

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

OA 1919/2021

Cdr Om Prakash (Retd)

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Shakti Chand Jaidwal, Advocate

For Respondents : Mr. Sanjay Pal, Advocate

CORAM :

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

ORDER

1. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant vide the present OA makes the following prayers:-

“(a) Call for relevant records of the Applicant and after perusal thereof, set aside the impugned order dated 03.02.2021 passed by the Respondents, rejecting appeal of the Applicant for grant of disability pension.

(b) Direct the Respondents to concede disabilities of the Applicant, namely, “Primary HYPERTENSION, DYSLIPIDEMIA and SENSORINEURAL HEARING LOSS LT” as Attributable to/Aggravated by stress and strain of Naval Service;

(c) Direct the Respondents to grant disability pension to the Applicant @ 46% for life w.e.f. 01.12.2019, as degree of his disablement due to the said disabilities has been assessed @ 46% for life by the RMB.;

(d) Direct the Respondents to pay disability pension to the Applicant at enhanced rate of 50% for life from the date of his retirement

from service i.e. 001.12.2019 by broadbanding Applicant's disability from 46% to 50% as per Govt. Policy dated 31.01.2001;
(e) Direct the Respondents to pay to the Applicant an interest @ 10% p.a. on arrears of the disability pension w.e.f. 01.12.201 and/or;
(f) 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 enrolled in Indian Navy on 06.02.1985 and subsequently the applicant was commissioned in Logistic Cadre of the Indian Navy on 01.10.1997. The applicant retired permanently from the service on 30.11.2019. The Release Medical Board held on 12.07.2019 found the applicant fit to be released from service in low medical category S2A2(P) PMT for (i) Primary Hypertension (I-10.0), (ii) Dyslipidemia (E-78) (iii). S2A2(H) PMT for Sensorineural Hearing Loss (LT) (H-90.4) and assessed the disabilities of (i) Primary Hypertension @ 30% for life, (ii) Dyslipidemia @ 1-5% for life and (iii) Sensorineural Hearing Loss (LT) @ 20% for life, compositely assessed @ 46% for life. While the first disability, 'Primary Hypertension' was conceded to be 'Aggravated by military service', the other two disabilities viz Dyslipidemia and Sensorineural Hearing Loss (LT) were held to be 'neither

attributable to nor aggravated by service' vide RMB dated 12.07.2019. However, the applicant was not granted the disability element of disability pension.

3. The initial claim of the applicant for grant of the disability pension was rejected by the Directorate of Pay & Allowances, IHQ of MoD (Navy) vide letter No. PN/7832/DP/19 dated 09.12.2019 with an advice that in case, the applicant is not satisfied with the decision of the respondents, he may prefer an appeal to the Appellate Committee within six months from the date of receipt of the above mentioned letter. The applicant preferred his first appeal dated 01.06.2020 against rejection of initial claim grant of disability pension, which was also rejected by the Appellate Committee on First Appeal (ACFA) vide IHQ MoD (N) letter No. PN/7588/DP/18 dated 27.02.2020. The applicant preferred his second appeal dated 11.02.2021 but the same was also rejected by the Competent Authority vide IHQ MoD (N) dated PN/7832/DP/19 dated 28.03.2022. Aggrieved by the rejection of his appeals, the applicant has filed the present OA on 01.09.2021. In the interest of justice, it is considered appropriate to take up the present

OA for consideration, in terms of Section 21(2) of the AFT, Act 2007.

CONTENTIONS OF THE PARTIES

4. The learned counsel for the applicant submitted that the prayers made in the present OA are confined to the grant of disability element of pension in relation to the disability of (i) Primary Hypertension @ 30% for life only and the prayer made for grant of disability element of pension in relation to other disabilities viz 'Dyslipidemia' and 'Sensorineural Hearing Loss (LT)' are not pressed.

5. The learned counsel for the applicant placing reliance on the judgment of the Hon'ble Supreme Court in Ex-Spr Mohinder Singh vs. UOI & Ors (Civil Appeal No. 164 of 1993) wherein, it is held that findings of the Medical Board who physically examined the individual are to be treated as final unless altered by the higher competent medical authority.

6. Placing reliance also on the judgment of the Hon'ble Supreme Court in ***Dharamvir Singh v. UOI & Ors [2013 (7) SCC 36]***, the learned counsel for the applicant submitted 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 Navy at various places in different environmental and service conditions including 11 years of serving at hard station in Andaman & Nicobar Islands in his prolonged service and thus thereby, any disability during the time of his service has to be deemed to be attributable to or aggravated by military service.

7. It was further submitted on behalf of the applicant that the applicant's disability of 'Primary Hypertension' was detected in Jun 2019 while he was working in Dhanvantari (Port Blair) after around 34 years of continuous service.

8. The learned counsel for the applicant also placed reliance on judgment of the Hon'ble Supreme Court in **UoI & Ors. vs Rajbir** in Civil Appeal No. 2904/2011 to submit that the disability is to be treated as attributable to/aggravated by military service.

