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

123.

OA 1902/2018 WITH MA 2103/2018

Ex Sgt Nena Ram Saran ..... Applicant
Versus
Union of India & Ors. ..... Respondents

For Applicant : Mr. Praveen Kumar, Advocate for Mr. Virender Singh Kadian, Advocate
For Respondents : Ms. Barkha Babber, Advocate

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

ORDER
05.07.2024

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant filed this OA praying to direct the respondents to conduct a Re-assessment Medical Board of the applicant on the ground that the disability of Bronchial Asthma as alleged by applicant was not assessed by the Release Medical Board (RMB).

2. The applicant was enrolled in the Indian Air Force on 01.04.1987 and discharged from service on 31.03.2007 after completion of 20 years of qualifying service. The Release Medical Examination dated 31.03.2007 found that the applicant was fit to be released from service in the AYE category.

3. At this point, learned counsel for the applicant submits that the applicant started suffering with Naso-Bronchial Allergy & DNS (Optd.) on 06.07.1989 at 162 MH, and after sometime, he was downgraded to low medical category CEE(T) on 02.02.1990 as a case of Sinusitis at MH, Jodhpur.

4. Learned counsel further submits that he was knowingly upgraded to category AYE wef 24.11.1999 from Bronchial Asthama, and that he is still suffering from Bronchial Asthma which is a incurable disease and remains lifelong and his treatment is underway by Dr. Rahul Tyagi, Surg Cdre, INS Asvini, Mumbai.

5. Stressing further, learned counsel submits that before discharge from service, the Applicant was subjected to RMB which did not assess him for the disability - Bronchial Asthma despite submitting all medical papers of treatment given to him from the date of onset of aforesaid disabilities.

6. Placing reliance on the judgment of the Hon'ble Supreme Court in ***Dharamvir Singh*** *v.* ***UOI & Ors*** [2013 (7) SCC 36], Learned Counsel for applicant argues that no note of any disability was recorded in the service documents of the applicant at the time of the entry into the service, and that he served in the Air Force at various places in different environmental and service conditions in his prolonged service, thereby, any

disability at the time of his service is deemed to be attributable to or aggravated by military service.

7. Relying on the judgement of ***Air Cmde Jagdish Chandra Goyal (Retd.) v. UOI*** (OA 346/2022 AFT PB) passed by this Tribunal and stressing on the conduct of Re-assessment Medical Board (RAMB) in cases of post discharge claim, learned counsel submits that in a number of cases in which the Applicants had suffered from diseases/disabilities, after discharge/retirement, sanctions have already been accorded to hold Post Discharge Claim Medicals/RAMBs, which, have returned the findings in most cases that said diseases/disabilities were attributable to/aggravated by service.

8. Per Contra, learned counsel for the respondents submits that under the provisions of Para 5 of the Entitlement Rules (ER) for Casualty Pensionary Awards, 2008, the mere fact that a disease has manifested during military service does not per se establish attributability to or aggravation by military service and the medical test at the time of entry is not exhaustive, but its scope is limited to broad physical examination.

9. learned counsel for the Respondents further submits that Para 8 of the Entitlement Rules (ER) for Casualty Pensionary Awards, 2008, the provisions of the case for Post Discharge Claim (PDC) are cases in which a disease was not present at the time of the

member's retirement/discharge from service but arose within 7 years thereafter. These cases may be recognized as attributable to service if it can be established by the Competent Authority that the disability is a delayed manifestation of a pathological process set in motion by the service conditions obtaining prior to discharge in terms of Entitlement Rules, 2008, and that even if the applicant had reported to the authorized medical attendant with symptoms pertaining to such conditions while in service, the specialist/Medical Officer (MO) attending to him did not consider that his condition at the time warranted placement in LMC, which is evident from the medical record held, that his medical category remains unchanged.

10. Relying on the aforesaid provision, learned counsel for respondents further submits that the case of the applicant cannot be considered for Post Discharge Claim (PDC) for disability element of pension as per the existing provisions and the guideline issued by the Competent Medical Authority i.e. office of DGAFMS/MoD vide letter no. 16050/PDC/DGAFMS/MA (Pens)/Policy dated 20.02.2019.

11. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, the pertinent question remains whether the applicant is entitled to get relief as sought for in the above mentioned OA for the reasons and grounds stated in the said Original Applications?

