

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

A..

OA 1110/2017

Brig Sagar Singh (Retd)

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Ms. Sangeeta Tomar, Advocate

For Respondents : Mr. Avdhesh Kumar Singh, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)

HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

21.12.2023

Vide our detailed order of even date, we have allowed the OA 1110/2017. 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 our 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, prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)  
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)  
MEMBER (A)

**COURT NO. 2, ARMED FORCES TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**O.A. No. 1110 of 2017**

**In the matter of :**

**Brig Sagar Singh (Retd)**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant** : Ms. Sangeeta Tomar, Advocate

**For Respondents** : Shri Avdhesh Kumar Singh, Advocate

**CORAM :**

**HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER(J)**

**HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)**

**O R D E R**

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 read as under :

***"A. Direct the respondents to appoint a Review Medical Board for proper identification and fixation of the disability percentage of the applicant duly considering the medical documents of the applicant;***

***B. Direct the respondents to grant Disability Pension.***

- C. *Direct the respondents to pay the entitlement of the applicant along with an interest of 12% per annum with effect from 01.08.2014.*
- D. *Any other order as may be deemed fit and proper in the facts and circumstances of the case."*

### **BRIEF FACTS**

2. The applicant, after having been found fully fit mentally and physically, was commissioned in the Indian Army on 22.12.1979 and, on superannuation, retired from service on 31.07.2014 in the medical category SHAPE-1. Thereafter, the applicant was re-employed in the Army on 01.08.2014 and was released from the re-employed service on 16.07.2016 in low medical category P3 (Permanent) with the disability of 'Hypertension with left Thalamic Ischemic Stroke' which was assessed by the Recategorisation Medical Board held on 15.07.2016 as 'neither attributable to nor aggravated by the service'. The applicant filed a representation/letter dated 19.09.2016 for Post Discharge Claim and conduct of Review Medical Board to re-assess the disability of the applicant and its attributability/aggravation. In response to the same, the respondents vide

their letter dated 05.12.2016 informed the applicant that his case was examined for holding post discharge medical board and the applicant was asked to forward necessary medical documents, which the applicant submitted vide his letter dated 25.01.2017. The respondents rejected the claim of the applicant vide Noting Sheet enclosed with the impugned letter dated 08.02.2017 in the present OA praying, *inter alia*, for directing the respondents to conduct the Review Medical Board. In the interest of justice in terms of Section 21 (1) of the AFT Act, 2007, we take up the same for consideration.

### **CONTENTIONS OF THE PARTIES**

3. It was submitted on behalf of the applicant that at the time of joining the Army, the applicant was declared fully fit physically and mentally and no note was made in his medical documents to the effect that he was suffering from any disease at that time. It was further submitted that the applicant during his first active service, in January, 2009, being in command, during Brigade exercise on 'Canal crossing', while coming down from the canal embankment in the night, slipped and lost his balance and fell on the

ground and his right knee was injured which swelled up; the applicant was given required medications for knee pain and swelling; the X-Ray done on the next day showed the injury but no fracture was found and after a few days of medication, the swelling of the right knee subsided and the applicant could walk normally.

4. It is the case of the applicant that whilst he was posted to IHQ of MoD (Army) at New Delhi as DDG(C), the swelling of the knee re-occurred with pain and in August, 2009, the applicant reported to the Armed Forces Clinic (AFC) and on advice got the MRI done for both the knees on 08.08.2009 at the Army Hospital (R&R) and was diagnosed to be suffering from 'Osteoarthritis'. It was further submitted that the applicant was examined by the Orthopaedic Surgeon at the Base Hospital Delhi Cantt and was advised that the X-Ray of both knees to be done and thereafter on examining the X-Ray reports, the previous diagnosis was changed from 'Radiologically Osteoarthritis' to 'tri compartmental' and the applicant was treated accordingly and the pain in the knees somewhat subsided.

