

**SEE RULE 102 (1)**  
**ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA**  
**ORIGINAL APPLICATION : O.A. NO. – 156/2016**

**DATED : THE *Thirty First* DAY OF DECEMBER, 2018**

**CORAM**

**HON'BLE DR. (MRS.) JUSTICE INDIRA SHAH, MEMBER (JUDICIAL)**

**HON'BLE LT GEN GAUTAM MOORTHY MEMBER (ADMINISTRATIVE)**

APPLICANT (S) : Ex-JC-266593F Nb Sub Sachidanand Singh  
S/O Late Deoki Singh  
Village – Telari  
PO – Rupou, The – Nawada, Dist – Nawada  
(BIHAR) PIN – 805 107

**Vs.**

RESPONDENT (S)

- (1) The Union of India  
Through Secretary, Ministry of Defence  
South Block, DHQ PO, New Delhi-110 011
- (2) The Chief of the Army Staff  
Through Adjutant General  
Integrated HQ of MoD (Army)  
South Block, DHQ PO, New Delhi-110 011
- (3) The Secretary  
Department of Ex-servicemen Welfare & Pensions  
Ministry of Defence, South Block  
New Delhi – 110 011
- (4) The Officer-in-Charge  
Artillery Records  
PIN – 908 802  
c/o 56 APO
- (5) The Principal Controller of Defence Accounts  
(Pensions), Drapaudi Ghat,  
Allahabad (UP) – 211 014

Counsel for the applicant (s) : Mr. SK Choudhury, Ld. Counsel

Counsel for the Respondent (s) : Mr. Daya Shankar Mishra, Ld. Counsel

**ORDER****PER HON'BLE LT GEN GAUTAM MOORTHY, MEMBER (ADMINISTRATIVE)**

1. This is a second round of litigation and it pertains to the claim for disability pension.
2. The applicant, a Junior Commissioned Officer (JCO) in the Indian Army was enrolled on 14.03.1983 as a Clerk in the Regiment of Artillery and was discharged from service on 31.03.2007 being placed in medical category lower than S1H1A1P1E1, ie. S1H1A1P2 (Permanent) E2 (Permanent) due to the disability of ***Perforating Injury Right Eye (Optd)*** and ***Primary Hypertension***. Both disabilities were assessed at 30% each with a composite disability of 60% for life. However, both the disabilities were held as "Neither Attributable nor Aggravated by Military Service" (NANA).
3. The applicant appealed against both these disabilities; and after rejection by both the First Appellate Authority as well as by the Second Appellate Authority, he approached this Bench of the Armed Forces Tribunal vide O.A. No. - 113 of 2013. This Bench, while rejecting the claim for disability pension for the first disability, '***Perforating Injury Right Eye (Optd)***' vide Order dt. 07.08.2015 (O.A. No. 113/2013), ruled as under : -

*"The Hon'ble Apex Court in Dharamvir Singh vs Union of India, AIR 2013 SC 2840 and Veer Pal Singh vs. Secretary, Ministry of Defence, AIR 2013 SC 2827 has dealt with the issue of payment of disability pension to the armed forces personnel. In Veer Pal Singh's case (supra), it is held by the Hon'ble Supreme Court that the opinion of the medical*

*board “deserves respect but not worship.” In appropriate cases, judicial review of medical opinion is permissible. Hence, the applicant seems to be entitled to disability pension.*

*In view of the above, the respondents are directed to consider the applicant’s plea for grant of disability pension for Primary Hypertension with effect from the date of his retirement i.e. from 01.04.2007 (date of discharge) and pass an appropriate, reasoned and speaking order keeping in view the observations made in the body of the present order expeditiously, say within a period of four months from the date of communication of this order and also communicate that order to this Tribunal as well.*

*Cost made easy.”*

4. Based on the above Order, the applicant appealed to the authorities to grant him disability pension for the disease **“Primary Hypertension”**. This application has now been necessitated as the applicant’s plea for grant of disability pension for **“Primary Hypertension”** with effect from the date of his discharge i.e. 01.04.2007 has been rejected vide AG’s Branch, letter No. B/38046A/447/2015/AG/PS-4 (2<sup>nd</sup> Appeal) dt. 05.08.2016. The relevant portion of the order is set out as under :

