

**COURT NO. 1, ARMED FORCES TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**O.A. No. 541 of 2023**

**In the matter of:**

**Col Vijay Dutt Chandola (Retd) ... Applicant**

**Versus**

**Union of India & Ors. ... Respondents**

**For Applicant : Mr. IS Yadav, Advocate**

**For Respondents : Mr. SS Chugh, Advocate**

**CORAM :**

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

**ORDER**

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) To quash and set aside the respondents letter No. 13101/IC-48953A/AEC/MP6(E)/67/2021/AG/MP(ORO) dated 09 Nov 2021, and***

***(b) To direct the respondents to grant the disability element of pension 57% and further rounding off the disability element of pension to 75% in terms of letter dated 31 Jan 2001; and***

***(c) To grant an interest of 12% on the delayed payment of service element of the disability pension and revision and***

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

***(e) Such further order or orders, direction/directions be passed so as to this Learned Tribunal may deem fit and proper in accordance with law."***

### **BRIEF FACTS**

2. The applicant was commissioned into the Army Education Corps on 10.06.1989 and superannuated from service on 30.11.2021 in low medical category S1H1A1P2(P)E1. The Release Medical Board (RMB), held on 01.06.2021, assessed the disabilities of (i) Primary Hypertension (1-10) assessed @ 30%; (ii) Cough Variant Asthma (J-45.9) assessed @20%, (iii) Obesity (E-66) assessed @ 5% and (iv) Diabetes Mellitus Type-II (E-II) assessed @20%. The composite assessment of disabilities was determined as 57% for life and were assessed as NANA.

3. The initial claim of the applicant for grant of the disability pension was rejected vide letter dated 09.11.2021 on ground that applicant's disability does not fulfil the eligible condition for grant of disability element of pension. The applicant preferred his first appeal dated 22.02.2022 against rejection of his initial claim for disability pension which has not been replied to by the respondents till the date of filing this OA so file on 22.08.2022.

Thereafter the applicant preferred his second appeal dated 26.08.2021 which was rejected vide IHQ MoD/DPA letter No. PN/7770/DP/19 dated 30.05.2022. Aggrieved by this, the applicant approached this Tribunal and has filed the present OA on 22.08.2022. 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.

### **CONTENTIONS OF THE PARTIES**

4. The learned counsel for the applicant stated during the course of the hearing that the applicant would be pressing for the disability of Cough Variant Asthma (J-45.9) assessed @20%, only and not for other disabilities i.e. Primary Hypertension (1-10) assessed @ 30%, Obesity (E-66) assessed @ 5% and Diabetes Mellitus Type-II (E-II) assessed @20%.

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 Indian Army at various places in different environmental conditions and in most difficult field postings in his total 32 years and 05 months of service with complete dedication and thus thereby, any disability that arose during his service has to be deemed to be attributable to or aggravated by military service. It is further submitted by the learned counsel that though, the disability of the applicant namely Cough Variant Asthma (J-45.9) assessed @20% is conceded as 'Aggravated by Military Service' by the RMB, however, the disability pension was denied to the applicant.

6. On behalf of the applicant reliance was placed on the verdicts of the Hon'ble Supreme Court in the case of **Union of India v. Rajbir Singh** 2015(12) SCC 264, **D.S Nakara v. Union of India** AIR 1983 SC 130, Civil Appeal No. 4949/2013 titled **Dharamvir Singh vs. Union of India**. The applicant also placed reliance on orders of the AFT, Principal Bench, New Delhi in OA No. 491/2014, OA No. 178/2015 wherein similarly situated personnel were given relief.

9. *Per contra*, the learned counsel for the respondents submitted although RMB conceded the disability of the applicant namely 'Cough Variant Asthma (J-45.9) assessed @20%' as Aggravated by service. However, the rejection was based on the findings that the said disability of the applicant did not fulfil the conditions under Rules 6, 10 and 11 of the Entitlement Rules for Casualty Pensionary Awards, 2008, read in conjunction with relevant provisions of the Guide to Medical Officers (GMO), 2002 (amended 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**

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

11. It is an undisputed fact that at the time of joining the service in June, 1989, the applicant was found medically and physically fit and the present disability of Cough Variant Asthma (J-45.9) had admittedly first occurred in May, 2002, i.e. after about 12 years of service.

12. It is not in dispute that the present disability of the applicant i.e. 'Cough Variant Asthma (J-45.9) assessed @20%' has been conceded as 'Aggravated by military service' by the Release Medical Board dated 01.06.2021 with the reasons for assessment being 'Aggravated' mentioned as 'Due to strenuous mil activities, collective training like BPET, PPET, Games, Parade, Prolonged duties and exposure to various climatic conditions in military service vide Para-5, Chapter VI of GMO 2008. The same is reproduced to the effect:-

Disability	Attributable to service (Y/N)	Aggravated by service (Y/N)	Detailed justification
Cough Variant Asthma (J-45.9) assessed @20% normal LV function (ICD No. I25.0)	NO	<b>YES</b>	Due to strenuous mil activities, collective training like BPET, PPET, Games, Parade, Prolonged duties and exposure to various climatic conditions in military service vide Para-5, Chapter VI of GMO 2008.

13. 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.

14. The issue in question 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 made 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.”***

15. In view of the decision of the Hon'ble Supreme Court in ***Ex Sapper Mohinder Singh*** (Supra), we are of the considered view that opinion of the RMB was wrongly interfered with by the administrative authority and is unsustainable in law when the disability of the applicant has been held as 'Attributable to military service'.

### **CONCLUSION**

16. In view of the aforesaid judicial pronouncements and the parameters referred to above, OA 541/2023 is allowed. The respondents are thus directed to grant disability element of pension to the applicant @ 20% for life which be rounded off to 50% for life from the date of 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 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 @ 6% per annum till the date of payment.

18. There is no order as to costs.

Pronounced in open Court on this 17 day of March, 2026.

  
[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

  
[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)

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