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

RA 20/2021
WITH
MA 1994/2021 IN OA 1660/2016

Col Deepak Kumar Vishnoi (Retd) ..... **Applicant**
VERSUS
Union of India and Ors. ..... **Respondents**

For Applicant : Mr. Indra Sen Singh, Advocate

For Respondents : Mr. Anil Gautam, Sr CGSC
Maj Sridhar J, OIC, Legal Cell

Date:- 31st July, 2023

CORAM

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

ORDER

This review application has been preferred for seeking review of the judgment/order dated 8th March, 2019 passed in OA 1660/2016, whereby and wherein this Hon'ble Tribunal had dismissed the OA of the applicant as being devoid of any merit and the prayer for grant of disability pension was declined. The applicant, therefore, preferred Civil Appeal No. 4474/2021 before the Hon'ble Supreme Court alleging therein that though he has challenged the correctness of the findings of the Re-Survey Medical Board

and had placed his reasons for grant of the relief as claimed in the OA, the Tribunal had failed to consider such submissions and had dismissed the application without considering the merits of the claim of the applicant for grant of the reliefs.

2. The reliefs, as prayed for by the applicant in his OA 1660/2016 are as follows:

> **"(a) Set aside the Impugned order dated 15.11.2016 (Annexure A-1);**
> **(b) Set-aside the Re-Survey Medical Board, to the extent it has arbitrarily reduced the Applicant's disability from 50% to 14%;**
> **(c) Set-aside the assessment made by the Release Medical Board Proceeding (RMB) dated .....in respect of the Applicant held at Military Hospital, Kirkee only to the extent it holds that the Applicant's disability on account of 'Diabetes Mellitus Type-II' is neither attributable to nor aggravated by military service;**
> **(d) Direct the Respondents to treat both the disabilities which he was found suffering from as attributable to Military-service and pay disability pension to the Applicant at the rate of 75% w.e.f. 19.08.2007 thereby granting the benefit of rounding off/broad-banding policy of the Govt;**
> **(e) Direct the Respondents to pay the arrears of war/disability pension, after calculating the same at the rate of 75% w.e.f. 19.08.2007, with interest at the rate 12% per annum; and"**

3. The Hon'ble Supreme Court after hearing the application had permitted the applicant to approach the Tribunal by filing a Review Application and had thus

disposed of the Civil Appeal No. 4474/2021. Text of the order of the Hon'ble Apex Court reads as under:

> **"The appellant is permitted to approach the Tribunal by filing a review petition.**
> **The appeal is disposed of accordingly.**
> **Pending applications, if any, also stand disposed of."**

4. Thus, the present Review application.

5. Learned counsel for the review application, while urging the Tribunal to entertain the present review application has tried to press before us the grounds which had earlier been raised by him in the original application, which had been disposed of by a reasoned order. Though, the review application was seemingly barred by limitation, MA 1994/2021 was also filed and accordingly, vide order dated 25th January, 2022, this Tribunal had issued notice in both the applications to the respondents to file the response.

6. After several adjournments, reply was thus taken on record and the matter was heard by us on 2nd February, 2023 on which date learned counsel for the applicant sought some time to place certain judgments on record in support of his case.

7. During the course of the arguments, learned counsel for the applicant placed before us a letter

dated 20th July, 2012, the said letter is in the shape of a guideline to medical officer for the purpose of assessment of disability percentage in Diabetes Mellitus and Epilepsy cases. It would be relevant to mention here that in the instant case, the applicant had sought disability pension though he had taken premature retirement on 18th August, 2007, 03 months prior to the date of his superannuation. The Review Medical Board at MH KIRKEE had been conducted just prior to his premature retirement, which had found him to be suffering from two disabilities viz Pulmonary Tuberculosis @ 50% and Diabetes Mellitus Type-II @ 1-5% and the composite disability had been assessed at 50%. Disability (a) Pulmonary Tuberculosis (50%) was held as attributable to military service but disability (b) Diabetes Mellitus Type-II (1-5%) had been assessed as non-attributable to nor aggravated by military service. It had been contended by the applicant that though disability (b) was given for life, the disability for Pulmonary Tuberculosis-(a) assessed at 50% was awarded only for two years. Nevertheless, no disability pension was awarded to the applicant after his retirement and despite several requests having been made by him for holding a Re-Survey Medical Board, the applicant after a prolonged