SECOND APPEAL AGAINST REJECTION OF DISABILITY PENSION  
IN R/O JC-266593F EX NB SUB SACHIDANAND SINGH

1. Reference your letter No. JC-26659F/Appeal-8656(II) / Pen- 2 (D) to 19 Nov 2015.

2. Second appeal from grant of Disability Pension submitted by Arty Records as per direction by Hon'ble AFT Kolkata order dated 07 Aug 2015, passed in OA No. 113/2013 filed by JC-266593F EX Nb Sub Sachidanand Singh has been examined by the Second Appellate Committee on Pension (SACP) based on his service/medical documents and in the light of relevant rules/instructions on the subject. The SACP has considered his ID (Invaliding Disease) "PRIMARY HYPERTENSION" as neither attributable to nor aggravated by military service on the following grounds: -

*"Perusal of the enclosed medical/service documents reveals that onset of the indl's ID was in Jul 2005 in Nasik (peace) during PME. He was thoroughly investigated and found to be hypertensive, placed in low medical category and managed with antihypertensive medication. At RMB, his blood pressure was controlled and there was no evidence of target organ damage. ID 'Primary Hypertension' has strong familial preponderance and is, per se, not attributable to service. Aggravation may be conceded if onset occurs during Fd/CI Ops/HAA service. In the instant case, onset of the ID was in Jul 2005 at peace. After onset the individual continued to serve in the same station till retirement. He was diagnosed promptly and treated adequately and there was no service related worsening of the ID. Hence, the ID is conceded as neither attributable to nor aggravated by military service in terms of Para 43, Chap VI, GMO 2002, Amendment 2008."*

3. In view of the above, the appeal has not been accepted by the SACP and the said individual is not entitled for disability pension.

5. In the instant case, although the applicant was discharged with a composite disability of 60 % (30 % for Perforating Injury Right Eye (Optd) and 30 % for Hypertension, it was held by this Bench of Tribunal in O.A. No. - 113/2013 (Supra) that the **"Perforating Injury Right Eye (Optd)"** cannot be attributable to military service as there was no causal action between the injury and the military service and it was correctly held by the Respondents as being neither attributable to nor aggravated by military service.

6. In so far as the disease **"Primary Hypertension"** is concerned, in Paras 18 to 23 of our Order dated 7<sup>th</sup> Aug 2015 in O.A. No - 113/2013 (Supra) is reproduced as under : -

*"18. In so far as the individual's suffering from hypertension is concerned, the same was discovered in the year 2005 (13.07.2005) and the Medical Board authorities labeled it as idiopathic in nature. The definition of idiopathic as seen in medicine.net.com is quoted as under:-*

***"Idiopathic – an unknown cause."***

*19. Any disease for unknown reason may be termed as idiopathic in nature. The liberal meaning of the definition 'idiopathic' could give the benefit of doubt to the applicant as it cannot be conclusively proved that the disease had not occurred during the course of military service, since it was discovered during the term of employment of the applicant when he was examined in Military Hospital, Devlali during the routine Annual Medical Examination. Besides the nature of work of the applicant being a clerk cannot strictly speaking show that military service led to its cause. As may be seen that the individual was born in the year 1964 and the disease was discovered in the year 2005 when he was 41 years old. The medical authorities opined that he is an asymptomatic patient of hypertension (CAD). He was advised to reduce 7 kg being overweight, to be on low salt diet and to walk 5 km per day along with medication.*

*20. In the Dharamvir Singh case, the Hon'ble Supreme Court held while considering the disability pension that if a person at the time of entry into service was in sound mental and physical health and no entry*

of any disability exists in his record, then any disability occurring to the individual would be deemed to have occurred in service and would be attributed to and aggravated by military service and therefore such a person would be entitled to disability pension if it is 20 per cent or more. Thus in the absence of any note thereof, the burden of proof shall be upon the employer and the benefit of doubt must be in favour of the employee. After considering the different provisions, rules and regulations, observations made by the Hon'ble Supreme Court under para 28 of the judgement in the case of *Dharamvir Singh vs Union of India* is reproduced as under:-

*"(i) Disability pension to be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable to or aggravated by military service to be determined under "Entitlement Rules for Casualty Pensionary Awards, 1982" of Appendix II (Regulation 173).*

*(ii) A member is to be presumed in sound physical and mental condition upon entering service if there is no note of record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service {Rule 5 r/w Rule 14(b)}.*

*(iii) Onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).*

*(iv) If a disease is accepted to have been as having arisen in service, it must also be established that the condition of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstance of duty in military service {Rule 14(c)}.*

*(v) If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service {14(b)}.*

*(vi) If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons {Rule 14(b)} ; and*

(vii) It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the 'Guide to Medical (Military Pension), 2002 – "Entitlement: General Principles", including paragraph 7, 8 and 9 as referred to above."

