

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

OA 74/2020 with MA 834/2023

Ex HFO Jaibir Singh

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. V. S. Kadian, Advocate
For Respondents : Gp Capt Karan Singh Bhati, Sr. CGSC

CORAM :

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

ORDER

OA 74/2020

The applicant vide the present OA seeks the following prayers:-

“(a) direct respondents to conduct Re-(a) direct respondents to conduct Re-Survey/re-assessment Medical Board to assess percentage of the disability of the applicant and to grant disability element of pension along with benefits of broad banding. And/or

(b) Direct respondents to pay the due arrears of disability element of pension with interest @12% p.a from the date of stoppage of disability element of pension.

(c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost of the application in favour of the applicant and against the respondents.”

2. The applicant Ex HFO Jaibir Singh No. 669408-S was enrolled in the Indian Air Force on 16.04.1981 in a fit medical category after a medical examination conducted vide AFMSF-2A dated 20.11.1980. He was discharged from the Indian Air Force on 30.04.2019 under the clause of "on attaining the age of superannuation" after rendering a total 38 years and 15 days of regular service.

3. The applicant was initially placed in LMC A4G4 (T-24) for ID- Unilateral Vestibular Dysfunction vide AFMSF-15 dated 07 Jul 2017 while serving at AFS Pathankot, the Applicant had no family history of Hypertension or Diabetes Mellitus. The Applicant was noted to be a non-smoker and vegetarian. He was reviewed regularly. On 03 Apr 2018, the applicant applied for early review for Re- Categorization of Medical Board by stating that "he has improved his health and feeling better and asymptomatic". His application was approved by the Dy PMO, HQ WAC, IAF on 05 Apr 2018. During subsequent review he was upgraded to medical category A4G1 for the ID- Unilateral Vestibular Dysfunction vide AFMSF-15 dated 16 Apr 2018.

4. The applicant's Release Medical Examination was held at AF Station Pathankot vide AFMSF-18 dated 11 Jun 2018 and it found him fit to be released from service in full medical category A4G1 with Nil disability

claimed or detected. His RME was perused by Dy PMO HQ WAC, IAF dated 26.06.2018.

5. The applicant submits that on 19.01.2019 while fitment of Fuel Drop Tank on MIG-21 aircraft at 26 Sqn, Air Force Station, Pathankot, the unit of the applicant was preparing for a training exercise and the applicant being the supervisor helped the other technician. The applicant submits that he sustained a sudden jerk on his back and felt severe pain and was given heat treatment and local therapy was done by the medical assistant. The applicant further submits that he reported sick on 21.01.2019 (Monday) and took regular treatment at the Station Medicare Centre till 28.01.2019 where he remained admitted till 05.02.2019 and was given sick leave with effect from 21.02.2019 till 03.04.2019 and was further referred to CH(WC) at Chandimandir and admitted there from 13.04.2019 to 17.04.2019.

6. The applicant further submits that he was intimated by the doctors that there was very less time in his discharge i.e. till 30.04.2019, and it was not possible to conduct the categorization Medical Board or RMB and thus the applicant was discharged from service in SHAPE -I that is in a fit Med Cat. The applicant submits that after retirement also he has been taking treatment.

7. It is further submitted by the applicant that he was also suffering from the Vertigo Tinnitus hearing problem with effect from April 2017 to June 2017

for which he had been treated at the Base Hospital Delhi Cantt and he had been facing this problem till June 2017 and submits that he was placed in LMC for nine months thereafter and had been upgraded. The applicant submits that he is still regularly facing the same problem which needs to be assessed.

8. The applicant submits further that the RMB has not assessed the disabilities which he is facing which were caused due to performance of military duties and submits that despite his appeal cum representation dated 21.06.2019 made by him seeking the conducting of the Re-survey/Re-assessment Medical Board to assess his disabilities of low backache and Vertigo Tinnitus hearing problem and to then grant him the disability element of pension with the benefits of broad banding after conducting of the Re-assessment of his medical disabilities was not responded to by the respondents nor did they conduct any Re-survey Medical Board, which the applicant submits is wholly unjustified, unfair and arbitrary.

9. The present OA was instituted by the applicant on 07.01.2020. The respondents chose to respond to the said appeal cum representation of the applicant dated 21.06.2019 vide letter dated 26.08.2020 copy of which is annexed at Annexure R-4 to the counter affidavit dated 17.02.2023 filed on behalf of the respondents wherein it was stated to the effect :-

"3. Now, vide ibid representation dated 21 Jun 19 it is stated that he has h/o being in low medical category A4G4 (T-24) for ID- Unilateral Vestibular Dysfunction (Lt) vide AFMSF-15 dated 07 Jul 17 and was upgraded to Medical Category A4G1 vide AFMSF-15 dated 16 Apr 18 on the recommendation of ENT specialists opinion dated 23 Mar 18. Individual has also expressed himself Fit and asymptomatic vide personal application dated 03 Apr 18. Further, he has h/o sustained sudden jerk on his back while giving OJT to technician for fitment of fuel drop tank to MIG-21 aircraft on 19 Jan 19 during his posting to 26 Sqn, AF c/o 18 Wg. AF. He was treated conservatively at SMC 18 WG, 167 MH and CH (WC) Chandimandir w.e.f 21 Jan 19 to 17 Apr 19 with no change in medical category status.

