

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI****O.A.No.154 of 2013****Monday, the 08<sup>th</sup> day of December, 2014**

The Honourable Justice V.Periya Karuppiah  
(Member-Judicial)

and

The Honourable Lt Gen K Surendra Nath  
(Member-Administrative)

Colonel Tummala Amarnath  
Service No.IC-35779 – A  
Son of Late Sqn Ldr T.S.P.Rao, aged about 58 years  
Plot No.105, Sai Baba Officers Colony  
Sainik Puri, Secunderabad, PIN: 500 094

....Applicant

By Legal Practitioners:  
Mr.M.K.Sikdar and Mr.S.Biju

vs.

1. The Adjutant General  
Adjutant General's Branch  
IHQ of MOD (Army), Sena Bhavan  
DHQ P.O., New Delhi – 110 011

2. The President  
Release Medical Board  
Military Hospital, Secunderabad-900 453

3. Union of India  
Represented by The Secretary  
Government of India, Ministry of Defence  
New Delhi – 110 011

4. The PCDA (P)  
Draupadi Ghat  
Allahabad (U.P), PIN: 211 014

...Respondents

*[RR 3 & 4 are impleaded as per order dated 21.03.2014 and made in  
M.A.No.49/2014]*

Mr.S.Haja Mohideen Gisthi, SCGSC

**ORDER**

[Order of the Tribunal made by  
Hon'ble Lt Gen K Surendra Nath, Member (Administrative)]

1. The applicant Col Tummala Amarnath(Retd.), has filed this Original Application challenging the impugned opinion of the Medical Board dated 14 August 2009 passed by the 2<sup>nd</sup> respondent and the impugned order dated 21 June 2013 passed by the 1<sup>st</sup> respondent regarding the rejection of the claim for disability pension of the applicant and to broadband it to 100% in accordance with existing provisions.

2. The applicant was commissioned in the Indian Army on 16 December 1978 and after serving 30 years 08 months and 16 days, he superannuated in the rank of Colonel on 31 August 2009. The applicant submits that at the time of joining the Army, he was not suffering from any ailments and had no history of any constitutional disease. After vigorous flying training, he was appointed as helicopter Pilot on 13 April 1984 and had been flying Cheetah helicopters from 1984 to March 1993 in different terrains and operational areas including Siachen glacier and other high altitude areas and flying at high altitudes upto 23,000 ft above Mean Sea Level. He submits that while he was in J&K, he felt sick due to inclement weather and unbearable stress and strain and had reported for Cardiac problem and he was subsequently treated in the Army Hospital in Delhi and underwent a Coronary Angiogram in 1996. He would further submit that in 1999 while participating in Operations during 'Op Vijay', in Rajasthan sector, he felt burning sensation in entire body and was transferred to MH, Jodhpur. He was diagnosed as suffering from NIDDM (Diabetes). The Medical Board held on 15 July 1999 found principal disabilities, i.e., (i) NIDDM-(E-11) & (ii) Hyperlipidemia-(E-16.8).

3. The applicant would further submit that in May 2003, while undertaking a motorcycle expedition of NCC cadets, he suffered severe disc prolapse and high blood pressure and was subsequently operated upon in Central Command Hospital, Lucknow in August 2003. The disease was diagnosed as PIVD L5/S1 and Primary Hypertension. The disability was declared as aggravated due to stress and strain of military service. In December 2004, the applicant developed chest pain and was transferred to Army

Hospital (R&R), New Delhi for consultation and on 20 December, he underwent a heart operation (PTCA –Percutaneous Coronary Angiogram+2 DES) (Drug Eluting Stents) were put to enable blood flow to the heart. Subsequently, in August 2006, the applicant underwent Coronary Angio Bypass Graft at MH, Pune. At the time of superannuation, he was found to be suffering from four disabilities, i.e., (i) NIDDM; (ii) Primary Hypertension; (iii) PIVD (OPTD); & (iv) CAD-PTCA+2DES & CABG. The applicant would submit that he was brought before the Release Medical Board, Secunderabad on 14 August 2009 and the RMB opined that the ID – PIVD (Optd) was aggravated by military service and assessed as 20% disability for life but in respect of the other three IDs, they opined that they were neither attributable to nor aggravated by military service and assessed disability Nil for life.

