

COURT No.3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

72.

OA 325/2016 with MA 1970/2018

Lt Col (Retd) S P Bhardwaj Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. A K Trivedi, Advocate
For Respondents : Mr. YP Singh, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE LT GEN P.M. HARIZ, MEMBER (A)

ORDER
31.01.2023

MA 1970/2018

This application has been filed by the applicant under Rule 25 of AFT (Procedure) Rules, 2008 for amendment of OA seeking following reliefs:

“(i) Declare the findings of Medical Board dated 18/04/2013 as illegal, arbitrary and perverse in treating the disability as nil despite the fact that the applicant is still suffering from the same disease and therefore the whole action of the respondents as illegal, unjust, arbitrary and discriminatory in not granting the war injury pension to the applicant on the ground that ID Is assessed NIL (i.e. less than 20%),

despite the fact that there is no minimum percentage is provided in OM dated 30/10/1987.

(ii) Set aside the finding of Medical Board dated 21/07/1998 with regard to attributability of the injury caused to the applicant which is without jurisdiction as the same has been held as attributable to military service by the Court of Inquiry and assessed as 70% for two years.

(iii) Direct the respondents to authorize and grant War Injury pension to the applicant in view of Battle Casualty in view of GOI orders on the subject.

(iv) OR to grant Disability pension to the applicant @ 70% by rounding off to 75% wef the date of his discharge including commutation of Pension with all consequential benefits such as recommending the name of the applicant for benefits from different Govt. Agencies and state Govt. due to War Injury, and; To award interest @ 18% on the arrears of War Injury Pension/disability pension, etc.

(V) Direct the respondents to constitute the Re-survey Medical Board to assess the disability percentage with respect to Battle Casualty and the disability for future.

(vi) Call for the entire Medical Records and COI Proceedings.

(vii) Any other relief which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.”

which relates substantially in relation to the same aspect of seeking that the findings of the Medical Board dated 18.04.2013 be declared illegal, arbitrary and perverse and that the findings of the Medical Board dated 21.07.1998 with regard to stating of non-attributability of the injury caused to the applicant on being without jurisdiction and hold it as attributable to military service being assessed as 70% for two years and further grant disability pension @ 70% by rounding off to 75% w.e.f. the date of his discharge .

The further prayers made by the applicant through the original OA related to the grant of War Injury Pension with commutation of pension with all consequential benefits.

Vide the amendment also the applicant seeks the grant War of Injury Pension in view of Battle Casualty in view of the GOIs orders on the subject which is also the similar prayer as the prayer clause (ii).

Though, on behalf of the respondents it is submitted that these prayers sought to be amended substantially change the consideration of the OA, the same cannot be accepted as in much in sum and substance the prayers through the amendment sought are similar as prayed in the original OA.

The MA is thus allowed.

OA 325/2016

Counter affidavit of the respondents to the amended OA, if any, be filed within four weeks.

Rejoinder, if any, be filed by the applicant within four weeks thereafter.

The matter be listed before the Principal Registrar for completion of pleadings on **17.04.2023** and thereafter before the Bench.

**(JUSTICE ANU MALHOTRA)
MEMBER (J)**

**(LT GEN P.M. HARIZ)
MEMBER (A)**