12. It is pertinent to note that this application has been filed after an inordinate delay of about 11 years from the date of discharge, while the first representation for the claim was sent to the competent authority after the expiry of 11 years from the date of discharge, wherein as such, it becomes relevant to refer to the observations of the Hon'ble Apex Court in the case of ***Maniben Devraj Shah*** *v.* ***Municipal Corporation of Brihan Mumbai*** [(2012) 5 SCC 157], on the issue of delay and laches, wherein Hon'ble Supreme Court has held that:

> *"No doubt, sufficient cause should be construed liberally on facts without any hard and fast rule and substantive rights of parties cannot be ignored on account of delay, but a distinction must be made between delay of a few days and inordinate delay causing prejudice to the other side."*

13. While dismissing the petition, the Hon'ble Supreme Court in the judgement passed in ***C. Jacob*** *v.* ***Director Geology & Mining & Anr*** reported in (2008 (10) SCC 115) had held as under:

> *"a dead or stale claim is not permitted to be revived. The person who sleeps over his right is not entitled for any indulgence"*

14. Considering that the grant of disability pension is a beneficial provision, we proceeded to examine the case on merits and found that it is relevant to refer to Paragraph 8 of the Entitlement Rule (ER) for Casualty Pensionary Awards, 2008, which is reproduced as under:

"8. Cases in which a disease was not present at the time of the 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 the service conditions obtaining prior to discharge."

15. A detailed analysis of the aforesaid provision dealing with the post discharge claim makes it clear that a disability can be recognized as attributable to service only if it can be established that the disability is a delayed manifestation of a pathological process set in motion by the service conditions obtaining prior to discharge, which is however, not substantiated by the material available on record on the behalf of the applicant.

16. Secondly, it is relevant to iterate that the provision of Post-Discharge Claim was brought in for the disabilities which aggravate with time even post service due to the pure reason that the delayed aggravation is entirely attributed to disability that occurred at the time of service, and are therefore, considered as being aggravated by service and not attributable to service.

17. We find that the applicant mentioned about the disability Bronchial Asthma for the first time in his representation dated 17.06.2018, after approximately 11 years of his discharge, but more interestingly, no mention of the disability is found for almost 6 years in service once he was upgraded vide AFSMF-7A dated 26.05.2001 and 17 years till re-detection, and treatment.

18. It is difficult to accept that the disability Bronchial Asthma for which applicant has been upgraded in 2001, continued to exist till the date of discharge of the applicant, and even after 11 years of the discharge, without being aggravated in the period of service, escaping the notice of the medical experts and the applicant not being put in Low Medical Category. While no medical documents have been placed on record which show that the disability existed 11 years even after the discharge of the applicant, it is highly improbable that there is delayed manifestation of the aforesaid disabilities.

19. It is further important to note that the representation was filed after approximately 11 years i.e. 4 years after the expiry of 7 years limitation as mandatory period for post discharge claim, and a detailed analysis of submissions made by the applicant makes it clear that for approximately 17 years post upgradation for the disability - Bronchial Asthma, there is no mention of the disability at all, from the material available on record, which gives rise to two possibilities, either the disability was not continuing in nature and the applicant was absolutely fit in the above mentioned intermediate period of 17 years respectively, or he has not been undergoing any treatment for the concerned disability, therefore, not affecting the routine living conditions of the applicant, thereby, refuting any presumption of delayed manifestation or aggravation.

20. We have gone through the judgment of ***Air Cmde Jagdish Chandra Goyal*** (supra) relied upon by the applicant in support of his case. We find that the case of ***Air Cmde Jagdish Chandra Goyal*** (supra) pertains to a situation where the disability of the applicant was diagnosed within a month of the assessment by Release Medical Board and the delayed manifestation was corroborated by the sufficient subsequent treatment undergone by the applicant post RMB, which is not the case here.

21. We must reiterate that we are not medical specialists to scrutinize the opinion of medical boards, and it would not only be beyond our jurisdiction but also hazardous if this Court were to examine the accuracy of such expert opinion. The scope of judicial review does not entail the Court embarking upon such misadventures. As far as judicial review of decisions based on medical expert opinion is concerned, there is no doubt that wide latitude is provided to the executive in such matters and the Court does not have the expertise to appreciate and decide on merits of medical issues on the basis of medical opinion.

22. In view of the above analysis, we don't find any infirmity in the opinion of the Release Medical Board and in absence of any material evidence on record, we do not find it fit to disagree with the opinion of Release Medical Board, and therefore, the relief asked for by the applicant is unsustainable.

23. Furthermore, we are of the considered opinion that the OA filed by the applicant was inordinately belated and the stale claim could not be granted merely because the applicant woke up after 11 years.

24. Consequently, the OA 1902/2018 along with MA 2103/2018 is dismissed on the ground of delay as well as on merits.

25. No order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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