5. It was further submitted on behalf of the applicant that again on 30.09.2012, the applicant faced the same difficulty of the knee pain which became severe with a swelling; an X-Ray was again done and he was given required treatment for Osteoarthritis. The learned counsel submitted that despite the applicant's medical condition for five years, the RMB held on 01.01.2014 ignored the same and erroneously declared the applicant as 'Shape-I'; that in April, 2014, the pain and swelling in the knee of the applicant further worsened that it became very difficult for him to even walk; when the applicant reported to MH Kirkee, after examination, an X-Ray being taken, the applicant was given medical treatment for Osteoarthritis in the left knee. The learned counsel for the applicant submitted that despite the medical history of the applicant which was evident from the various medical documents, the respondents committed grave error in declaring the applicant as 'SHAPE-1' at the time of his retirement on 31.07.2014.

6. It was further submitted on behalf of the applicant that after his re-employment with effect from 01.08.2014,

the applicant was posted to the Infantry in Legal Cell of the IHQ of MoD (Army) where he was given the responsibility to look after more than 7000 pending cases, which he completed despite having the severe medical condition; when the applicant had no respite in knee pain, he was advised for half-knee replacement by the Senior Advisor Surgery, Base Hospital and the applicant remained under treatment at the Base Hospital from December, 2014 to May, 2016. It was further submitted on behalf of the applicant that due to the heavy legal work load while on re-employed service, the applicant had developed hypertension and high blood pressure and on 11.07.2016, he had to be admitted to Army Hospital with very high blood pressure and tingling sensation in his right knee and remained under treatment; that on 15.07.2016, a Re-categorisation Medical Board was held at the Army Hospital (RR) and the applicant was downgraded to SHAPE-3X (Permanent) for principal disability of 'Hypertension with left Thalamic Ischemic Stroke' considering the same as NANA ignoring the earlier disability relating to his knees and problem in walking; and finally on 16.07.2016, the applicant was discharged from

service being in low medical category P3(Permanent) without conducting any Release Medical Board.

7. The learned counsel for the applicant submitted that the applicant has been suffering from two disabilities i.e. 'Osteoarthritis' and 'Hypertension with left Thalamic Ischemic Stroke' and the same occurred during service due to occupational hazard/extreme work pressure/accident as brought out in the OA and the disabilities are neither chronic in nature nor had they been in existence at the time of joining the service, and even at the time of re-employment, the applicant had no symptom of the disability due to which the applicant was discharged from re-employment service. The learned counsel further submitted that both the disabilities have manifested within a period of 10 years from the date of retirement and, therefore, he is entitled for Review Medical Board and grant of disability pension in terms of Rule 86 of the Pension Regulations for the Army, 1961 (Part -I) 2008 read with GoI, MoD letter No. 1(2)/2002/D(Pen-C) dated 31.05.2006, and placed reliance on the order dated 13.02.2014 of the AFT, RB, Chandigarh in ***Hav Naresh Kumar Sharma Vs. Union of India & Ors.***



**[O.A. No. 1551 of 2013]** to submit that the facts of that case are similar to the present case and in that case, similar relief was granted to the applicant therein.

8. *Per contra*, the learned counsel for the respondents justified the action of the respondents and submitted that the applicant was superannuated in SHAPE-1 from active service and that the medical board of the applicant before the re-employment was not held. The learned counsel further submitted that the case of the applicant for post discharge claim was thoroughly adjudicated by the competent authority and was rejected vide letter dated 05.12.2016 stating that no medical documents to suggest the onset of disability/injury due to service condition was available with the Army HQ and no medical document was forwarded by the applicant to substantiate the claim. The respondents further submitted that in view of the provisions of Regulations 37 and 81 of the Pension Regulations for the Army, 1961 (Part-I), the applicant is not entitled to any disability pension. The learned counsel for the respondents, therefore, prays for dismissal of the OA.

