

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

OA 4324/2024

Lt Col Venugopal MG (Retd) ... Applicant
Versus
Union of India & Ors. ... Respondents

For Applicant : Mr. K R Verma, Advocate
For Respondents : Mr. Sundeep Kumar, 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) Quash and set aside the impugned orders dated 29 Dec 2022, dated 28 Jun 2023 and dated 13 Aug 2024, passed by the Respondents rejecting the initial claim and first appeal of the Applicant for claim to disability pension. (Annexure A-1(Colly).;

(b) Direct the Respondents to grant disability pension to the Applicant for the ID (II). PRIMARY HYPERTENSION, @ 30% duly broad banded to @ 50%, from the date of retirement. The date of retirement is 22 Aug 2022 (A/N).

(c) Direct the Respondents to pay Interest at 9% per annum from the date of retirement of the Applicant to till the actual date of payment.

(d) Pass any other order / direction that this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

BRIEF FACTS

2. The applicant was commissioned in the Army Dental Corps of Indian Army on 21.09.2000 and retired from the service on 24.08.2022 under the clause of "Prematurely retired from service" after rendering total 21 years 11 months and 03 days of regular service. The Release Medical Board held on 18.06.2022 found the applicant fit to be released from service in low medical category P2 (P) and assessed the disabilities of (i) Crush Injury (R) Middle and Ring Finger Optd (ICD S67.194D) @ 15% for life, (ii) Primary Hypertension (ICD I-10) @ 30% for life (iii) Dyslipidemia (ICD E-78.0) @ 5% for life, compositely assessed @ 44% for life. While the second disability, 'Primary Hypertension' was conceded to be 'Aggravated by military service', the other two disabilities viz 'Crush Injury (R) Middle and Ring Finger Optd' and 'Dyslipidemia' were held to be 'neither attributable to nor aggravated by service' vide RMB dated 18.06.2022. However, the applicant was not granted the disability pension.

3. The initial claim of the applicant for grant of the disability pension was rejected by the Adjutant General's

Branch, IHQ of MoD (Army) vide letter No. DR-10563N/MPRS(O)/167/2022/AG/MP (ORO) dated 29.12.2022 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 08.02.2023 against rejection of initial claim grant of disability pension, which was also rejected by the Appellate Committee on First Appeal (ACFA) vide letter No. DR-10563N/MPRS(O)/NE/90/2023/AG/PS-8 dated 28.06.2023. The applicant preferred his second appeal dated 02.07.2023 but the same was also rejected by the Second Appellate Committee on Pension (SACP) vide letter No. B/38046A/943/2023/AG/PS-9 dated 13.08.2024. Aggrieved by the rejecting of his claim, the applicant has filed the present OA on 24.09.2024. 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 'Crush Injury (R) Middle and Ring Finger Optd' and 'Dyslipidemia' are not pressed.

5. Placing reliance 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 Army at various places in different environmental and service conditions 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.

6. It was further submitted on behalf of the applicant that the applicant's disability of 'Primary Hypertension' was detected in Jan 2021 while he was working in HQ 14 Corps, Leh after around 19 years of continuous service and thus

the prolonged service caused stress and strain and adversely affected the physical and mental health condition of the applicant, Even the Entitlement Rules, Annexure III contains certain diseases which are affected by stress and strain of Military Service and the present disease i.e., 'Primary Hypertension' has been listed therein as one of the diseases affected by to stress and strain of Military Service.

7. 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.

8. The learned counsel further placed reliance on the decision of the AFT, Principal Bench, New Delhi in the case of OA 728/2017 titled **Ex Air Cmde MDN Prasad vs. UOI & Ors** decided on 13.07.2018, OA 243/2014 titled **Ex Nb Sub Dharamvir Singh vs. UOI & Ors** decided on 06.05.2019, OA 364/2018 titled **Ex Sqn Ldr VN Sharma vs. UOI & Ors** decided on 06.03.2020, OA 1682/2017 titled **Ex Lt Col Krishna Mohan Rai vs. UOI & Ors** decided on 01.01.2019, OA 608/2018 titled **Ex Wg Cdr Girija Datt Dabral vs. UOI & Ors** decided on 06.03.2020 and OA 1446/2021 titled **Ex**

Cdr AK Srivastava vs. UOI & Ors decided on 27.02.2023

wherein similarly situated persons were granted relief.

9. Furthermore, learned counsel for the applicant submitted that even though the applicant's disability of 'Primary Hypertension' has been conceded as 'aggravated by the Military Service' by the Release Medical Board held on 18.06.2022, but the claim of his disability pension was rejected by the Competent Authority stating as 'NANA'.

10. *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 HAA. However, Appellate Committee on First Appeals (ACFA) and Second Appellate Committee on Pension (SACP) have not concurred the opinion of Release Medical Board for grant of disability pension stating that the disability does not fulfill the conditions laid down as per Rules 6, 10 & 11 of the Entitlement Rules for Casualty Pensionary Award to Armed Forces Personnel-2008, read in conjunction with Para 43 Chapter VI, GMO 2002, amendment 2008. 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

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

12. In view of the disabilities of the applicant namely 'Crush Injury (R) Middle and Ring Finger Optd' and 'Dyslipidemia' are not being pressed by the applicant, we adjudicate only for the disability of 'Primary Hypertension', which has been assessed @ 30% for life.

13. It is an undisputed fact that at the time of joining the service in Sep, 2000, the applicant was found medically and physically fit and the present disability had admittedly first occurred in Jan, 2021, i.e. after about 19 years and 4 months of service and was conceded as 'aggravated by service' by the Release Medical Board dated 18.06.2022 with the reasons for assessment being 'Aggravated' mentioned as 'As the disability is of idiopathic origin and onset of the disability is in Field/CI Ops/HAA area Leh, (J&K) cause and cause related to military Service. Hence the disability was conceded as Aggravated as per para 43 CH-VI

of GMO-2008' in the Part VII, 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) CRUSH INJURY (R) MIDDLE AND RING FINGER OPTD (ICD S67.194D)	YES	NO	Disability attributable as per IAFY (2006) duly signed by Stn Cdr, Stn HQ Secunderabad dt 26 Nov 2018.
(b) PRIMARY HYPERTENSION (ICD I-10)	NO	YES	As the disability is of idiopathic origin and onset of the disability is in Field/CI Ops/HAA area Leh, (J&K) cause and cause related to military Service. Hence Aggravated conceded as per para 43 CH-VI of GMO-2008.
(c) DYSLIPIDEMIA (ICD E-78.0)	NO	NO	Due to life style disease & personal dietary habits not related to mil service, hence cause & course NANA.
<p>Note:- 1. A detailed justification regarding the board's recommendations on the entitlement for each disease/ disability must be provided sequentially especially in NANA cases as per enclosed Appendix 'A'.</p> <p>2. In case of multiple disabilities or 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 medical board?</p> <p>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.</p> <p>4. A disability cannot simultaneously be both attributable to and aggravated by military service, only one or neither of which will apply.</p>			

14. However, the competent authority after adjudication opined the said disability to be 'NANA' 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.

15. The 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. [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. 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

17. In light of the above, O.A. No. 4324 of 2024 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.

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

19. There is no order as to costs.

Pronounced in the open Court on this 3rd day of March, 2026.

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

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

/AK/