correspondence with the PCDA he was granted disability pension in the month of March at the rate of 50% in 2010. It appears that a RSMB was held at INHS ASWINI and the proceedings thereof were communicated to the Army Headquarters, which was forwarded to the PCDA (Allahabad) on 22nd March, 2012 for issuance of a corrigendum PPO in respect of the applicant in grant of disability pension @ 50% for life. However, PCDA (Allahabad) failed to do so and only granted the applicant 50% disability pension till the date of holding of RSMB and not of life. As per the report of the RSMB, the applicant's disability has been reduced from 50 to 14%. Learned counsel for the applicant thus, submitted that the PCDA could not have discontinued the pension in view of the directions of the Army Headquarters in forwarding the case of the applicant. Since the disability pension granted to the applicant had been discontinued w.e.f. 15th March, 2012, the applicant preferred the application dated 3rd October, 2016 for restoration of his disability pension @60% but such application was also rejected vide order impugned in the original application.

8. Learned counsel for the applicant has preferred the present review application that since the disability found in the applicant by the Review Medical Board at the time of his retirement were Permanent Medical Category (PMC), then as per Para 7, Government of India, MoD order dated 07.02.2001, the disability having been declared permanent had to be assessed as for life. He, further, contended that there should be no periodical review of such disabilities, therefore, the Release Medical Board was clearly in the wrong in assessing the disability of the applicant as for only two years. It was, however, urged by the applicant that the assessment made by RSMB held on 10th March, 2012 was clearly unreasonable and the act of the Board in reducing the disability from 50 to 14% without assigning any reason was wholly arbitrary and could not be sustained being violative of Article 14 of the Constitution. It was, however, contended that if at all such a reduction had been made by the RSMB, the respondents were duty bound to record reasons which are held that the applicant's disability which he suffered at the time of his retirement was still evident on account of Pulmonary Tuberculosis and Diabetes Mellitus Type-II and was to be considered composite 50%.

9. Learned counsel for the applicant, however, submitted that not only was the decision of the respondents, contrary to the guidelines laid down by the Hon'ble Apex Court in the case of **Dharamveer Singh** Versus **Union of India and others** as well as **K Srinivasa Reddy** Versus **Union of India and others** but also contrary to the provision of the Rule 432 of the Armed Forces Medical Services Regulations and the provisions of Guide to Medical Officers (Military Pensions), 2002. He further contended that in any view of the matter, the applicant's case for broad banding/rounding off promulgated vide Government of India notification dated 31st January, 2001 was also applicable in the case for the present applicant and needed worthwhile consideration.

10. Opposing the grounds raised in the Review Application by the applicant, learned counsel for the respondents has submitted that all the contentions raised by the applicant for the present Review Application were duly considered by the Tribunal Before passing the order under review. The contentions of the applicant are wholly misconceived and do not warrant interference under the review jurisdiction which in any view of the matter would entail interference only within the four parameters as enunciated in order 47 Rule 1

CPC and from operative portion of the order, no error apparent on the face of record has been either alleged or demonstrated before this Tribunal. It was thus contended that the Review Application cannot be entertained on this score alone.

11. Re-capitulating briefly, the respondents, per contra have asserted that the applicant was commissioned on 9th June, 1979 and had sought pre-mature retirement and pre-maturely retired on 18th August, 2007. At the time of pre-mature retirement, the applicant had been brought before the Review Medical Board which had classified his disability as under:-

"(i) Primary Tuberculosis- attributable to service but not aggravated by service, degree 50%, for 2 years,

(ii) Diabetes Mellitus Type II- NANA by service degree 1% to 5% for life."

12. Thus, the net assessment qualifying for disability element was fixed at 50% for two years in pursuance of respondent's letter No. 12681/IC-38206F/ENGRS/MP-5(B)/261/2009/AG/PS-4(Imp-II) dated 25th March 2010, and he was granted disability element @ 50% for 2 years,

i.e. 4th April, 2009 to 14th March, 2012 (Vide PPO dated 18th May, 2012).

13. The respondents further contended that on the applicant's request dated 7th July, 2009, Re-Survey Medical Board (RSMB) was conducted on 12th February, 2012 at INHS ASVINI, which held IDs as :-

(i) Primary Tuberculosis- 11% to 14% for life

(ii) Diabetes Mellitus Type II- 1% to 5% for life.

And therefore, the net assessment referable to service was assessed at 11% to 14% for life. As a consequence of such report of the RSMB, the applicant preferred OA 1660/2016 for setting aside the report of the RSMB and for grant of disability element of pension at the rate of 50% with rounding off to 75% w.e.f. 19th August, 2007. Learned Tribunal vide a detailed reasoned order dated 8th March, 2019, disposed of the application whereafter the applicant approached the Hon'ble Supreme Court in Civil Appeal No. 4474/2021 which was disposed of permitting the applicant to approach this Tribunal by filing a Review Application.