9. The learned counsel further placed reliance on the decision of the AFT, Principal Bench, New Delhi in the case of OA 1386/2017 titled **Col Sanjeev Bhattacharjee (Retd) vs. UOI & Ors** decided on 04.08.2020, OA 1645/2017 titled **Ex Sub Tejveer Singh vs. UOI & Ors** decided on 09.08.2019, wherein similarly situated persons were granted relief.

10. Furthermore, learned counsel for the applicant submitted that even though the applicant's disability of 'Primary Hypertension' has been conceded as aggravated by service by the Release Medical Board held on 12.07.2019, but the claim of his disability pension was rejected by the Competent Authority considering it as 'NANA'.

11. *Per contra*, the learned counsel for the respondents submitted although RMB conceded the disability of the applicant namely 'Primary Hypertension' as aggravated by service considering 'vide para 43, Chapter-VI, of GMO 2008 (revised), onset whilst serving in active field area'. However, Directorate of Pay & Allowances, IHQ – MoD (Navy) has not concurred for grant of disability pension stating that the net assessment qualifying for disability pension has been assessed @ **Nil**. Hence, his claim for the grant of the disability was rejected by the competent authority and thus the applicant is not entitled to the grant of the disability pension.

ANALYSIS

12. We have heard the learned counsel for the parties and have perused the record produced before us.

13. In view of the disabilities of the applicant namely 'Dyslipidemia' and 'Sensorineural Hearing Loss (LT)' not being pressed by the applicant, we adjudicate only for the disability of 'Primary Hypertension', which has been assessed @ 30% for life and is conceded as aggravated by service by the Release Medical Board.

14. It is an undisputed fact that at the time of joining the service on 06.02.1985, the applicant was found medically and physically fit and the present disability had admittedly first occurred in Jun, 2019, i.e. after about 34 years and 09 months of service and was conceded as 'aggravated by service' by the Release Medical Board with the reasons for assessment being 'Aggravated' by service mentioned as 'Vide para 43, Chapter-VI, of GMO 2008 (revised), onset whilst serving in active field area', Opinion of the Medical Board of the RMB. The same is reproduced to the effect:-

PART VII
OPINION OF THE MEDICAL BOARD

1. Please endorse diseases/ dis in chronological order of occurrence:-

Disability	Attributable to service (Y/N)	Aggravated by service (Y/N)	Detailed Justification
(a) PRIMARY HYPERTENSION, ICD I-10.0	No	YES	Vide para 43, Chapter-VI, of GMO 2008 (revised), onset whilst serving in active field area.
(b)	No	No	Life style disorder.

DYSLIPIDEMIA, ICD E 78			
(c) SENSORINEURAL HEARING LOSS LT, ICD NO. H 90.4	No	No	Onset of peace. No h/o suggestive of any infection/traumatic etiology. No history available suggestive of continuous exposure or proximity to any loud noise, refer para 23 ch-VI of GMO 2008.

Note:- 1. A detailed justification regarding the board's rec on the entitlement for each disease/ dis must be provided sequentially especially in **NANA** cases as per enclosed Appendix 'A'.

2. In case of multiple disabilities of inadequate space, does not paste over the opinion, an additional sheet should be attached instead, providing a detailed justification, which is authenticated by the President and all members of the med bd.

3. In case the medical board differs in opinion from the previous medical board, a detailed justification explaining the reasons to differ should be brought out clearly.

4. A dis cannot simultaneously be both attributable to and aggravated by mil service, or one or neither of which will apply.

15. However, the competent authority after adjudication opined the said disability to be 'NANA' without stating any reason for disagreeing with the findings of the Medical Board. 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.

16. The issue of primacy of the opinion/assessment of a Medical Board is no more **res integra**. The case in 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. [supra]** 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.”

17. In view of the decision of the Hon'ble Supreme Court in **Ex Sapper Mohinder Singh (Supra)**, which has been relied upon in numerous orders of the Tribunal, we are of the considered view that the assessment/opinion of the RMB with regard to the disability in question to claim for disability element of pension was wrongly interfered with by

the administrative authority which is unsustainable in law when the disability of the applicant has already been held as 'Aggravated by military service' by the RMB, which is a medical expert body. We, therefore, hold that the applicant is entitled to the disability element of disability pension in respect of the disability of 'Primary Hypertension', assessed @ 30% for life along with broad-banding benefits.

CONCLUSION

18. In light of the above, O.A. No. 1919 of 2021 is allowed. The respondents are directed to grant the applicant disability element of disability pension with respect to his disability of 'Primary Hypertension' @ 30% for life from the date of retirement, which is directed to be further 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*** (Civil Appeal No. 418/2012), decided on 10.12.2014.

19. 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 and the amount of arrears shall be paid by the respondents, *failing which*, the applicant will be

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entitled for interest @ 6% per annum from the date of receipt of copy of the order by the respondents.

20. There is no order as to costs.

Pronounced in the open Court on this _____ day of February, 2026.

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

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

/AK/