9. The applicant vide the rejoinder to the counter affidavit of the respondents reiterated the submissions already made through the OA and submitted that no reasoned opinion has been given by the RMB and the Re-Categorization Medical Board and these boards have erroneously held the disabilities of the applicant as being neither attributable to nor aggravated by military service. In support of this contention, the learned counsel placed reliance on the judgment of the Hon'ble Supreme Court in ***Veer Pal Singh Vs. Secretary, Ministry of Defence* [(2013) 8 SCC 83]**, wherein it was held that although the Courts are extremely loath to interfere with the opinion of the experts, there is nothing like exclusion of judicial review of the decision taken on the basis of such opinion. Reliance was further placed on behalf of the applicant on the verdicts of the Hon'ble Supreme Court in ***Dharamvir Singh Vs. Union of India* [(2013) 7 SCC 316]** and ***Sukhvinder Singh Vs. Union of India & Ors.* [Civil Appeal No. 4949 of 2013]** decided on 02.07.2013 to submit that any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and should be attributed to

military service. Therefore, the learned counsel for the applicant prayed that the OA deserves to be allowed.

### **ANALYSIS**

10. We have heard the learned counsel for the parties at length and gone through the records produced before us.

11. In the present case, the applicant was discharged from the Indian Army from active service on 31.07.2014 in SHAPE-1 and from the very next day i.e. 01.08.2014, he was re-employed in the Army and was released from the extended service with effect from 16.07.2016 being in low medical category P3 (Permanent) for the disability 'Hypertension with left Thalamic Ischemic Stroke' held as NANA by the Recategorisation Medical Board held on 15.07.2016. It is not in dispute that the applicant, during his first spell of service in Indian Army in January, 2009, was injured in his right knee while his foot slipped and he fell on the ground. There is no denial to the averments made by the applicant that during previous service, because of the accident, he had suffered severe pain and swelling and was being treated as a case of 'Osteoarthritis'. Despite the same, the applicant was declared as SHAPE-1 at the time of discharge. Thereafter,

during his re-employment service, the applicant was suffering from the previous disability of Osteoarthritis and then he suffered from hypertension and later was diagnosed with 'Hypertension with left Thalamic Ischemic Stroke', which led to the discharge of the applicant from service.

12. It is evident from the documents placed on record by the applicant i.e. prescription slips, various Medical Case Sheets, MRI/X-Ray reports, which indicate that the applicant was suffering from the disabilities in question during service. The report dated 08.08.2009 of the MRI done of both knees in the Army Hospital (R&R) Delhi Cantt clearly suggested that the applicant was suffering from Osteoarthritis in addition to other disabilities including Medial Meniscus tear in both knees and he was referred to the Ortho Surgeon. The Medical Case Sheet dated 04.03.2013 also shows aggravation of his condition in the knees and he was advised to avoid running, jumping and squatting and to manage swelling. The applicant has filed various medical case sheets dated 08.04.2014, 16.07.2014, 22.07.2014 and MRI report dated 18.07.2014 showing the applicant suffering from Osteoarthritis along with various medical case sheets of

undergoing treatment on various dates including the Medical Case sheet dated 17.05.2016 and discharge slip dated 16.07.2016 when the applicant was diagnosed with the second disability i.e. Hypertension with left Thalamic Ischemic Stroke' and underwent treatment therefor. We have also seen the Re-Categorisation Medical Board proceedings which recorded the disability and the applicant's low medical category P3(P) w.e.f. 15.07.2016, due to which the applicant was released on 16.07.2016.

13. The applicant was discharged from the active service on 31.07.2014 and from re-employed service on 16.07.2016 and he filed a representation for post discharge claim and to conduct of the Review Medical Board on 19.09.2016, thus in view of Para 8 (a) of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008, the applicant is within the limitation period of seven years within which the Review Medical Board can be conducted. The said Para 8(a) 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 7 years thereafter, 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."*

Therefore, we are of the considered view that it is appropriate and essential in the interest of justice that the disabilities of the applicant are re-assessed by conducting a Resurvey Medical Board so that proper identification of his disabilities and percentage of disablement may be fixed.

### **CONCLUSION**

14. In view of the above, the OA 1110/2017 is allowed to the extent that the respondents are directed to conduct the Resurvey Medical Board of the applicant within a period of two months from the date of this order so as to re-assess the disabilities and the percentage of the disabilities and the decision of the same be communicated to the applicant accordingly.

15. There is no order as to costs.

Pronounced in the open Court on this 21 day of  
December, 2023.

[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)

[JUSTICE ANU MALHOTRA]  
MEMBER (J)

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