

**E-Court No. 1**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**Original Application No 719 of 2022**

Wednesday, this the 14<sup>th</sup> day of December, 2022

**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

14548519M Ex Hav. Vandana Venkata Ramana  
S/o Appalasuri  
R/o No. 13-9-98/1A Kaki Street,  
Srikakulam,  
Srikakulam Distt, Andhra Pradesh – 532001

..... Applicant

Ld. Counsel for the Applicant: **Shri Aditya Singh Puar**, Advocate

Versus

1. Union of India, through Secretary to Govt. of India, Ministry of Defence, South Block, New Delhi-110011.
2. Additional Director General of Personnel Services, PS Directorate, Sena Bhawan, DHQ PO, New Delhi – 110011.
3. Additional Director General of Manpower (Policy & Planning), Adjutant General's Branch, West Block III, RK Puram, New Delhi – 110066.
4. Principal Controller of Defence Accounts (P), Draupadi Ghat, Allahabad (UP).

..... Respondents

Ld. Counsel for the Respondents : **Ms. Anju Singh**,  
Central Govt Counsel

## ORDER

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- “(i) Petitioner, hence, prays for grant of disability pension in accordance with the applicable rules and The Entitlement Rules, 1982, by approving that part of the medical Board (Annexure A-2) wherein his disability has been opined to be aggravated by military service, and quashing/declaring Impugned Orders 1 and 2 as being not only in conflict with the Rules but also in direct contravention of a series of decisions of the Hon’ble Supreme Court (as seen supra),
- (ii) With a further prayer that the respondent’s may be directed to release disability pension for life, along with arrears to the Petitioner, alongwith the benefit of Broad banding in accordance with the judgment of the Hon’ble Supreme Court in Union of India vs. Ram Avtar with heavy costs and compensation and interest within a time bound manner,
- (iii) Any other relief which the Hon’ble Tribunal may deem fit and to be in the interest of the Petitioner.”

2. Briefly stated facts of the case are that the applicant was enrolled in the Army on 03.11.1982 and was discharged from service on 31.12.1999 (AN) in Low Medical Category under Rule 13 (3) III (v)

of Army Rules, 1954. The Release Medical Board (RMB) assessed his disability “**ESSENTIAL HYPERTENSION**” @ 30% for two years and opined the disability as aggravated by military service. The disability pension claim of the applicant was rejected by Medical Advisor (Pension), attached to PCDA (P) Allahabad vide their letter dated 31.08.2000 viewing the disability of applicant as neither attributable to nor aggravated by military service. Accordingly, no disability pension was granted to the applicant. Thereafter, applicant kept awaiting the PPO for the disability pension but no PPO issued for grant of disability pension. It is in this perspective that the applicant has preferred the present O.A.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Indian Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. The disease of the applicant was contacted during the service, hence, it was assessed @ 30% for two years and considered as aggravated by Military Service by RMB. He submitted that the act of overruling the recommendations of RMB by higher competent authority or PCDA (P) Allahabad was wrong and should be set aside. He placed reliance on the judgment of the Hon'ble

Apex Court in the case of ***Dharamvir Singh vs. UOI & Ors***, (Civil Appeal No. 4949 of 2010, arising out of SLP No. 6940 of 2010) and ***Ex. Sapper Mohinder Singh vs. Union of India*** in Civil Appeal No 104 of 1993 decided on 14.01.1993 and pleaded that applicant be granted disability pension as per recommendations of RMB duly rounded off to 50% for life.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant i.e. **“ESSENTIAL HYPERTENSION”** has been regarded as 30% for two years by RMB as aggravated by military service. However, Medical Advisor (Pension), attached to PCDA (P) Allahabad has rejected the claim of the applicant stating that the disability of the applicant is considered as NANA. Therefore, in terms of Rule 173 of Pension Regulations for the Army 1961 (Part-1), applicant does not fulfil the conditions, hence, applicant is not entitled for disability pension. He pleaded for dismissal of the O.A.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the RMB proceedings. The only question which needs to be answered is whether the Medical Advisor (Pension), PCDA (P) Allahabad has power to overrule the opinion of the RMB for the disability?

6. This is a case where RMB had conceded the disability of applicant “**ESSENTIAL HYPERTENSION**” as aggravated by military service. However, PCDA (P) Allahabad has rejected the claim of applicant on the ground that disability of applicant has not been viewed as aggravated to military service. However, it is clear that the higher competent authority i.e. PCDA (Pension) has not physically examined the applicant. The Hon’ble Apex Court has made it very clear that the opinion of the Medical Board cannot be overruled by higher chain of command without physical medical examination of the patient by a higher Medical Board. In this context the operative portion of the judgment of Hon’ble Apex Court in the case of **Ex. Sapper Mohinder Singh vs. Union of India** in Civil Appeal No 104 of 1993 decided on 14.01.1993 is 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 Applicant was subjected to any higher medical Board before the Chief Controller of Defence Accounts (Pension) decided to decline the disability pension to the Applicant. 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.”*

7. Thus in sum and substance we set aside the decision of competent authority and PCDA (Pension) overruling the opinion of RMB without physical examination of applicant by a higher Medical Board and restore the original opinion and findings of RMB for grant of disability element and are of the considered opinion that the applicant was entitled to disability element for his disability **“ESSENTIAL HYPERTENSION”** @ 30% for two years from the date of discharge. The applicant will also get benefit of rounding off from 30% to 50% for two years from the date of discharge from service as per Govt of India, Ministry of Defence letter dated 31.01.2001.

8. Resultantly, the O.A. deserves to be allowed, hence **allowed**. The impugned order passed by the respondents and PCDA (P) Allahabad is set aside and the original opinion of RMB is restored. The applicant's disability **“ESSENTIAL HYPERTENSION”** is to be considered as aggravated by military service in line with RMB recommendations. The applicant is entitled to disability element of disability pension @ 30% for two years duly rounded off to 50% for two years from the date of discharge from service. The respondents are directed to grant disability pension @ 50% for two years from the next date of discharge from service. The respondents are directed to give effect to this order within a period of four months from the date of

receipt of certified copy of this order. The respondents are also directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement of disability pension. Default will invite interest @ 8% per annum till actual payment.

9. No order as to costs.

10. Pending Misc. Application(s), if any, shall stand disposed off.

**(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)**  
**Member (A) Member (J)**

Dated: December, 2022  
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