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

OA 1118/2019 WITH MA 1810/2019

Col H.S. Jha (Re-employed) ... Applicant
Versus
Union of India & Ors. ... Respondents

For Applicant : Mr. S.S. Pandey, Advocate
For Respondents : Mr. Rajeev Kumar, Advocate

CORAM :

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

ORDER

MA 1810/2019

Keeping in view the averments made in the application and in 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.

2. MA stands disposed of.

OA 1118/2019

3. The applicant vide the present OA 1118/2019 has prayed for grant of disability pension for the disability - Carcinoma Right Distal Ureter (Optd.) with Submeatal Stricture Urethra (Optd.) @ 40% for life, and held as attributable to service by the Release Medical Board.

4. The applicant Col Himanshu Shekhar Jha was commissioned in the Indian Army on 12.06.1982 and retired from service on superannuation on 31.08.2015. It was thus opined by the said RMB that the disability of the applicant - Carcinoma Right Distal Ureter (Optd.) with Submeatal Stricture Urethra (Optd.) @ 40% for life was attributable to service. The administrative authorities however, held that the said disability of the applicant was neither attributable to nor aggravated by military service and the initial claim for disability claim of the applicant was rejected vide letter No.13301/IC-40313F/JAKLI/MP-6(E)/484/2015/AG/PS-4(Imp-I)dated 30.03.2016. Aggrieved by the aforesaid rejection, the applicant has approached this Tribunal on the ground that the administrative authorities cannot overrule the opinion of the Medical Board.

5. Inter alia, the respondents have placed reliance on the Rule 27(c) of ER-82 which reads as follows :-

> ***"27(c) Assessment of disablement and acceptance of attributability/aggravation in cases of disabilities other than injuries are medical issues, views on such medical issues shall be given by the competent Medical Authorities as defined in rule 17(a)(i)."***

As enumerated in amended Rule 17(a) (i) of ER 82, which reads as follows :-

"Rule 17(a) (i). Competent Medical Authorities in respect of for initial claim of commissioned officers is "Medical Advisor (Pension) Joint Director, AFMS (Pension) in the office of DG, AFMS."

6. We have heard the learned counsel for the applicant as well as the learned counsel for the respondents and perused the documents available on record along with the relevant Regulations.

7. We are of the view that the administrative decision taken by the respondents to deny disability element of pension to the applicant is against the decisions of the Hon'ble Supreme Court in ***Ex Sapper Mohinder Singh*** Vs. ***Union of India & Anr.*** (C.A No. 164 of 1993 decided on 14.01.1993) and ***Dharamvir Singh*** Vs. ***Union of India and others*** (2013) 7 SCC 316. The IHQ (Army) has also issued a letter dated 25.04.2011, the relevant portion of which is reproduced below:

"2 These alterations in the findings of IMB/RMB by MAP (PCDA(P)) without having physically examined the individual, do not stand to the scrutiny of law and in numerous judgments, Hon'ble Supreme Court has ruled that the medical Board which has physically examined should be given due weightage, value and credence.

....

4. All Command HQs are requested to instruct all Record Offices under their command to withdraw unconditionally from such cases, notwithstanding the stage they may have reached and such file be processed for sanction."

8. In a catena of judgments ***(pointedly, O.A No. 270 of 2016 of Armed Forces Tribunal, Regional Bench, Chandigarh)***, this Tribunal has reaffirmed with consistency that due credibility and primacy has to be given to medical board proceedings. Whether it be the PCDA or an administrative authority, refutation of a medical opinion can only be by another more competent medical opinion. We do not find any justifiable reason on the part of the respondents in denying the disability element of pension to the applicant, especially when the Release Medical Board had determined the invaliding disease and assessed his disability @ 40%.

9. Further, in view of the judgment of the Hon'ble Supreme Court in ***Union of India and others*** Vs. ***Ram Avtar*** in C.A No. 418 of 2012 dated 10.12.2014, the applicant is entitled to get the disability element of pension broad banded to 50%, based on the Government notification dated 31.01.2001.

10. In the result, the O.A is allowed directing the respondents to grant disability element of pension to the applicant @ 40% and broadband the same to 50% from the date of his retirement i.e. 31.08.2015. Noting that the applicant has been continuously raising his grievance with the Respondents by preferring First Appeal on 14.10.2016, followed by Second

Appeal on 16.11.2018, we are of the view that restriction on the arrears will not be applied in the instant case.

11. The respondents shall comply with this order within four months from the date of receipt of a copy of this order, failing which they shall pay interest @ 8% per annum on the entire arrears till the date of actual payment.

12. No order as to costs.

13. Miscellaneous application, if any, pending stands closed.

Pronounced in the open Court on 8th day of May, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

Akc