21. Once Their Lordships of the Hon'ble Supreme Court themselves have interpreted in the case of Dharamvir Singh (supra) then it is not open for the Tribunal or any Court or Authority to form a different opinion than what has been expressed by the Supreme Court in the case of Dharamvir Singh vs Union of India & Ors. Under the facts and circumstances that the disease of hypertension (BP) has been labeled as **idiopathic** in nature by the Medical Board and that since "the claimant has a right to derive the benefit of any reasonable doubt", a liberal view may be taken and it may be held that the applicant's disease was aggravated by the service and in consequence thereof he suffered from primary hypertension of 30% disability which held him permanent low medical category and thus not being able to fulfill the conditions of extended service and having to retire at 24 years of service itself. Annexure III to Appendix II of Pension Regulations for the Army, classification of Diseases clearly indicates that BP is a disease affected by stress and strain. This is reproduced as under :-

#### "Classification of Diseases

##### A. Diseases Affected by Climatic Conditions.

Xxxxxxx

##### Diseases Affected by Stress and Strain.

1. Psychosis and psychoneurosis
2. **Hypertension (BP)**
3. Pulmonary Tuberculosis
4. Pulmonary Tuberculosis with pleural effusion.
5. Tuberculosis (Non-pulmonary).
6. Mitral Stenosis
7. Pericarditis and adherent pericardium
8. Endocarditis
9. Sub-acute bacterial endo-carditis, including infective endocartis
10. Myocarditis (acute and chronic).
11. Valcular disease.
12. Myocardial infarction, and other forms of IHD.
13. Cerebral haemorrhage and cerebral infarction.
14. Peptic Ulcer.

##### C. Diseases Affected by Dietary Compulsions.

Xxxxxxxx

D. Diseases Affected by Training, Marching, Prolonged Standing etc.

Xxxxx

E. Environmental Diseases

Xxxxx

F. Diseases Affected by Altitude

Xxxxx

G. Diseases Affected by Service in submarines and in Diving

Xxxxx

H. Diseases Affected by Serving in Flying Duties

Xxxxxx

J. Diseases not normally Affected by Service

Xxxxxx”

*Appropriate compensation in the form of disability pension is a sine qua non for military service and a little omission for disability pension merely on the grounds of the opinion of the medical board would be a set back to the applicant and other similarly placed persons.*

22. *The Hon'ble Apex Court in Dharamvir Singh vs Union of India, AIR 2013 SC 2840 and Veer Pal Singh vs Secretary, Ministry of Defence, AIR 2013 SC 2827 has dealt with the issue of payment of disability pension to the armed forces personnel. In Veer Pal Singh's case (supra), it is held by the Hon'ble Supreme Court that the opinion of the medical board “deserves respect but not worship.” In appropriate cases, judicial review of medical opinion is permissible. Hence, the applicant seems to be entitled to disability pension.*

23. *In view of the above, the respondents are directed to consider the applicant's plea for grant of disability pension for Primary Hypertension with effect from the date of his retirement i.e. from 01.04.2007 (date of discharge) and pass an appropriate, reasoned and speaking order keeping in view the observations made in the body of the present order expeditiously, say within a period of four months from the date of communication of this order and also communicate that order to this Tribunal as well.”*

7. Therefore, it is clear that the applicant is entitled for the grant of disability element of disability pension for the disease **Primary Hypertension @ 30 %** rounded off to 50 % for a period of 3 years prior to his filing of the earlier O.A. No. 113 of 2013 dated 06 Dec 2013.

8. Earlier, in our Order dt. 07.08.2015 (O.A. No. 113/2013) (supra), we had directed the Respondents to consider the applicant's case for Disability Pension for this disease from his date of discharge. However in view of the rulings of the Hon'ble Supreme Court and of various Benches of the Armed Forces Tribunal, the same is now being restricted to three years prior to filing the appeal.

9. Accordingly, this O. A. (O.A. No. 156 of 2016) is allowed with the directions to the Respondents to comply with our directions in para 7 above.

10. No order as to cost.

11. Let a plain copy of this order duly countersigned by the Tribunal Officer be supplied to both the parties upon observance of all usual formalities.

(LT GEN GAUTAM MOORTHY)  
MEMBER (ADMINISTRATIVE)

(JUSTICE INDIRA SHAH)  
MEMBER (JUDICIAL)