4. The applicant superannuated on 31 August 2009 and was granted only 20% disability pension. Aggrieved, he filed the first appeal dated 18 May 2010 for grant of disability pension for the other three IDs also. However, the First Appellate Committee only upheld the disability, NIDDM, as aggravated by military service with disability 15% to 19% for life and he was granted 30% (composite) disability pension for life for both the disabilities. The applicant made a second appeal vide letter dated 30 April 2012 before the 1<sup>st</sup> respondent to declare the other two diseases, i.e., (i) Primary Hypertension; and (ii) CAD to be declared as aggravated by military service. However, the second appeal too was rejected. The applicant has now appealed before this Tribunal on being deprived of disability pension for two diseases, i.e., Primary Hypertension and CAD-30%. and has filed this application seeking indulgence of this Tribunal to quash the impugned opinion of the Release Medical Board dated 14 August 2009 and, (ii) impugned order passed by the 1<sup>st</sup> respondent, dated 21 June 2013, and grant him disability pension of 90% and broadbanded to 100% with all attendant consequential monetary benefits.

5. The respondents in their reply statement and oral submissions have stated that the applicant was commissioned in the Indian Army on 16 December 1978 and proceeded to superannuate on 31 August 2009 on completion of terms and conditions

of service. Prior to the superannuation of the officer from service, a Release Medical Board (RMB) was held and had considered the following IDs: (i) NIDDM (ii) Primary Hypertension (iii) PIVD (OPTD) (iv) CAD PTCA+2DES & CABG ID. The ID (iii), i.e., PIVD was appropriately held as aggravated by military service by the Board and assessed the degree of disablement at 20% for life. Subsequently, based on his application dated 18 May 2010, the First Appellate Committee conceded the ID NIDDM as aggravated by military service and he was granted disability pension of 30% (composite) for life for both IDs.

6. Not satisfied with the above, the applicant filed a second appeal on 30 April 2012 claiming attributability/aggravation for the other two IDs, i.e., Primary Hypertension and CAD PTCA + 2DES and to broadband the disability pension to 100%. The Second Appellate Committee on Pension, after having considered the appeal, vide its order dated 21 June 2013, rejected the claim for disability pension since the IDs (ii) and (iv), i.e., Primary Hypertension and CAD PTCA+2DES & CABG ID were considered neither attributable to, nor aggravated by military service. Giving considered opinion, the Committee observed that ID Primary Hypertension was developed in a peace station while he was posted there and ID(iv), i.e., CAD PTCA+2DES & CABG ID is considered to be due to underlying atherosclerosis which is a result of interplay of hereditary, biological and life style factors. Further, the onset of the said ID was also when the applicant was posted in a peace station.

7. As for broadbanding, for purposes of disability pension, the respondents would state that since the disabilities fall under Para 8.1 of GoI, Ministry of Defence letter dated 31 January 2001, it can only be granted when a person is invalided out of service. In the instant case, the applicant had superannuated on completion of terms of engagement and, therefore, cannot be granted the benefit of broadbanding,

8. In view of the foregoing, the respondents would contend that the Original Application lacks merit and would request the Tribunal to pass appropriate orders as deemed fit and dismiss the said OA.

9. On the above pleadings, the following issues emerge for consideration:

- (i) Are the two IDs, ie., Primary Hypertension and CAD caused to the applicant are liable to be treated as attributable to / aggravated by military service?
- (ii) Is the applicant entitled to broadbanding of the disability pension as envisaged in paragraph 7.2 of Gol, Ministry of Defence letter dated 31 January, 2001?
- (iii) What relief, if any, the applicant is entitled to?

10. This Bench heard the arguments of Mr. M.K.Sikdar and Mr.S.Biju, learned counsel for the applicant and Mr.S.Haja Mohideen Gisthi, learned Senior Central Government Standing Counsel and Maj Suchithra Chellappan, JAG Officer (Army) representing the respondents. We have also perused the written submissions from either side and all the documents made available to us.

11. It is not disputed that the applicant was commissioned in the Indian Army on 16 December 1978 and at the time of his commissioning, he had undergone thorough medical check-up and was not found to be suffering from any ailments. During the course of service and discharge of duties, the applicant suffered following IDs: (i) NIDDM (ii) Primary Hypertension (iii) PIVD (OPTD) (iv) CAD PTCA+2DES & CABG ID.

