

COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

F.

OA 1948/2017

Lt Col V Krishnamurthy (Retd.) Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Rajesh Nandal, Advocate
For Respondents : Mr. Avdhesh Kumar Singh, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER
16.07.2024

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this OA praying to direct Respondents to consider his disability - Bilateral Perthes Disease- 732 Hip Joints @20% for two years as aggravated by service for life and grant disability element of pension @ 50 % for life.

2. The factual matrix of the case is that the applicant was commissioned as a short service commissioned officer in the Indian Army on 12.05.1984 and was released after 21 years of service after taking premature retirement on 12.09.1995. At the time of enrollment, he was medically fit in SHAPE-1 and subsequently, prematurely retired as medical category A2 (Perm) for life. Applicant was subjected to Release Medical

Board (RMB) before his discharge, wherein his disability of Bilateral Perthes Disease- 732 Hip Joints was held @20% for two years as aggravated by service for life.

3. Learned counsel for the applicant submits that at the time of enrolment the applicant was medically fit in SHAPE1 and the aforesaid disability was first detected during annual medical examination held on 12.04.1985. Subsequent periodic medical examination conducted on 24.04.1989, 24.06.1991 and 21.09.1993 have granted the applicant medical category SIHLA2P1E1 for the disability of Bilateral Perthus Disease.

4. Despite repeated opportunities having been granted to them the respondents have failed to file a counter affidavit and have merely filed a RMB dated 08.09.1995 held prior to discharge of the applicant wherein his disability of Bilateral Perthus Disease- 732 Hip Joint has been assessed @20% for two years which is held to be aggravated by service.

5. Placing reliance on the judgement of Hon'ble Supreme Court in *Dharamvir Singh* Vs. *UOI & Ors* CA No 4949/2013, learned counsel for the applicant submits that the Release Medical Board (RMB) while holding the disability for two years failed to appreciate that the applicant has been continuously posted to various units and his role and

responsibilities during his entire service career were directly affecting his disability and therefore, the disability is of permanent nature and he is entitled for the disability pension @20% rounded off to @50% in view of the judgement by Hon'ble Supreme Court in their judgment in Civil Appeal No. 418/2012 titled as Union of India & Ors Vs Ram Avatar decided on 10.12.2014.

6. We have heard the learned counsels for the parties at length and have perused the records placed before us for our scrutiny. Now, on a careful perusal of the materials on record, the point for consideration is whether, the applicant is entitled to get relief as sought for in the above mentioned OA for the reasons and grounds stated in the said Original Application?

7. We find that the disability of the applicant has been assessed at 20% for two years and the same has been held as aggravated by military service. However, till date it has been almost more than 28 years from the date of retirement of the applicant, and it is submitted by the applicant that he underwent hip replacement surgery in the year 2010 and thus, the possibility of disability being reduced or healed cannot be ruled out. However, there are no medical

documents placed on record by the applicant in support of his claim of having undergone a hip replacement surgery.

8. Although the matter was reserved for order on 05.07.2024, in the light of the aforesaid analysis and considering that a period of 29 years has elapsed and since the release of the applicant from the Army, we are of the view that it is essential in the interest of justice to medically assess whether the applicant's disability still persists and if so, the extent thereof.

9. Therefore, the respondents are directed to conduct a Re-assessment Medical Board to re-assess the gravity of disability, within four weeks from the date of pronouncement of this order.

10. List again on **04.09.2024**.

11. Let a copy of this order be provided '*DASTI*' to learned counsel for the parties.

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

**[LT GEN C.P. MOHANTY]
MEMBER (A)**