

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

OA 1136/2017 WITH MA 844/2017

Ex AC (U/T) Ram Niwas Ahlawat ..... Applicant  
Versus  
Union of India & Ors. .... Respondents

For Applicant : Mr. Virender Singh, Advocate  
For Respondents : Mr. Satya Ranjan Swain, Advocate

CORAM :

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

ORDER

MA 844/2017

Keeping in view the averments made in the application and in the light of the decision in Union of India and others Vs. Tarsem Singh [(2008) 8 SCC 648), the delay in filing the OA is condoned. MA stands disposed of.

OA 1136/2017

2. The applicant through the instant OA is seeking the following reliefs:-

*“(a) Quash and set aside the impugned letter no. AIRHQ/99798/1/706588/DAV/DP/CC dated 27.04.2017*

*“(b) Direct respondents to grant disability pension to the applicant from the date of discontinuation of disability pension i.e. wef 12.11.1994 with consequential benefits and arrears with interest @125 p.a.*

*“(c) Any other relief as this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case.”*

3. The applicant was enrolled in the Indian Air Force on 16.05.1986 and medically invalidated on 19.05.1987 for the ID, "Pulmonary Tuberculosis" after rendering 01 year and 3 days of service.

4. It is the contention of the applicant that the Invaliding Medical Board opined that the disease is attributable to military service and assessed the ID @ 100% for two years. Accordingly he was granted the Disability Element of Pension. Subsequently, his disability was re-assessed by subsequent medical boards and was granted disability element of pension till 12.11.1994, and the same needs to be continued as the invaliding disability cannot be assessed below 20%.

5. On the other hand, the Respondents submit that the disability of the applicant were re-assessed post his retirement, and that the first Resurvey Medical Board (RSMB) assessed the ID @ 100% for two year w.e.f 20.05.1987. Subsequently, his disability was assessed by second RSMB @100%, third RSMB assessed the disability @60%, fourth RSMB assessed the disability @20% and the fifth RSMB assessed the disability @15-19% wef 13.11.1994 to 25.05.1995.

6. It is further submitted by the Respondents that while the disability pension granted to the applicant was discontinued wef 13.11.1994 with the disability being assessed at less than 20%, he was again assessed by sixth RSMB, which again assessed his disability @15-19% for life wef 26.05.1995 and therefore, the Applicant is not entitled for Disability Element in terms of para 173 of the Pension Regulations for the Army 1961 (Part I), and accordingly the payment of Disability Pension was stopped.

7. We have heard learned counsel for the parties and perused the material placed on record. We have also gone through Invalid Medical Board dated 13.01.1995 and subsequent Re-assessment Medical Boards as well as the rejection order of disability pension claim. Now, the limited question for consideration is whether the applicant is entitled for the grant of disability pension for the period, wherein RSMB has assessed his disability at less than 20%, which is minimum benchmark for grant of disability pension as per Para 173 of the Pension Regulations for the Army 1961 (Part I).

8. On an analysis of medical literature, we find that as per the report of World Health Organization, and American Lung

Association, the disability of the applicant is now curable with time and regular medication. It is important to note that the RSMB has itself assessed the disability @ 15-19 % for life, which is clear evidence that the disability has healed with time, and in absence of any contrary medical record, we find no reason to dispute the finding recorded by the Medical Board, and that the applicant is not entitled to disability pension for a disability, which has been assessed at less than 20%.

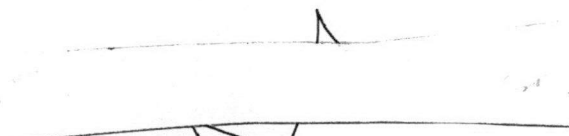
9. In view of the aforesaid analysis, we are of the opinion that this OA is devoid of merit and deserves to be dismissed.


10. Accordingly, the OA 1136/2017 is dismissed.

11. No order as to cost.

12. Pending miscellaneous application, if any, is disposed of.

Pronounced in the open Court on <sup>H</sup>14 day of May, 2024.

  
[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

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

Akes