14. Learned counsel for the respondent further contended that as per Regulation 48 of the Pension Regulations for the

Army, 1961 Part I (hereinafter referred to as PRA), provides that unless otherwise specifically provided, a disability pension consisting of service element and disability element may be granted to an officer who is invalided out of service on account of a disability which is either attributable to or aggravated by military service in non-battle casualty and the disability is assessed at 20% or more. As per Regulation 53 of Pension Regulation of Army, a Low Medical Category (LMC) officer who retires on superannuation or on completion of tenure can also be granted disability pension under aforesaid provision, however he must fulfil the twin conditions as stated above which includes that the percentage of disability should be 20% or more. It was clarified further that Regulation 50 of the Pension Regulations for the Army, 1961 (Part-I), an officer proceeding on voluntary retirement was not eligible for disability pension even if he fulfils the twin eligibility conditions for the same. However, on the recommendations of the 6th CPC, the government issued another policy vide GoI, MoD letter No. 16(5)/2008/D(Pens/Policy) dated 29.09.2009 wherein it was clarified that Armed Forces personnel who are retained in service despite disability, which is accepted as attributable

to or aggravated by military service, and have, forgone lumpsum compensation for said disability, may be given disability element/war injury element at the time of their retirement/discharge on or after 01.01.2006, whether voluntarily or otherwise, in addition to retiring/service pension or retiring/service gratuity.

15. Reverting back to the government of India, MoD letter No. 1(2)/97/D(Pen-C) dated 7th February, 2001, it was contented that at Para 7 of the aforesaid letter it had been clarified that "There will be no periodical reviews by the Resurvey Medical Boards for re-assessment of disabilities. In cases disabilities adjudicated as being of a permanent nature, the decision once arrived at will be final and for life unless the individual himself requests for a review. In cases of disabilities which are not of a permanent nature, there will be only review of the percentage by a Reassessment Medical Board, to be carried out later, within specific time frame. The percentage of disability assessed/recommended by the Reassessment Medical Board will be final and for life unless the individual asks for a review. The review will be carried out by Review Medical Board constituted by DGAFMS. The

percentage of disability assessed by the Review Medical Board will be final".

16. Learned counsel for the respondents thus contended that in the instant case, the disability 'Pulmonary Tuberculosis' which was not permanent in nature was considered by the Re-Survey Medical Board who found the same disability of Pulmonary Tuberculosis to be between 11% to 14% and Diabetes Mellitus Type-II as 1% to 5% for life, and net rounding off thus came to be less than 20%. The percentage of disability thus assessed by the Review Medical Board became final and binding and the applicant cannot withdraw from the aforesaid report as it was conducted only on his request.

17. It was further contended that Para 6(a) of Re-Survey Medical Board dated 14th March, 2012 clearly stated that due to improved medical condition, the applicant's disability percentage in respect of ID Pulmonary Tuberculosis had been reduced from 50% to 11-14%.

18. So far as the ID Diabetes Mellitus Type-II is concerned, it had been detected on 3rd October, 2006 at Pune, a peace station and was thus appropriately conceded as "NANA" by the RMB and stands validated by the Competent Authority, in

terms of Para 26, Chap VI, GMO 2002, amendment 2008, which reads as under :-

> "This is a metabolic disease characterized by hyperglycemia due to absolute/relative deficiency of Insulin and associated with complications called microangiopathy (retinopathy, nephropathy, neuropathy) and macroangiopathy.
>
> There are two types of primary diabetes, Type-I and Type-2. Type 1 diabetes results from severe and acute destruction of Beta cells of pancreas by autoimmunity brought about by various Infections Including viruses and other environmental toxins in the background of genetic susceptibility. Type 2 diabetes is not HLA-linked and autoimmune destruction does not play a role.
>
> Secondary diabetes can be due to drugs or due to trauma to pancreas or brain surgery or otherwise. Rarely, it can be due to diseases of pituitary, thyroid and adrenal gland. Diabetes arises in close time relationship to service out of infection, trauma, and post surgery and post drug therapy be considered attributable.
>
> Type 2 Diabetes results from acute beta cell destruction by immunological injury resulting from the interaction of susceptibility. If such a relationship from clinical presentation is forthcoming, then Type 1 Diabetes Mellitus should be made attributable to service. Type 2 diabetes is considered as life style disease. Stress and strain, improper diet non-compliance to therapeutic measures because of service reasons, sedentary life style are the known factors which can precipitate diabetes or cause uncontrolled diabetic state.
>
> Type 2 Diabetes Mellitus will be conceded aggravated if onset occurs while serving in Field, CI Ops, HAA and prolonged afloat service and having been diagnosed as Type Diabetes mellitus who are required service in these areas.
>
> Diabetes secondary to chronic pancreatitis due to alcohol dependence and gestational diabetes should not considered attributable to service."

