA) has treated the said disability as 'Neither Attributable to nor Aggravated by Military Service' (NANA). The only question that now arises for consideration before this Tribunal is whether the assessment of the applicant's disability has been correctly made or not.

11. In the instant case, the applicant was diagnosed with the said disability in the year 1991, and his RMB held on 09.10.1995 assessed the same @11-14%.

12. **GMO (MP) 1980, Chapter VII at Para No. 34**, reads to the effect:-

Diseases of the circulatory system

“34. In determining the degree of disablement in cardiovascular disease, there are two principal considerations:-

(a) xxxxxxxxxxxx

(b) xxxxxxxxxxxx

Essential Hypertension:-

According to the size of the Heart, response of BP to exercise, ECG changes and complications.....30-100%.

xx

13. Later, **GMO (MP), 2002**, introduced detailed and structured assessment criteria of the said disability and wherein it has been stated that uncomplicated ‘Essential Hypertension’ has to be assessed @ 30%. The relevant part reproduced as follows:-

“1. Essential hypertension:

<i>(i) Uncomplicated hypertension</i>	<i>30%</i>
<i>(ii) Hypertension with involvement of target organs (heart, brain, eye and kidney)</i>	<i>30-100%</i>
<i>(iii) Simple aneurysm aorta</i>	<i>30%</i>
<i>(iv) Dissecting aneurysm aorta</i>	<i>70%-100%</i>

14. In support of applying the beneficent provisions of GMO (MP), 2002, even to earlier cases, especially when the earlier GMO (MP), 1980, which is applicable in this case but however was not as detailed as in GMO (MP) 2002, *qua* the

assessment of the said disability, we may refer to the judgment of the Hon'ble High Court of Delhi in **Beermati Devi vs. UOI & Ors.** dated 07.12.2007, wherein vide Para 5 it has been stated to the effect:-

5. Learned Counsel for the respondents, however, contends that since the present Rule 186 was introduced on 1.1.1973, the petitioners would not be covered by the amended provisions since they were invalidated prior thereto. It is incontrovertible, however, that the Rule is beneficent in nature and should, therefore, be liberally construed in favour of persons subsequently coming under its umbrella. Even otherwise, there is no reason why retroactive effect should not be given to the Rule. In coming to this opinion we are fortified by the decision in V. Kasturi v. Managing Director, State Bank of India, Bombay, VIII (1998) SLT 297=(1998) 8 SCC 30. In that case Pension Rules had been amended, but the benefit of the Amendment had not been allowed to the petitioners. The Hon'ble Supreme Court had held that there was no reason why persons eligible for pension should not receive pension at the enhanced rates.”,-

At the relevant time as applicable in the instant case on the date 09.10.1995 i.e. the date of the RMB, GMO (MP), 1980, was in force, however, the assessment was not specific on the assessment criteria of the said disability, but in relation to Essential Hypertension, in terms of the Chapter VII of the

GMO (MP), 1980, which has been reproduced hereinabove, the percentage of the disability cannot be assessed at less than 30%.

15. With regard to the other aspect that the disability of the applicant being treated as NANA, it is not in dispute that the present disability of the applicant namely 'Mild Idiopathic Hypertension' has been conceded as 'Aggravated by Military Service'. **The Medical Board has recorded the reasons of assessment being 'Aggravated' mentioned as 'Physical and mental stress and strains of military duties for a period of more than 10 years'**. This finding is clearly reflected in Part III Opinion of the Medical Board, where the Board has detailed the factors and duration of service conditions that aggravated the applicant's disability. The relevant portion of the Medical Board's opinion is reproduced hereinunder:-

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

XXXXXXXXXXXX

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

Disability	क A	ख B	ग C
Mild Idiopathic Hypertension	NO	YES	NO

(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.

Physical and mental stress and strains of military duties for a period of more than 10 years.” ,

However, the assessment/opinion of the RMB has been overruled by the administrative authority resulting in denial of the disability element of pension to the applicant. The issue in question is no more **res integra**. The case is hand is squarely covered by the decision of the Hon'ble Supreme Court in the case of **Ex Sapper Mohinder Singh Vs. Union of India & Ors. [Civil Appeal No. 104 of 1993]** decided on 14.01.1993, wherein the Hon'ble Supreme Court has observed that without physical medical examination of the patient, the administrative/higher authority cannot sit over the opinion of a medical board. The observations of the Hon'ble Supreme Court in the judgment in the case of **Ex Sapper Mohinder Singh** (supra) being relevant are 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 petitioner was subjected to any higher medical Board before the Chief Controller of Defence Accounts (Pension) decided to decline the disability pension to the petitioner. 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.”

16. Subsequent to this, the Integrated HQ of MoD (Army) issued letter dated 25.04.2011, which states, “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.” The said letter further asks “Command Headquarters to instruct all Record Offices under their control to withdraw unconditionally from such cases,

notwithstanding the stage they may have reached and such files be processed for sanction”.

17. In view of the decision of the Hon'ble Supreme Court in **Ex Sapper Mohinder Singh** (Supra), we are of the considered view that the claim for disability pension was wrongly interfered with by the administrative authority which is unsustainable in law when the disability of the applicant has been held as 'Aggravated by military service' by the medical experts.

18. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is held entitled to the grant of the disability element of disability pension in respect of the disability i.e. Mild Idiopathic Hypertension @ 30% for life with the broad-banding benefits in terms of the verdict of the Hon'ble Supreme Court in **UOI & Ors Vs. Ram Avtar** in Civil Appeal 418/2012.

CONCLUSION

19. In view of the aforesaid judicial pronouncements and parameters, the applicant is entitled for disability element of pension. Therefore, the OA 1116/2015 is allowed. The respondents are thus directed to grant disability element of pension to the applicant for the disability of 'Mild Idiopathic

Hypertension @ 30% for life', which be rounded off to 50% for life, in terms of the judicial pronouncement of the Hon'ble Supreme Court in the case of **Union of India Vs. Ram Avtar** (supra). The payment of the amount of arrears however is directed to commence to run from a period of three years prior to the institution of the present OA instituted on 17.12.2015, in terms of the verdict of the Hon'ble Supreme Court in **UoI & Ors Vs Tarsem Singh** (2008) 8 SCC 648.

20. Accordingly, the respondents are directed to calculate, sanction and issue the necessary PPO to the applicant within three months from the date of receipt of copy of this order, failing which, the applicant shall be entitled to interest @ 8% per annum till the date of payment.

Pronounced in open Court on this 12 day of January, 2026.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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