12. The applicant had also served as a Pilot in the Army Aviation and had served in high altitude areas such as Ladakh and was flying helicopters in the Siachen glacier, reaching upto heights of 23,000 ft above Mean Sea Level. In 1996, he went through Coronary Angiogram in Army Hospital, Delhi. Thereafter, the applicant suffered a series of ailments since 1999, while he was posted at Jodhpur (Rajasthan) and Motihari (Bihar). The major ailments were (i) NIDDM; (ii) Primary Hypertension; (iii) PIVD (OPTD); (iv) CAD PTCA+2DES & CABG ID. At the time of superannuation, the Release Medical Board examined him for the four diseases, of which ID (iii) PIVD (OPTD) was considered as having been aggravated by military service, and on first appeal, the ID NIDDM was also conceded as aggravated by military service. The applicant's claim now is that the remaining two diseases, i.e., Primary Hypertension and CAD PTCA + 2DES +CABG ID

also should be considered as attributable to / aggravated by military service and he be granted disability pension duly compounded and broadbanded to 100%.

13. Points (i) & (ii): From the medical records placed before us, we note that the officer has suffered four principal medical disabilities. These are listed below.

- (I) NIDDM
- (II) Primary Hypertension
- (iii) PIVD (OPTD)
- (iv) CAD PTCA+2DES & CABG ID

For better understanding of the history of the disease and medical opinion on attributability and aggravation and percentage of disability including result of first and second appeal is in the chart is given below:

S.No	Disability	Date & Place of Origin	Recommendation of Categorization Medical Board and subsequent Boards (AFMS-15)		Recommendation of Release Medical Board (AFMS-16)		Remarks
			Attributability/Aggravation	% of disability	Attributability/Aggravation	% of disability	
i	NIDDM	06 Sep '99 Pokhran(Fd)	No	20%	No	15-19% Life	Conceded as aggravated during First Appeal
ii	Primary Hypertension	14 Jul '03 Motihari (Peace)	Yes (aggravation)	30%	No	30% Life	Not conceded in both appeals
iii	PIVD (Optd)	14 Jul '03 Motihari (Peace)	Yes (aggravation)	20%	Yes	20% Life	
iv	Hyperlipidemia/CAD-PTCA+2DES+CABG	13 Jul 03 (Motihari) ----- 15 May 06 (Warangal)	No	20%	No	30% Life	Not conceded in both appeals

14. From the above, it is seen that S.No. (i) and (iii), i.e., NIDDM and PIVD (OPTD) have been conceded as attributable to and aggravated by military service and the

applicant has been given 30% (Composite) disability pension for life. Therefore, the aforesaid diseases are not discussed any further.

15. As for Primary Hypertension is concerned, we note that the said disease occurred while he was posted in Motihari in July 2003 and as per the statement recorded in the medical records, this occurred while the officer was on an expedition with NCC cadets for a long duration. The initial Categorisation Medical Board conducted at Command Hospital, Lucknow approved on 31 October 2003, the ID considered to be aggravated due to service (recorded by the Medical Specialist as "Yes, due to stress and strain of service") and the degree of disability was adjudged as 30%. In the Re-categorisation Medical Board held at MH, Secunderabad and approved on 30<sup>th</sup> June 2007, the Medical Board concurred with the initial AFMS-15 regarding the aggravation, with the Medical Specialist recording at Para 18 of Part I "as per initial AFMS-15". Again, during the Re-categorisation Medical Board held at MH, Secunderabad, two years later, and approved on 14 August 2009, the Medical Specialist again concurred with the original findings, i.e., aggravation "as per initial AFMS-15" and also noted that the degree of disability to be 30% for life. However, during the Release Medical Board conducted at the same hospital and on the same day, i.e., 14 August 2009, the same Medical Specialist opined that the said ID Primary Hypertension is "neither attributable to nor aggravated" by service. We are also constrained to note that the composition of both the Boards was virtually the same (i.e, all three Medical Officers were common), save the fact that the approving authority of the Re-Categorisation Board was the President of the Release Medical Board. It is not understood how two separate Medical Boards are conducted on the same day and with common Board members can come up with two different conclusions and both Boards approved/perused in the same chain of command! The presumption would be that the Boards have been conducted in a perfunctory and mechanical manner with little or no application of mind and, therefore, both the Boards are liable to be viewed as defective in the eyes of the law. Further, the respondents, in their submissions, stated that as per the extant instructions of Director General Armed Forces Medical Services (DGAFMS), the opinion of the Release Medical Board should be

