

COURT No.3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

19.

OA 1088/2019

Hav Pooran Mal (Retd.) Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Ms. Archana Ramesh, Advocate
For Respondents : Mr. Shyam Narayan, Advocate

CORAM

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

ORDER

09.05.2023

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

- A. *Issue directions to the Respondents to hold an Appellate Medical Board for assessing and quantifying the second disability of Cervical Spondylitis and declare the disability either as attributable or aggravated to military service and consequentially grant Composite Disability Pension duly rounded to the Applicant from the date of discharge for life with arrears with penal interests to meet the ends of equity, justice and fair play;*
- B. *Pass such other and further orders to the Respondents by way of an adequate exemplary compensation in the attendant genuine circumstances of the case, to meet the ends of justice.*

2. The applicant having been enrolled in the Rajput Regiment on 30.07.1998 was invalided out of military service on 30.04.2018, with a disability of PIVD – Prolapsed Intervertebral Disc, for which he received the disability element

of pension @ 30% duly rounded to 50% from the date of discharge as also indicated from the counter affidavit filed on behalf of the respondents dated 25.01.2021.

3. The applicant submits that apart from the disability of the PIVD – Prolapsed Intervertebral Disc, the applicant was also suffering from Cervical Spondylitis and to that effect, the applicant had made the submissions previously to the respondents as was submitted vide a letter dated 18.08.2018.

4. The applicant thus seeks that in the event of the applicant being found to be suffering from Cervical Spondylitis and if entitled to, the applicant may then get the disability element of pension in relation thereto.

5. It is also brought forth on behalf of the applicant that through the documents that have been placed on record by the respondents as Annexure R-10 to the counter affidavit filed on their behalf, the receipt of the personal application no. 2997971P/pers/Dis/2018 dated 18.08.2018 made by the applicant has not been refuted, though in the said letter dated 17.10.2018 placed as Annexure R-10 on the record, there is no mention in relation to the said disability sought to be reassessed apart from merely stating of the receipt of the letter dated 18.08.2018 from the applicant.

6. It is also brought forth on behalf of the applicant that placed on record at Annexure R-13 to the counter affidavit of the respondents is the letter dated 30.09.2019 which indicates to the effect that the Statement of the Case along with the recommendation of the Chief Record Officer and OIC Records for holding post discharge RMB in respect of the applicant had been forwarded along with the supporting documents for processing the case to Office of the DGAFMS (MoD) and accord sanction in relation thereto.

7. Reference is also made on behalf of the respondents to the very counter affidavit filed on behalf of the respondents themselves vide averments in Para 16 thereof which reads to the effect:-

"16. That the content Para 4(A) and 4(E) of the OA is wrong and denied. It is submitted that the applicant was brought before Release Medical Board at 151 Base Hospital vide AFMSF-16 dated 29 Dec 2017 in terms of Army or 03/89. As per Para 1 of Part V of Release Medical Board Proceedings, the disability "FIVD L5-S1-(OPTD) ICD CODE-10, M 48.06" of the applicant was opined to be aggravated by military service and further as per Para 6 Part V, of release medical board proceedings the percentage disablement was assessed @ 30% for life. Accordingly, Principal Controller Defence Accounts (Pension) Allahabad notified Pension Payment Order bearing No 163201800429 (Annexure R-8) granting disability element @ 30% rounded off to @ 50% with effect from 01 May 2018 for life, also, the applicant has not claimed 'Cervical Spondylitis' at the time of his Release

Medical Board. However, records the Rajput Regiment vide letter no 2997971/DP/PG dated 30 Sep 2019 has already taken up case with Directorate General of the Armed Forces (Ministry of Defence) for obtaining sanction to conduct appeal medical board in respect of the applicant. Further action for grant of disability pension will be taken according to outcome of the appeal medical board, in case disability "Cervical Spondylitis" as claimed by the applicant is found to be either attributable to or aggravated by military service and will have affect on the composite assessment for disability pension, the case of the applicant will be processed to Principal Controller of Defence Accounts (Pensions), Allahabad in the light of rules and policy on the subject. Therefore, RELIEF AS ASKED FOR BY THE APPLICANT ALREADY STANDS GRANTED."

8. It is submitted on behalf of the applicant that despite this counter affidavit dated 25.01.2021 till date there has been no progress in the matter on behalf of the respondents.

9. On behalf of the respondents time is sought to seek instructions in relation thereto which we do not consider appropriate to grant now and in as much as the applicant is entitled to get the Re-survey Medical Board conducted which is a right that flows to him in terms of Para 8 (a) of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008, which provides thereby to the effect:-

"8. Post discharge claims:

(a) Cases in which a disease was not present at the time of 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”,

i.e. that in case in relation to a disease not present at the time of retirement/discharge from service (in relation to which the contention however on behalf of the applicant is to the effect that the disease of Cervical Spondylitis was in existence even prior to discharge which aspect however is not being taken into account), in view of the very factum that the provisions of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008, even take into account the arising of any disability within a period of 07 years after discharge, it is essential that the respondents are directed to conduct the post discharge Re-survey Medical Board qua the stated disability of the applicant of the Cervical Spondylitis which be so conducted within a period of two months from the date of this order.

10. Copy of this order be given *DASTI* as prayed on behalf of the respondents.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL BHIREN VIG)
MEMBER (A)

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

12.

