

**Court No.1**  
**RESERVED**

ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW

**Original Application No. 24 of 2018**

Thursday, this the 24<sup>th</sup> day of May, 2018

**Hon'ble Mr. Justice SVS Rathore, Member (J)**  
**Hon'ble Air Marshal BBP Sinha, Member (A)**

Naval Kishor, son of Late Shri Parashu Ram, resident of village  
Peepriya, Post Etmadpur, district Agra, Pin – 283202 (UP)

..... Applicant

By Legal Practitioner - **Shri R. Chandra, Counsel for the Applicant**

Versus

1. Union of India, through the Secretary, Ministry of Defence,  
Government of India, New Delhi – 11
2. Chief of the Army Staff, Integrated Headquarters of Ministry of  
Defence (Army) DHQ Post Office New Delhi – 11.
3. The Officer-in-Charge, Records, the Brigade of the Guards,  
Kamptee – 441001
4. The Chief Controller Defence Accounts, Draupadi Ghat,  
Allahabad-14 (UP)

..... Respondents

By Legal Practitioner - **Dr Gyan Singh, Addl Central Govt. Counsel**

**ORDER****“Per Hon’ble Air Marshal BBP Sinha (Member A)”**

1. Being aggrieved by the denial to grant disability pension, the applicant has preferred this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 with the following reliefs:-

(I) Hon’ble Tribunal may be pleased to direct the respondents to grant disability pension with effect from 09.10.2001 for life along with the interest at the rate of 18% per annum.

(II) Hon’ble Tribunal may be pleased to grant benefit of rounding of disability pension @ 50 per cent in terms of Ram Avtar’s case.

(III) Any other appropriate order or direction which the Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case.

2. Brief facts, as they emerge out, are that the applicant was enrolled in the Indian Army as a recruit (Soldier GD) in Brigade of Guards on 03.01.2001. The applicant as a recruit was brought before the Second Medical Board at Regimental Centre Kamptee on 21.07.2001 after about six months of initial enrolment. The Second Mandatory Medical Board found the applicant suffering from ‘PRIMARY HYPERTENSION’ and referred the applicant to INHS Ashvini for opinion of Advisor Medicine who vide his opinion dated 11.08.2001 recommended the applicant to be invalided out of service in low medical category SHAP5E. The applicant was accordingly invalided out from service on 07.10.2001 under Rule 13 (3) IV of the Army Rules, 1954 before completion of his terms of engagement after about six months. The duly constituted Invaliding Medical Board

assessed his disability @ 20% for life and opined the disability of the applicant as 'neither attributable to nor aggravated' by military service. The applicant's claim for disability pension was accordingly rejected. The appeal preferred by the applicant also met the same fate and was rejected.

3. Submission of learned counsel for the applicant is that the onset of Invaliding Disease 'PRIMARY HYPERTENSION' suffered by the applicant was not present at the time of entry of the applicant in the Army and it was, therefore, attributable to and aggravated by harsh and strenuous military training. It was submitted that if the disease existed prior to the enrolment, it should have been detected by the Recruiting Medical Board and the respondents have acted illegally in referring the applicant to Second Medical Board.

4. Learned counsel for the respondents on the other hand submitted that the Invaliding Medical Board had opined that the disease was not connected with military service. He further submitted that the disease was 'neither attributable to nor aggravated' by military service. The onset of the disease was detected at the very initial stage of training and was not connected with military service.

5. Army HQ letter No. 76063/DGMS-5A dated 06 July 1999 provides for a Mandatory Second Medical Examination, thus, the decision of the authorities for referring the applicant for a second Medical Board was a mandatory requirement and in consonance with Army letter referred to above, which is reproduced as follows:-

“Tele : 3011063

*Dte Gen of Medical Services (Army)  
Adjutant General’s Branch  
Army HQ “L” Block N. Delhi-110001*

76063/DGMS/5A

06 July 99

*Headquarters  
Southern Command (Med)  
Eastern Command (Med)  
Central Command (Med)  
Northern Command (Med)  
Western Command (Med)*