treated as final and overrides the previous Medical Boards. Though the applicant had preferred 1<sup>st</sup> Appeal and 2<sup>nd</sup> Appeal, before the appropriate authorities, his claim was rejected. The 2<sup>nd</sup> Appellate Committee observed:

*“The ID is a lifestyle disorder with known familial clustering and no service related causative factors hence considered **as not attributable** to service. Onset of ID was while you were posted to peace station. After onset of the ID, you continued to serve in peace station till your release from service. As there is no close time association of ID with service in field/HAA/CI Ops area, ID is considered **as not aggravated** by service in terms of Para 43, Chapter VI, Guide to Medical Officer 2002 amendment 2008.”*

On the other hand, the applicant would quote the judgment of the Hon’ble Apex Court in the case of Dharamvir Singh *versus* the Union of India and others (Civil Appeal No.4949 of 2013). The relevant portion is quoted below:

*“.....for the purpose of determining a question whether the cause of a disability or death resulting from disease is or is not attributable to service, it is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a field service/active service area or under normal peace conditions.”*

The Hon’ble Apex Court in several judgments has reaffirmed the said principle. We also note that the Jaipur Bench of the AFT in its judgment in the case of ex-Corporal C.L.Kataria vs Uol and others have held that :

*“if there are two different and contrary opinions expressed by two different experts, in such case, opinion which is beneficial or benevolent to the incumbent should be given due weightage.”*

16. From the examination of the above judgment and the relevant facts in this case, we note that the applicant, though serving in peace conditions, was on a fairly long expedition with NCC cadets during which period he was said to have contracted the onset of the disability which was duly noted by the Medical Specialist, at the time of medical examination. The Initial Medical Categorisation Board and subsequent Re-Categorisation Boards from 2004 to 2009 have consistently held that the said ID, i.e., Primary Hypertension as having been aggravated by the military service. On the other hand, the Release Medical Board has rejected the claim without giving sufficient reasons



to overturn the opinion of the previous Medical Boards. Even if we were to ignore the fact that the last Re-Categorisation Board (14 August 2009) and Release Medical Board (14 August 2009) *ipso facto* were held on the same day and by the same set of Medical Officers, but with contrary medical opinion and, therefore, liable to be treated as vitiated, the benefit of more favourable opinion would go to the litigant. The judgment of the Hon'ble AFT, Regional Bench (Supra) that in case of contradictory findings, the more beneficial finding should go in favour of the applicant fits squarely in this case.

17. As per the other disability No.(iv), i.e., CAD-PTCA+2DES & CABG, the initial Medical Board and subsequent Re-Categorisation Boards as well as the Release Medical Board have all opined that it is neither attributable to nor aggravated by military service. Further, in the 2<sup>nd</sup> appeal filed by the applicant, the Appellate Committee noted that:

*"The ID is considered to be due to underlying atherosclerosis. Atherosclerosis is a result of interplay of hereditary, biological and lifestyle factors. The onset of ID was while you were posted to a peace station and after onset you continued to service in peace station till your release from service. There is no close time association of ID with service in field/HAA/CI Ops area. The 14 days charter of duties prior to onset of ID has revealed no exceptional physical or mental stress and strain related to service precipitating the disease. Hence ID is considered **as neither attributable to nor aggravated** by service in term of Para 47, Chapter VI, Guide to Medical Officer 2002 amendment 2008."*

In view of the foregoing, primacy should be given to the medical opinion as enshrined in the Hon'ble Apex Court's judgment in the case of A.V.Damodaran vs Uol and others [(2009) 9 Supreme Court Cases 140]. Therefore, we do not find any defect in the findings of various medical authorities that the disability, i.e., CAD-PTCA+2DES & CABG is neither attributable to nor aggravated by military service.

