

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

OA 1704/2018

Ex Nk Om Kumar ... **Applicant**
Versus
Union of India and Ors. ...
Respondents

For Applicant : Mr. Rajesh Nandal, Advocate
For Respondents : Mr. Neeraj, Sr. CGSC with
Mr. Rudra, Advocate

CORAM

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

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of The Armed Forces Tribunal Act, 2007, the instant OA has been filed praying for the following prayers:

(a) Direct respondents to treat the disability as attributable to / aggravated by military service and grant the disability element of pension along with broad banding/rounding off. And/or

(b) Direct respondents to pay the due arrears of disability element of pension with interest @ 12% p.a. from the date of retirement with all the consequential benefits. And/or

(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.

BRIEF FACTS

2. The factual matrix of the case is that the applicant was enrolled in the Indian Army on 08.08.1980 and was discharged on 30.09.1996 on expiry of terms of engagement after rendering a total service of 16 years and 54 days. At the time of discharge he was placed in low medical category **BEE** by the Release Medical Board for disabilities viz. (i) **"Appendicular Lump (OLD) (540) (V67)**.

3. The RMB held on 28.05.1996 at MH Mathura assessed the disability 'Appendicular Lump (OLD) (540) (V67)' @ 20% for two years. However, it held that the disability was neither attributable nor aggravated by military service. All relevant medical documents were forwarded to PCDA (P) Allahabad vide letter dated 16.11.1996 (Annexure R-III) and PCDA (P) Allahabad rejected the claim vide their letter dated 28.02.1997 (Annexure R-IV) stating that the disability claim was untenable since he had been discharged at his own request. It was only in 2018, that the applicant later made a representation dated 16.01.2018 which was replied to vide letter dated 22.02.2018 (Annexure R-VI). The applicant then submitted a RTI which was replied by the respondents vide their letter dated

19.08.2018 stating that the applicant was not eligible for disability pension since the disability was neither attributable nor aggravated by military service.

CONTENTIONS OF THE PARTIES

4. Ld. Counsel for the applicant submits that when the applicant joined the Army, he had been found medically fit and no note of any disability was made in respect of any disease including the present disabilities by the Medical Board and that the Pension Regulations and entitlements rules stipulate that if at the time of release from service, a soldier is in a lower medical category than that in which he was recruited, he will be entitled to disability pension and will be **"Attributable"** irrespective of service area. The counsel for the applicant further submitted that the disability of **APPENDICULAR LUMP (OLD)** commenced while the applicant was in military service and was subsequently downgraded to medical category BEE permanently.

5. Inter alia, the applicant places reliance on the verdict of the Hon'ble Supreme Court in **Dharamvir Singh Vs UOI & Ors** (Civil Appeal No 4949/2013) 2013 AIR SCW 4236.

with specific reliance on the observations in Para 28 of the said verdict which reads to the effect:-

"28. A conjoint reading of various provisions, reproduced above, makes it clear that:

(i) Disability pension to be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable or aggravated by military service to be determined under "Entitlement Rules for Casualty Pensionary Awards, 1982" of Appendix-II (Regulation 173).

(ii) A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service. [Rule 5 r/w Rule 14(b)].

(iii) Onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally. (Rule 9).

(iv) If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service. [Rule 14(c)].

(v) If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service. [14(b)].

(vi) If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons. [14(b)]; and

(vii) It is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II of the "Guide to Medical (Military Pension), 2002 – "Entitlement : General Principles", including paragraph 7,8 and 9 as referred to above."

6. Per contra, the counsel for the respondents submit that the disability claim had been rejected since the RMB had held it to be neither attributable nor aggravated to military service. He further elaborated that the applicant had refused to undergo surgery which if undertaken would have entirely reduced the disability.

ANALYSIS

7. Relevant extracts of the RMB held on 28.05.1996 are reproduced below:

CONFIDENTIAL

PART III

OPINION OF THE MEDICAL BOARD

(Not to communicated to the individual)

*Note: Clear and decisive answers should e filled in by the Board
Expressions by the Board such as 'Might' 'may' 'probably',
should be avoided.*

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2 (a) In respect of each disability the Medical Board on the evidence before it will express views as to whether

(i) It is attributable to service during peace or under held service condition : or

(ii) It has been aggravated thereby and remains so : or

(iii) It is not connected with service,

The Board should state fully the reasons in regard to each disability on which its opinion is based.

Disability	A	B	C
Appendicular Lump (Old) (540) (v67)	No	No	Yes

(b) In respect of each disability shown as aggravated under A, the Board should state fully, the specific condition and period in service which caused the disability. NA

c) In respect of each disability as aggravated under B, the Board should state fully.

