

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 753 of 2021**Thursday, this the 26th day of May, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)Ram Bachan Singh (No. 7116219P Ex. Hav)
S/o Shri Ganaur Singh, R/o House No. 16A/6G New Market,
Behind Shamim Market, Shivala, Bamrauli,
Allahabad – 211012

..... Applicant

Ld. Counsel for the Applicant: **Shri Ashok Kumar**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. The Officer Incharge Raksha Suraksha Corps Abhilekh, Defence Security Corps Records, Mill Road, Kannanore – 670013.
3. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

..... Respondents

Ld. Counsel for the Respondents : **Shri Rajiv Pandey**,
Central Govt Counsel**ORDER (Oral)**

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) This Hon'ble Court may graciously be pleased to direct the respondents to give disability pension along with its arrears and interest to the applicant w.e.f. 1.8.2005 towards his disability “RENOVASCULAR HYPERTENSION” (Permanent) for life”.

- (ii) This Hon'ble Court may further be pleased to pass such other and/or further order as deem fit, proper and necessary in the circumstances of this case.
- (iii) Award costs to the applicant."

2. Briefly stated facts of the case are that the applicant was enrolled in the Defence Security Corps (DSC) on 30.11.1976. During the extension period, applicant was placed in permanent low medical category P2 w.e.f. 11.02.2005 for his disability "PRIMARY HYPERTENSION" and was discharged from service on 31.07.2005 (AN) in Low Medical Category under Army Rule 13 (3) III (i) after rendering more than 34 years of service. The Release Medical Board (RMB) assessed his disability "**PRIMARY HYPERTENSION**" @ 30% for life 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 28.12.2005 viewing the disability of applicant as neither attributable to nor aggravated by military service. No appeal against the rejection of disability claim was submitted by the applicant. 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/DSC and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army/DSC. The disease of the applicant was contacted during the service, hence, it was assessed @ 30% for life 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 pleaded that applicant be granted disability pension as per recommendations of RMB duly rounded off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant i.e. **“PRIMARY HYPERTENSION”** has been regarded as 30% for life by RMB as neither attributable to nor 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 has been considered as neither attributable to nor aggravated by military service. Therefore, in terms of Rule 173 and 179 of Pension Regulations for the Army 1961 (Part-1) revised vide Rule 53 (a) of Pension Regulations for the Army, 2008 (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 and perused the record. 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 “**PRIMARY HYPERTENSION**” @ 30% for life as aggravated by military service. However, PCDA (P) Allahabad has rejected the claim of applicant on the ground that disability of applicant has been viewed as neither attributable to nor aggravated by 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 “**PRIMARY HYPERTENSION**” @ 30% for life from the date of discharge with benefit of rounding off @ 50% for life 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 orders passed by the respondents and PCDA (P) Allahabad are set aside and the original opinion of RMB is restored. The applicant’s disability “**PRIMARY HYPERTENSION**” is to be considered as aggravated by military service @ 30% for life in line with RMB recommendations. The applicant is entitled to disability element @ 30% for life from the next date of discharge from service duly rounded off to 50% for life. The respondents are directed to grant disability element @ 50% for life from the next date of discharge from service. However, due to law of limitations settled by the Hon’ble Supreme Court in the case of ***Shiv Dass v. Union of India and others*** (2007 (3) SLR 445), the arrear of disability element will be restricted to three years preceding the date of filing of the instant O.A. The date of filing of this O.A is 17.11.2021. 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 the order. 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: 26th May, 2022

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