18. The applicant has prayed that his disability should be broadbanded to 100%. From the records before us, we note that the applicant had superannuated from service on completion of his terms and conditions of engagement. The disabilities suffered by the applicant fall in Category 'B'. Therefore, in accordance with paras 8.1 and 8.2 of Government of India letter dated 31 January 2001 regarding disability element on retirement / discharge, the applicant is not entitled to broadbanding / rounding off. For a better understanding, the said paras 8.1 and 8.2 are also reproduced below :

*“8.1 Where an Armed Forces personnel is retained in service despite disability arising / sustained under the circumstances mentioned under category ‘B’ & ‘C’ in para 4.1 above and is subsequently retired / discharged on attaining age of retirement or on completion of tenure, he / she shall be entitled to disability elements at the rates prescribed at para 7.1.II(a) above for 100% disablement.*

*8.2 For disabilities less than 100% but not less than 20% the above rates shall be proportionately reduced. No disability element shall be payable for disabilities less than 20% provisions contained in para 7.2 above shall not be applicable for computing disability element. Disability actually assessed by the duly approved Release Medical Board / Invaliding Medical Board as accepted by the Pension Sanctioning Authority, shall reckon for computing disability element.”*

19. Point (iii) In fine, we are inclined to agree with the applicant’s contention that Primary Hypertension should be conceded as aggravated by military service. Therefore, the applicant is entitled to composite disability pension for the three disabilities, i.e., (i) NIDDM; (ii) Primary Hypertension; and (iii) PIVD (OPTD) for life.

20. In sum, the O.A. is partially allowed. The applicant is entitled to composite disability pension in respect of the three IDs, i.e., (i) NIDDM (15-19%); (ii) Primary Hypertension (30%); and (iii) PIVD (OPTD) (20%) for life. The composite disability pension may be worked out by appropriate medical authorities at Medical Branch, ATNK&K Area, Chennai in accordance with the principles laid down in Chapter IV, Guide to Medical Officers (Military Pensions) 2002 and MOD letter (DDG Pensions) letter No.16036/RMB/IMB/DG AFMS/MA (Pens) dated 14 December 2009 and extant rulings on the subject for calculation of composite disability pension. This may be done within one month from the date of this order. The applicant is entitled to the said composite disability pension from the date of his retirement, i.e., 01 September 2009. Arrears shall be paid within four months from the date of this order. In default, an interest of 9% *per annum* is payable from that date.

21. We are also constrained to observe that the present policy of giving overriding weightage to the opinion of the Release Medical Board over the opinion of the Initial and subsequent Medical Boards is discriminatory and seriously flawed and is *non est* in the eyes of the law. It is incomprehensible, how the original attributability / aggravating conditions can be reinterpreted to the detriment of a soldier. We are of the view that the only condition that can change between two Medical Boards is the state / medical condition of the ID. It would appear as if the objective of the Armed Forces / Government in endorsing favourable opinion with regard to attributability / aggravation during initial Medical Board/Re-Categorisation Medical Board (AFMSF-15) is to keep the soldier's motivation and morale high while he is in service and that the opinion can be changed to the disadvantage of a soldier when his services are no longer required. Such a perception will have a detrimental effect on the morale of the soldiers. Primacy, if any, should be given to the opinion of the Initial Medical Board especially with regard to attributability / aggravation as it is done in close time proximity to the occurrence of the disease and investigations carried out are likely to be more deliberate in nature. We recommend that the DGAFMS and the Government review the said policy at the earliest. With these observations, the O.A. is disposed off. No order as to costs.

Sd/-  
Lt Gen K Surendra Nath  
Member (Administrative)

Sd/-  
Justice V.Periya Karuppiah  
Member (Judicial)

08.12.2014  
/True copy/

Member (J) – Index : Yes/No  
Member (A) – Index : Yes/No  
*ap*

Internet : Yes/No  
Internet : Yes/No

To

1. The Adjutant General  
Adjutant General's Branch  
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Hon'ble Justice V.Periya Karuppiah  
(Member-Judicial)

and

Hon'ble Lt Gen K Surendra Nath  
(Member-Administrative)

O.A.No.154 of 2013

Dated: 08.12.2014