4. The representation has been further deliberated at appropriate level and is informed that the ex-air warrior was not considered for lowering of medical category for low backache. Also for his disability Unilateral Vestibular Dysfunction (LT), he was upgraded to A4G1. Hence, the case is not processed for holding appropriate medical board under Post Discharge Claim."

10. The respondents have thus submitted that the applicant's case for holding the appropriate Medical Board under post discharge claim was appropriately declined and seek that the OA be dismissed. The respondents have placed on record as Annexure R2 copy of an application dated 03.04.2018 of the applicant to the Officer Commanding, 26 Sqn, AF wherein the applicant had sought an early Re-categorisation of Medical Board stating therein that he was in LMC A4G4 (T24) due to Unilateral Vestibular Dysfunction (LT) with effect from 11.12.2017 and was due for re-categorisation of his Medical Board on 27.05.2018 but that his health had

improved and he is feeling better and asymptomatic. Vide the said application the applicant had also stated that he was in the panel for promotion in his next higher rank and this additional promotion panel was valid upto June 2018 and that for the promotion he needed to have his medical category upgraded.

11. The applicant had thus sought that he may be reviewed early for a re-categorisation of his Medical Board. In view of the remarks of the SMO after this application was approved on 05.04.2018, the remarks of the SMO in relation thereto qua the effect that the ENT specialist at 167 MH had recommended the applicant to be upgraded to Med Cat SHAPE –I vide opinion dated 23.03.2018 and in view of the applicant's asymptomatic clinical status and opinion of the ENT specialist, the applicant's application for an early review Medical Board was strongly recommended and forwarded.

12. The respondents have thus submitted that during subsequent review the applicant had been upgraded to Medical Category A4G1 for the ID-Unilateral Vestibular Dysfunction vide AFMSF-15 dated 16.04.2018. The applicant has placed on record as Annexure A2 copies of medical documents to indicate that he has been suffering from a back pain from 21.01.2019 onwards when he reported at the Medicare Centre Air Force Station, Pathankot, on 21.01.2019, 23.01.2019, 28.01.2019, apart from the documents of the Base Hospital Delhi Cantt of 22.06.2019, of the 167 Military Hospital

to indicate his admission there on 05.02.2019 and discharge on 20.02.2019 in relation to his condition PIVD L4/L5 L5 S1 as well as the documents to indicate that he was admitted from 13.04.2019 to 17.04.2019 at the Command Hospital WC, Chandimandir also for a low backache apart from also placing on record, the copy of the discharge note dated 16.04.2019 to indicate that he was suffering from a low backache.

13. The respondents through their counter affidavit have not refuted the documents that the applicant has annexed as Annexure A2 as averred in para 4.3 of the OA.

14. Para 8(a) of the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel 2008 reads to the effect :-

"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.

(b) In cases where an individual in receipt of a disability pension dies within a period of 7 years from the date of release/retirement, may be considered to have died of the disease for which he was granted disability pension if it can be so established by the competent medical authority. If the medical certificate as to the cause of the death is not available, other

factors and circumstantial evidence would be taken into account."

15. Though the respondents seek to contend that the applicant was discharged in a fit medical category and suffered from no disability whatsoever in relation to his Unilateral Vestibular Dysfunction and rather it was the applicant himself who had sought to be upgraded vide an application seeking a review of his medical category, **the said upgradation as stated by the respondents was done vide AFMSF-15 dated 16.04.2018. The applicant has been discharged on 30.04.2019.**

16. The applicant submits that he continues to suffer from the problem in relation to the ailment of Vertigo Tinnitus.

17. That the applicant was admitted in the Army Hospital for the backache is brought forth through documents placed on record as Annexure A2 by the applicant, which have not been refuted by the respondents. In these circumstances as the applicant contends that he still suffers from the ailment of his backache which he submits was due to the sudden jerk sustained by him when he was helping another technician whilst fitment of a Fuel Drop Tank on a MIG-21 aircraft at 26 Sqn, Air Force Station Pathankot, the aspect of the applicant suffering from the disability in relation thereto as sought to be

contended by him is required to be ascertained by conducting of Medical Board, to which the applicant is entitled to, by conducting of the Post Discharge Medical Board in terms of Para 8(a) of the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008.

18. The OA is thus disposed of with directions to the respondents to conduct a Post Discharge Medical Board qua the applicant in relation to his stated disabilities of Vertigo Tinnitus as well as in relation to his stated submission of suffering from a low backache pursuant to a jerk sustained by him whilst on duty on 19.01.2019, which Medical Board be conducted by the respondents within a period of two months from the date of this order to ascertain the ailments if any, from which the applicant suffers in relation to the two ailments as detailed hereinabove, the extent of disablement if any, and also the duration of disablement.

19. It would be open to the applicant to seek redressal in accordance with law after the conducting of Post Discharge Medical Board, copy of which proceedings are directed to be supplied by the respondents to the applicant. The original medical record qua the applicant that had been produced by the

respondents have been perused and are directed to be returned to the respondents. The OA 74/2020 is disposed off accordingly.

Pronounced in the Open Court on.....¹⁸December, 2023.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

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