(i) The specific condition and period in service which aggravated the disability NA

(ii) Whether the effects of such aggravative still persist NA

(iii) If the answer (ii) is the affirmative, whether effect of aggravation will persist for a material period.

(d) If the case of a disability under C, the Board, should state what exactly in the opinion is the cause there of :

Endogenous inflammation infection.

3. (a) Was the disability attributable in the individual's own negligence or misconduct. If so, in what way? No/NA

(b) If not attributable was to aggravate by negligence or misconduct? If so what percentage of the total disablement.

No/NA

(c) Has the individual refused to undergo operation/treatment ?

If so individual's reasons will be recorded. Yes

Note: In case of refusal of operation/ treatment a certificate from the individual will be attached.

(d) Has the effect of refusal been explained in and fully understood by him/ her, viz a reduction in, or the entire withholding of, any disability pension to which he/she might other be entitled? YES

(e) Do the medical Board consider it probable that the operation/treatment have cured the disability or reduced its percentage YES.

If the reply to (e) is in affirmative, what is the probable percentage to which the disablement could be reduced by operation/treatment 20% Twenty percent.

(g) Do the Medical Board consider the operation to be severe and dangerous to life. No

(h) Do the Medical Board consider the individual's refusal to submit to operation/treatment reasonable? Give reasons in support of the opinion specifying the operation/treatment recommended -- No. Appendectomy is a simple route operation which would have cured his disability.

4. What is present degree of disablement as compared with a healthy person of the same age and sex? Percentage will be expressed or as follows::

1-5%, 6-10%, 11-14%, 14-19%, and thereafter in multiples of ten from 20% to 100%.

<i>Disability (as numbered in question I, part II)</i>	<i>Percentage of disablement</i>	<i>Probable duration of this degree of disablement</i>	<i>Composite assessment(all disabilities)</i>
<i>Appendicular Lump (Old) (v 67)</i>	<i>20% (Twenty percent</i>	<i>Two years</i>	<i>20% (Twenty percent)</i>

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8. On a consideration of the submissions made on behalf of either side, it is essential to observe in the instant case vide para-3(f) (**Annexure R-II , Pg 81**) , it had been specifically stated that the probable percentage to which the disablement could be reduced by operation was **20%** and in response to Para-3(f) (**Annexure R-II , Pg 81**) in the Release Medical Board proceedings specifically asked, "*If the reply to (e) is in affirmative, what is the probable percentage to which the disablement could be reduced by operation/treatment ?*" It was stated in answer "**20%**". Further at Para 3(h) in response to the question '(h) *Do the Medical Board consider the individual's refusal to submit to operation/treatment reasonable? Give reasons in support of the opinion specifying the operation/treatment recommended*', the Board has stated '*No appendectomy is a*

simple routine operation which would have cured his disability.'

9. Furthermore, the disability "Appendicular Lump", if untreated due to refusal of surgery, cannot be attributed to or aggravated by military service. Factors such as the natural progression of the condition, pre-existing medical issues, lifestyle choices, or age-related vulnerabilities are unrelated to service and can independently cause or worsen the condition.

10. Furthermore, Regulation 48(a) of the Pension Regulations for the Army 1961 (Part-I) lays down the twin condition for grant of disability pension which in the instant case are not met. Regulation 48 (a) is reproduced as under:

Disability Pension When Admissible

48. (a) Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an officer who is invalidated out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty cases and is assessed at 20% or more.

11. Also, regarding the issue of primacy of the Medical Board, the Supreme Court in its judgment in **UoI Vs. Ravinder Kumar** in Civil Appeal No. 1837/2009 decided on

23.05.2012, has explicitly viewed that :

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"5. We are of the view that the opinion of the Medical Board which is an expert body must be given due weight, value and credence. Person claiming disability pension must establish that the injury suffered by him bears a causal connection with military service."

In the instant case, the RMB had held that the surgery was a simple routine procedure which would have cured the disability. The RMB, therefore, held the disability as NANA. Thus in view of the above, it is evident that the disability with which respondent has been suffering from is neither aggravated nor attributable to the Army Service. Thus, concurring with the medical opinion according to the RMB we are of the opinion that the above mentioned ID "Appendicular Lump (Old)" is neither attributable nor aggravated by military service and the applicant is, therefore, not entitled to disability pension.

CONCLUSION

12. In view of the aforesaid analysis, the prayer made by the applicant in the present OA is disallowed and it is held that the applicant is not entitled to disability element of pension for disability **APPENDICULAR LUMP (OLD) (540) (V67)** assessed @ 20% for two years by the RMB.

13. With the aforesaid directions, the present OA is dismissed.

14. No Order as to Costs.

Pronounced in the open Court on this day of 17 September 2024.



(JUSTICE RAJENDRA MENON)
CHAIRPERSON



(LT GEN P.M. HARIZ)
MEMBER (A)

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