**RECRUITING MEDICAL PROCEDURES : ZROs  
MODIFICATION**

1. Changes as under have been made in the second medical examination procedures for candidates recruited through ZROs/BRO, UHQ quota :-

(a) Candidates recruited through UHQ quota will be subjected to a second medical examination at the authorized hospital. Centres will liaise with the Commandants/CO’s hospital for the necessary arrangements. Candidates found fit/unfit will be dealt with in accordance with the procedure so far followed for ZRO/BRO recruited candidates second medical examination. **ZRO/BRO recruited recruits will continue to undergo a second medical examination as hither to.**

(b) Status of recruits found unfit at second medical examination. It has been clarified by the Rtg Dte that the personnel being subjected to the second medical examination are recruits. They will thus be treated as Recruits and not judged by standards for fresh Recruitment. Thus recruits with correctible disabilities like hydrocele etc will be referred to the authorized hospitals for treatment and retained in service in accordance with the stipulations of MT 3 letter No A/203/4/MT-3 dated 20 Feb 86 (Photocopy attached). All concerned and in particularly Sr Advisers in all specialties may be advised to ensure action on the subject. Present practice of declaring recruits unfit for treatable disabilities will cease forthwith.

2. Contents of this letter may be disseminated to all concerned under your jurisdiction.

3. Please ack.

(Auth : Minutes of the meeting held in AG’s office on 26 Apr 99).

*Sd/- x x x x x  
(AB Pradhan)  
Col  
Dir MS (PS)  
For DGMS (Army)*

*Encls : As mentioned*

Copy to :-

*AG/Rtg Dte 6SP - Necessary instructions for subjecting UHQ candidates to a second medical examination be issued at earliest.  
AG’s Sectt - for information.”*

(Emphasis Supplied)

6. As per Army Headquarter letter quoted hereinabove, every recruit enrolled in the Army is required to undergo a mandatory second medical examination. In view of mandatory requirement, the applicant was referred for Second Medical Examination in which he was found suffering from PRIMARY HYPERTENSION.

7. In the case of **Dharmavir Singh vs. Union of India**, (2013) 7 SCC 316, their Lordships of the Hon'ble Supreme Court have held as under:

*“On the question whether any persisting deterioration has occurred, it is to be remembered that invalidation from service does not necessarily imply that the member's health has deteriorated during service. The disability may have been discovered soon after joining and the member discharged in his own interest in order to prevent deterioration. In such cases, there may even have been a temporary worsening during service, but if the treatment given before discharge was on grounds of expediency to prevent a recurrence, no lasting damage was inflicted by service and there would be no ground for admitting entitlement. Again a member may have been invalided from service because he is found so weak mentally that it is impossible to make him an efficient soldier. This would not mean that his condition has worsened during service, but only that it is worse than was realized on enrolment in the army. To sum up, in each case the question whether any persisting deterioration on the available evidence which will vary according to the type of the disability, the consensus of medical opinion relating to the particular condition and the clinical history.”*

8. We have carefully perused the Invaliding Medical Board proceedings and find that that the applicant was suffering from PRIMARY HYPERTENSION. Interestingly, the applicant has signed in Part-I of the Medical Board proceedings admitting that PRIMARY HYPERTENSION first started on 01.02.2001, i.e. within 27-28 days for his enrolment as recruit. Notwithstanding the above, it is common knowledge that intensive military training which is physical in nature

cannot contribute towards increasing Hypertension (Blood Pressure). On the other hand, strenuous physical training is bound to reduce overweight and Hypertension (Blood Pressure). In view of this basic fact, we are in agreement with the opinion of the Invaliding Medical Board that the disease of the applicant has no direct or casual connection with military training/service and is neither attributable to nor aggravated by military service. Thus, the disease being not attributable to or aggravated by military training/service, the applicant is not entitled to get the disability pension.

9. To sum up, we are of the opinion that the O.A. lacks merit and deserves to be dismissed.

10. It is accordingly **dismissed**.

No order as to cost.

(Air Marshal BBP Sinha)  
Member (A)

(Justice SVS Rathore)  
Member (J)

Dated : May, 2018  
anb