19. Learned counsel for the respondents further contended that thus the finding of RSMB assessing the applicant's ID 'PULMONARY TUBERCULOSIS' @11-14% and DIABETES MELLITUS TYPE- II @ 1-5 % for life and net assessment properly referable to service @ 11-14% (less than 20%) in consonance with the medical guidelines and consequently, the order passed by this Hon'ble Tribunal dated 8th March, 2019 has no error apparent and warrants no interference from this Hon'ble Tribunal.

20. We have heard the learned counsel for the parties at length and considered the rival submissions advanced by each of them. Learned counsel for the applicant and respondents have addressed us on the merit of the claim of the applicant for grant of disability pension. But we make it clear that we are conscious of the fact that the present application is under the review jurisdiction of this Tribunal and the parameters fixed under law as per the statute have been clearly spelt out under Section 18 of the AFT Act which is to be read along with the provisions of Order XLVII of the Code of Civil Procedure, 1908. Rule 1 of the Order XLVII is quoted hereunder:

Rule 1- Application for review of judgment:

> (1) Any person considering himself aggrieved—
> (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred.
> (b) by a decree or order from which no appeal is allowed, or
> (c) by a decision on a reference from a Court of Small Causes. and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.
> (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applied for the review.
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> [Explanation- The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.]

21. From a plain perusal of the prayers made out by the applicant in the present application, the applicant has prayed for the review of the order passed in the OA stating that there are errors apparent on the face of the judgment in as much as in some crucial issues which were prominently raised by the applicant in the OA have not been considered by the

Tribunal while delivering the judgment dated 08.03.213 passed in OA 1660/2016.

22. Having perused the entire pleadings of the applicant and the response of the respondents, we have noted the following: -

i. Though the disability of pulmonary tuberculosis has been stated by the applicant to be permanent in nature, we find that the same has been assessed as for 50% for two years only.

ii. On applicant's own request an RSMB had been conducted which found the aforementioned disability to have diminished from 50% to 11-14%.

iii. The present case is a case of premature release and not invalidation.

iv. The net assessment in the case of diabetes mellitus for 1-5% for life is also in accordance with the medical guidelines.

v. The Hon'ble Tribunal has passed a reasoned order considering the rule position of the subject matter.

vi. No error apparent has been pointed out by the applicant and the consistent effort has been made to

reappraise the claim of the applicant on merits which is not permissible in review jurisdiction.

vii. The additional letter dated 20.07.2012 filed by way of an additional affidavit also indicates that any impaired fasting glucose has to be treated less than 20%. However, any consideration of this document would entail re-appraisal on merit which would be beyond the scope of the review jurisdiction.

viii. Any patent illegality sought to be brought on and pressed before this court would entail a detailed reasoning and reconsideration on merit which is barred by law under Order XLVII of the CPC and could not be termed as an error apparent on the face of the record.

ix. The applicant has also not been able to establish as to how the document dated 20.07.2012 could not have been brought on record with due diligence at the earlier stage.

23. Several citations have been quoted before us by the applicant which have been perused by us and also been countered by the respondents especially with reference to the judgement in case of ***Pancham Lal Pandey v Niraj Kumar***

***Mishra,* (2023) SCC Online SC 143** which has categorically held at para 15 as such:

> **15. The provision of review is not to scrutinize the correctness of the decision rendered rather to correct the error, if any, which is visible on the face of the order/record without going into as to whether there is a possibility of another opinion different from the one expressed.**

Another judgment which is of relevance is ***State of West Bengal v Kamal Sengupta,* (2008) 8 SCC 612** of which paragraphs 21 and 22 reads:

> **21. At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review ex debito justitiae. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge, and even after the exercise of due diligence, the same could not be produced before the court earlier.**
>
> **22. The term "mistake or error apparent" by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny, and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because its erroneous in law or on the ground that a**

different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the Con/tribunal concerned cannot sit in appeal over its judgment/decision.

24. In the result, in our considered opinion and for the foregoing reasons we are not inclined to interfere in this matter as the present review application is but an appeal in disguise and we find no error apparent on the face of record. And the same is accordingly dismissed.

25. All pending MA(s), if any, also stands disposed of accordingly.

26. Pronounced in open Court on this 31st day of July, 2023.

(ANJANA MISHRA)
MEMBER (J)

(P. M. HARIZ)
MEMBER (A)

Priya