

ISSUE

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

OA 1971/2018
with
MA 2174/2018

Ex-MCPO-I(RP-I) H/Lt Ramesh Chandra Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Praveen Kumar, Advocate
For Respondents : Mr. K.K. Tyagi, Sr. CGSC

CORAM

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

ORDER

MA 2174/2018

Keeping in view the averments made in this application and finding the same to be bona fide, in the light of the decision in the case of Union of India and others Vs. Tarsem Singh [(2008) 8 SCC 648], the instant application is allowed condoning the delay in filing the OA.

2. The MA stands disposed of.

OA 1971/2018

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

“(a) *Call for the records.*”

(b) Direct respondents to grant disability pension @ 20% and rounding off the same to 50% for life as recommended by RMB to the applicant with effect from 01 Sep 2007 i.e. the date of discharge from service with interest @ 12% p.a. till final payment is made.

(c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case."

4. The brief facts of the case are that the applicant was enrolled in the Indian Navy on 09.01.1973 and discharged from service on 31.01.2007 after about 34 years, 07 months and 23 days of qualifying service. The Release Medical Board held that the applicant was fit to be discharged from service in composite low medical category S2A2 (P) PMT for the disability of "Periarthritis (LT) Shoulder (M-75.0)" @ 20% for life with composite disability @ 20% for life while the qualifying element for disability pension was recorded as NIL for life on account of disability being treated as neither attributable to nor aggravated by military service (NANA). The onset of the ailment, as per RMB, is from June 2004.

5. It is stated by the applicant that his initial claim for disability element of pension was rejected by the competent authority vide their letter dated 05.09.2007. Against the said rejection, the applicant preferred 1st Appeal dated 12.03.2018 but as submitted by the applicant neither any action has been taken nor any reply has been received by him. However,

from the counter affidavit it is revealed that vide letter dated 25.05.2018 the competent authority has rejected the 1st Appeal of the applicant and the said decision was communicated to the applicant (Annexure R-4). Aggrieved by the same, the applicant has approached this Tribunal.

6. Placing reliance on the judgment of the Hon'ble Supreme Court in Dharamvir Singh Vs. Union of India and Ors. [2013 (7) SCC 36], learned counsel for applicant argues that after thorough medical examination the applicant was enrolled into Indian Navy service and there was no note of any disability recorded in his service records. It is further contended that he served in the Indian Navy at various places in different environmental and service conditions in his prolonged service; therefore, any disability occurring during the period of his service is deemed to be attributable to or aggravated by Navy service.

7. Per Contra, learned counsel for the respondents submits that under Regulation 101 and 105-B of Navy Pension Regulations, 1964, "the disability should be either attributable to or aggravated by the Naval Service and minimum assessment for the disability is required to be 20%". In other words, disability pension is granted to those who fulfill the following

two criteria simultaneously: (i) Disability must be either attributable to or aggravated by service and (ii) Degree of disablement should be assessed at 20% or more.

8. Relying on the aforesaid provision, learned counsel for respondents further submits that the aforesaid disability of the applicant was assessed as “neither attributable to nor aggravated” by the services that caused non-fulfillment of the criteria (i) as mentioned above and as such, his claim was rejected; thus, the applicant is not entitled for grant of disability element of pension due to policy constraints.

9. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, we are of the view that it is not in dispute that the extent of disabilities were assessed to be above 20% which is the bare minimum for grant of disability element of pension in terms of the Pension Regulations for the Navy. The only question that arises in the above backdrop is, whether disability suffered by the applicant was attributable to or aggravated by Navy service?

10. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of *Dharamvir Singh Vs. Union of India & Others* [(2013) 7 SCC 316]. In this case the Apex Court took note of the provisions of the Pensions

Regulations, Entitlement Rules and the General Rules of Guide to Medical Officers to sum up the legal position emerging from the same in the following words-

“29.1. Disability pension to be granted to an individual who is invalided 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 to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).

29.2. 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 read with Rule 14(b)].

29.3. The 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).

29.4. If a disease is accepted to have been as having arisen in service, it must also 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)].

29.5. 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 [Rule 14(b)].

29.6. 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 (Rule 14(b)), and 29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions). 2002. "Entitlement General Principles, including Paras 7, 8 and 9 as referred to above (para 27)”

11. In the case of Secretary, MoD and others Vs. A.V Damodaran and others [(2009) 9 SCC 140], the Hon'ble Supreme Court has brought out the following principles with regard to primacy of medical opinion:

"8. When an individual is found suffering from any disease or has sustained injury, he is examined by the medical experts who would not only examine him but also ascertain the nature of disease/injury and also record a decision as to whether the said personnel is to be placed in a medical category which is lower than 'AYE' (fit category) and whether temporarily or permanently. They also give a medical assessment and advice as to whether the individual is to be brought before the release/invalidating medical board. The said release/invalidating medical board generally consists of three doctors and they, keeping in view the clinical profile, the date and place of onset of invaliding disease/disability and service conditions, draws a conclusion as to whether the disease/injury has a causal connection with military service or not. On the basis of the same they recommend (a) attributability, or (b) aggravation, or (c) whether connection with service. The second aspect which is also examined is the extent to which the functional capacity of the individual is impaired. The same is adjudged and an assessment is made of the percentage of the disability suffered by the said personnel which is recorded so that the case of the personnel could be considered for grant of disability element of pension. Another aspect which is taken notice of at this stage is the duration for which the disability is likely to continue. The same is assessed/ recommended in view of the disease being capable of being improved. All the aforesaid aspects are recorded and recommended in the form of AFMSF- 16. The Invalidating Medical Board forms its opinion/ recommendation on the basis of the medical report, injury report, court of enquiry proceedings, if any, charter of duties relating to peace or field area and of course, the physical examination of the individual.

9. The aforesaid provisions came to be interpreted by the various decisions rendered by this Court in which it has been consistently held that the opinion given by the doctors or the medical board shall be given weightage and primacy in the matter for ascertainment as to whether or not the injuries/illness sustained was due to or was aggravated by the military service which contributed to invalidation from the military service."

12. In view of the law settled on this matter by *Dharamvir Singh* (supra) and *A.V Damodaran and others* (supra), the disability of the applicant should be considered as aggravated by military service as per recommendation of the RMB, and as such the applicant is entitled for the disability element of pension from the date of his discharge and the respondents are directed to grant disability element of pension to the applicant for the disability of Periarthritis (LT) Shoulder @ 20% for life which be rounded off to 50% for life from the date of retirement, i.e., 31.01.2007, in terms of the judicial pronouncement of the Hon'ble Supreme Court in the case of *Union of India* Vs. *Ram Avtar* (Civil Appeal No.418/2012) decided on 10.12.2014. However, the arrears will be restricted to three years from the date of filing of this OA in keeping with the law laid down in the case of *Union of India and others* Vs. *Tarsem Singh* [(2008) 8 SCC 648].

13. Accordingly, we allow this application holding that the disability of the applicant is aggravated by military service and he is entitled to get disability element of pension for the disability of Periarthritis (LT) Shoulder @ 20% for life rounded off to 50% for life and direct the respondents to calculate, sanction and issue necessary PPO to the applicant within three

months from the date of receipt of a copy of this order failing which the applicant shall be entitled to interest @ 6% per annum till the date of payment.

14. No order as to costs.

15. Pending miscellaneous application(s), if any, stands closed.

Pronounced in open Court on this 9th day of December, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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