

COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

B.

OA 1823/2020 with MA 2101/2020

Ex Sgt Mukesh Kumar Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Baljeet Singh, Advocate
For Respondents : Ms. Barkha Babbar, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
15.09.2023

Vide our detailed order of even date we have allowed the OA 1823/2020. Learned counsel for the respondents makes an oral prayer for grant of leave to appeal in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007 to assail the order before the Hon'ble Supreme Court.

After hearing learned counsel for the respondents and on perusal of order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order to grant leave to appeal. Therefore, the prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

AP

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ORDER

1. The applicant vide the present O.A 1823/2020 has made the following prayers:-

“(a) To set aside the impugned order letter No. Air HQ/99801/5/764186/DAV(Med) dated 19.08.2020 passed by the respondents.

(b) To direct the respondents to conduct an appropriate Medical Board to assess the applicant's present medical condition for Post Discharge claim.

(c) To direct the respondents to grant disability pension to the applicant, in case he is found suffering from any disease.

(d) To pass such further order or orders, direction/Directions as this Hon'ble Tribunal may deem fit and proper in accordance with law.”

2. The impugned order that the applicant has challenged dated 19.08.2020 inter alia reads to the effect:-

"2. Ex-764186 Sgt Mukesh Kumar was enrolled in the IAF on 19 Nov 96 and discharged from service on 07 Jul 2016 in medical category A4G1 vide AFMSF-18(Release Medical Examination) dated 17 Feb 16 with Nil disability detected or claimed.

3. Now, vide ibid representation dated 16 Mar 20 it is stated that after his discharge from service, he continued treatment of adjustment disorder. During the treatment, he was also diagnosed as case of Hypertension, Hyperuricemia, Anxiety disorder and Vit-B12 Deficiency.

4. The representation has been further deliberated at appropriate level and is informed that all the disabilities claimed by the individual are generally not considered attributable in terms of relevant Para's of GMO. Hence, the case is not processed for holding appropriate medical board under Post Discharge Claim."

3. The applicant was enrolled in the Indian Air Force on 19.11.1996 in a fit medical category without any note of disability recorded on the records of the respondents at the time of commission, and was discharged from service on 07.07.2016 in medical category A4G1 with nil disability detected or claimed. During his tenure in the Indian Air Force on 03.03.2010, the applicant was diagnosed as a case of adjustment disorder, and admitted to MH Ahmedabad on 03.03.2010 and discharged from MH Ahmedabad on 20.03.2010 and continued his treatment from the Civil Doctor. The applicant submits that during his treatment on 28.02.2020, he was also diagnosed as a

case of Hypertension, Hyperuricemia, Anxiety disorder, and Vit-B12 Deficiency. The applicant thus filed a representation dated 16.03.2020 for the conduct of the appropriate medical board and the grant of a disability pension, in case he was found suffering from any disability and it is the rejection of this representation dated 16.03.2020 of the applicant, vide the impugned letter dated 19.08.2020 in relation to which the applicant now seeks redressal.

4. It is the avowed contention of the applicant that in terms of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008, in case the disease is not present at the time of the member's retirement/discharge from service but arises within a period of seven years thereafter, it may be recognized as attributable to service if it can be established by the competent medical authority that the disability is a delayed manifestation of a pathological process set in motion by service conditions obtaining prior to discharge. Para-8(a) of the Entitlement rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008 reads as under:-

"8. Post discharge claims:

(a) Cases in which a disease was not present at the time of the member's retirement/discharge from service but arose within a period of 7 years thereafter, it may be recognized as attributable to service if it can be established by the competent medical authority that the disability is a delayed

manifestation of a pathological process set in motion by service conditions obtaining prior to discharge."

5. The respondents through their Counter Affidavit sought to reiterate the contents of Para-4 of the Impugned letter dated 19.08.2020, already adverted to herein above in Para-2 to submit to the effect that the disabilities of Hypertension, Hyperuricemia, Anxiety disorder, and Vit-B12 Deficiency are generally not considered attributable in terms of the relevant Paras of the GMO and thus were not processed for holding an appropriate medical board under Post Discharge Claim. Apparently, the said submissions made on behalf of the respondents are wholly devoid of merits, as in as much as in terms of Para-8(a) of the Entitlement rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008, the prayer has been made by the applicant herein, within a period of seven years from the date of his discharge, he having been discharged on 07.07.2016 with the representation being made by the applicant seeking the conducting of the Post Discharge Medical Claim on 16.03.2020 within the said period of seven years, the applicant is clearly entitled to processing of his claim for conducting of the Post Discharge Medical Claim,- for as to whether or not, the disabilities

that the applicant submits that he suffers from, were delayed manifestation of pathological processes set in motion by service conditions obtaining prior to discharge, can only be determined on examination by the competent medical authority.

6. We are fortified in our view that the applicant is entitled to the grant of prayer made by him seeking the conducting of the Post Discharge Medical Board in relation to the disability that he suffers from, in view of orders of this Tribunal dated 19.01.2023 in OA 346/2022 in the case of *Air Cmde Jagdish Chandra Goyal(Retd) Vs. UOI & Ors.*, of the AFT(PB), New Delhi, order dated 06.10.2021 of the AFT(RB), Lucknow in OA 44/2020 in *Ex WO Surendra Pratap Narain Singh Vs. UOI & Ors.*, order dated 03.05.2023 of the AFT(PB), New Delhi in OA 1227/2020 in *Ex MWO(HFL) Satyabir Singh Yadav vs. UOI & Ors.*

7. Thus, in view of the provisions of Para-8(a) of the Entitlement rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008, the OA is disposed off with directions to the respondents to conduct the Post Discharge Medical Board for assessment of the disabilities that the applicant claims that he suffers from, within a period of three months of the receipt of copy of this order. The

impugned letter no. Air HQ/99801/5/764186/DAV(Med) dated
19.08.2020 is also set aside.

Pronounced in the open Court on the 15 day of September, 2023.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/TS/