

**(20) 06 AFT CK 0012**

**Armed Forces Tribunal Principal Bench, New Delhi**

**Case No:** Original Application No. 712 Of 2018, Miscellaneous Application No. 589 Of 2018

Navdeep Singh Lamba	Vs	APPELLANT
Union Of India And Others		RESPONDENT

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**Date of Decision:** June 17, 0020

**Hon'ble Judges:** Sunita Gupta, J; B.B.P. Sinha, Member (A)

**Bench:** Division Bench

**Advocate:** Rajendra Kumar, Barkha Babbar

**Final Decision:** Dismissed

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**Judgement**

M.A. No. 589/2018

1. For the reasons carved out in the Application, the delay of 1532 days in filing the Original Application is hereby condoned.

M.A. stands disposed off.

O.A. No. 712/2018

Aggrieved by the denial of disability pension, the applicant has filed the instant O.A seeking the following reliefs:

(a) Set aside the impugned order dated 16.09.2014 of rejection of initial claim of the Applicant.

(b) Direct the Respondents to grant him disability pension with disability element @ 30% for life from the date of his retirement on account of

PRIMARY HYPERTENSION in addition to the war injury pension already granted. Having granted disability pension, recalculate the composite

disability and rounding off in terms from Para 3 of Govt of India, Ministry of Defence, department of Ex-Servicemen Welfare letter dated 23.01.2018

and Para 3(b) of Letter dated 08.08.2016 and grant the Applicant War Injury Pension and disability pension accordingly.

(c) Direct the respondents to pay the arrears of disability pension from the date of his retirement with interest @ 9% pa till the date of actual payment

(d) Issue any other/direction as this Hon'ble Tribunal may deem fit in the facts of the case.

2. The brief facts, as averred by the learned counsel for both the parties are that the applicant was commissioned In the Indian Army on 13.06.1981

and retired from service on 31.07.2013 in low medical category after rendering more than 32 years of service. The Release Medical Board (RMB)

held at Military Hospital, Faizabad on 22.04.2013 assessed his disabilities (i) 'OPEN FRACTURE LATERAL CONDYLE (RT) FEMUR (OPTD)

WITH FRACTURE PATELLA (RT)' @ 30 % for life and (ii) 'PRIMARY HYPERTENSION' @ 30% for life. The composite assessment for both

the disabilities was @ 30% for life. However, the RMB opined that first ID of the applicant was 'Attributable to Service' whereas second ID was

neither attributable to nor aggravated by military service (NANA). The applicant is already in receipt of War Injury Element of War Injury Pension

@ 30% for life, duly rounded off to 50% for life. Now he has filed this Original Application for grant of disability element of his second ID i.e.

'Primary Hypertension'.

3. Learned Counsel for the applicant submitted that the applicant was medically fit when he was commissioned in the Indian Army and any disability

not recorded at the time of commission should be presumed to have been caused subsequently. The action of the respondents in granting only first ID

and denying the second disability i.e. 'Primary Hypertension' to the applicant is illegal. In this regard, he relied on the decision of the Honrble Supreme

Court in Dharamvir Singh v. Union of India and others, (2013) 7 SCC 316 and submitted that for the purpose of determining attributability of the

diseases to military service, what is material is whether the disabilities were detected during the initial pre-commissioning medical tests and if no

disability was detected at that time, then it is to be presumed that the disabilities arose while in service, therefore, the second disability i.e. 'Primary

Hypertension' of the applicant is to be considered as aggravated by service and he is entitled to get enhanced disability pension duly rounded off for

both the disabilities.

4. On the other hand, learned counsel for the respondents has filed the Counter Affidavit and submitted that the applicant is already in receipt of 30%

War Injury Element of War Injury Pension duly rounded off to 50% for life for his first ID i.e. (i) 'OPEN FRACTURE LATERAL CONDYLE (RT)

FEMUR (OPTD) WITH FRACTURE PATELLA (RT)' being Attributable to service and his second disability i.e. 'Primary Hypertension', assessed

@ 30% for life is NANA. As such his claim for disability element for his second disability i.e. 'Primary Hypertension' has rightly been rejected by the

respondents. He submitted that the instant Original Application does not have any merit and the same is to be dismissed.

5. Having heard the learned counsel for both the parties and perused the records, the only question that needs to be answered is, whether the second

disability i.e. 'Primary Hypertension' of the applicant is attributable to or aggravated by military service?

6. We have noted that the applicant is already in receipt of War Injury Pension @ 30%, duly rounded off to 50% for life for his first ID (i) 'OPEN

FRACTURE LATERAL CONDYLE (RT) FEMUR (OPTD) WITH FRACTURE PATELLA (RT)' being Attributable to service and his second

disability i.e. 'Primary Hypertension' is NANA.

7. The opinion of the RMB with regard to first disability has been accepted by the applicant and for the second disease i.e. 'Primary Hypertension' he

is challenging the RMB. In this context, we have tried to understand the disabilities of the applicant. We have noted that his first disability (i) 'OPEN

FRACTURE LATERAL CONDYLE (RT) FEMUR (OPTD) WITH FRACTURE PATELLA (RT)'" is related to a fracture near knee joint and has

been conceded as attributable by the RMB and the applicant is in receipt of war injury pension for the same. As far as the second disability is

concerned i.e. 'Primary Hypertension', we have noted that it has started just two years before retirement. Additionally this disease can be triggered by

a multiplicity of factors including the limitations imposed by first disease as also by life style and constitutional factor. The Medical Board is an expert

body to decide such things and there is no evidence otherwise before us which can convince us to overrule the opinion of the Medical Board. Hence,

we don't find any valid reason to interfere with the opinion of the Medical Board.

8. In this regard, the respect for expertise of a Medical Board has been clarified by Honible Supreme Court in its judgment dated 03.10.2019 in Civil

Appeal No 7672 of 2019 in Ex Cfn Narsingh Yadav vs Union of India & Ors. Relevant part of the aforesaid judgment is as given below:-

21. Though, the opinion of the Medical Board is subject to judicial review but the courts are not possessed of expertise to dispute such

report unless there is strong medical evidence on record to dispute the opinion of the Medical Board.

9. In view of the above, this Original Application is liable to be dismissed, hence, dismissed.

10. No order as to costs.

11. Pending application(s), if any, also stand disposed off.

Pronounced in the open Court on 17th June 2020.