MA 3564/2023 in OA 1088/2019

Hav Pooran Mal (Retd)

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Ms. Archana Ramesh, Advocate
For Respondents : Mr. Shyam Narayan, Advocate with
Maj Abhishek Kumar, OIC, Legal Cell

CORAM

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

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

ORDER
05.12.2024

MA 3564/2023 was filed by the applicant seeking directions to the respondents to implement the order dated 09.05.2023 in OA1088 of 2019.

2. It had been directed vide para 9 to the effect:-

"9. On behalf of the respondents time is sought to seek instructions in relation thereto which we do not consider appropriate to grant now and in as much as the applicant is entitled to get the Re-survey Medical Board conducted which is a right that flows to him in terms of Para 8 (a) of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008, which provides thereby to the effect:-

"8. Post discharge claims:

(a) Cases in which a disease was not present at the time of 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",

i.e. that in case in relation to a disease not present at the time of retirement/discharge from service (in relation to which the contention however on behalf of the applicant is to the effect that the disease of Cervical Spondylitis was in existence even prior to discharge which aspect however is not being taken into account), in view of the very factum that the provisions of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008, even take into account the arising of

any disability within a period of 07 years after discharge, it is essential that the respondents are directed to conduct the post discharge Re-survey Medical Board qua the stated disability of the applicant of the Cervical Spondylitis which be so conducted within a period of two months from the date of this order.”

3. Pursuant to the present MA, the respondents submitted a letter dated 30.07.2024 no. 2997971/25/CC/LC, to indicate to the effect that the Post Discharge Claim Medical Board of the applicant had since been conducted on 12.07.2024 and as per paragraph 3 of Part-VII of the Post Discharge Claim Medical Board dated 12.07.2024, the disability of ‘Cervical Spondylosis’, that the applicant suffered from has been assessed to 20% for life.
4. The applicant is already in receipt admittedly of the disability element of pension qua the disability of ‘PIVD – Prolapsed Intervertebral Disc’ assessed at 30% for life rounded off to 50% for life from the date of discharge as indicated from the counter affidavit that was filed on behalf of the respondents.
5. In view thereof, though the applicant is found to be suffering from ‘Cervical Spondylosis’ with a percentage of disablement assessed at 20% for life, as has been submitted on behalf of the respondents, qua the computation of the disability element of pension in relation to the disability of ‘PIVD – Prolapsed Intervertebral Disc’ assessed at 30% for life and of the disability of ‘Cervical Spondylosis’ assessed at 20% for life, the composite assessment of impairment in respect of the applicant

computes to 44% for life as per Para 17A Chapter 7 of the GMO (Military Pensions) 2008.

6. In view thereof, despite the earnest request and prayer made on behalf of the applicant that the computation be made arithmetically and that the applicant be granted the disability element of pension rounded off to 75% as submitted on behalf of the applicant, the prayer cannot be granted.

7. We are fortified in view of the order dated 31.05.2023 in OA 940/2022 titled as *WO Karambeer Singh vs Union of India and Ors* of the AFT (PB) New Delhi with observations in paras 16 and 17 thereof to the effect:-

“16. To bring out the correct method of computing composite disabilities in case when there are two or more disabilities due to service, the letter dated 14.12.2009 bearing no. 16036/RMB/IMB/DGAFMS/ MA(pens) issued by the office of DGAFMS, MoD should be considered. The relevant extract of the above letter is reproduced as under-

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2.As per the present laid down policy whenever there are two or more disabilities due to service, the compensation will be based on the composite assessment of the degree of disablement. Whenseparate disabilities have entirely different functional effects, the composite assessment is taken as the arithmetical sum of their separate assessments. But where the functional effects of the disabilities overlap, the composite assessment will be reduced in proportion to the degree of overlapping.

3. It has been observed by this office during perusal of RMB/MB proceedings conducted at various hospitals of the armed forces, that on several instances the members of the armed forces having two of more disabilities having similar assessment for individual disabilities have been given a composite assessment which have a wide variance between different Medical Boards thus defying fairness and uniformity. Particularly those cases pertaining to the former policy as mentioned in Para 2 above, where the separate disabilities having

different functional effects and the composite assessment is taken as the arithmetic sum of their separate assessments it has been found that members have been over assessed by the medical boards which is not commensurate with the overall functional ability of the individual.

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17. Therefore, the resultant calculation of composite disability is this case as per extant rules will be as follows:-

<i>Disability</i>	<i>Assessment</i>	<i>Net assessment</i>	<i>Remarks</i>
<i>Disability 1</i>	<i>30%</i>	<i>30%</i>	<i>The disability with max percentage is to be considered first.</i>
<i>Disability 2</i>	<i>20%</i>	<i>14%</i>	<i>Held attributable by the AMB dated dated 28.04.2014 and the RSMB dated 12.03.2018</i>
<i>Composite Assessment</i>		<i>44%</i>	<i>Rounded off to 50%</i>
<p><i>Calculation</i></p> <p><i>Disability 1 = 30% (the disability with max percentage)</i> <i>Disability 2 (100-30) = 70 * 20/100 = 14%</i> <i>Composite Assessment = 30+14 = 44%</i> <i>The rounding of composite assessment of 44% will be 50%.</i></p>			

8. The MA 3564/2024 thus now calls for no further action and stands disposed of.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)