

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

OA 2051/2018 WITH MA 2260/2018

Ex MC HA II Venkata Subbaraju Mentena ... Applicant
Versus
Union of India and Ors. ... Respondents

For Applicant : Mr. Ved Prakash, Advocate
For Respondents : Mr. Arvind Patel, Advocate

CORAM

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

ORDER

MA 2260/2018

Keeping in view the averments made in the application and in the 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 2051/2018

3. 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 accept the disability of the applicant as attributable to/aggravated by military service and grant disability element of

pension @20% rounded of to 50% with effect from the date of discharge of the applicant; along with all consequential benefits.

4. The applicant was enrolled in the Indian Air Force on 31.01.2002 and discharged on 31.12.2017 after serving for more than 15 years of qualifying service. The Release Medical Board dated 14.09.2017 held that the applicant was fit to be discharged from service in composite low medical category S3A2(A) for the disability - RECURRENT DISLOCATION (Rt) SHOULDER @ 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).

5. The claim of the applicant for grant of disability pension was rejected vide NAVPEN letter No. PEN/600/D/LRDO/1:12/2017/181745-H dated 21.11.2017 stating that the aforesaid disability was considered as neither attributable to nor aggravated by military service, being suffered on leave. Aggrieved by the aforesaid rejection, the applicant has approached this Tribunal.

6. Placing reliance on the judgement of the Hon'ble Supreme Court in Dharamvir Singh Vs. UOI & Ors [2013 (7) SCC 36], learned counsel for the 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 though the injury suffered was on leave, yet the onset was in 2005 during games, and subsequently had 3 episodes, with last episode on 20.05.2015 during injury and he served in the Navy at various places in different environmental and service conditions in his prolonged service post onset, thereby, any disability at the time of his service is deemed to be aggravated by Naval service.

7. Per Contra, learned counsel for the respondents submits that under the provisions of Rule 101 of the Pension Regulations for the Navy, 1964 (Part-I), the primary condition for the grant of disability pension is invalidation out of service on account of a disability which is attributable to or aggravated by Naval service and is assessed @ 20% or more.

8. Relying on the aforesaid provision, learned counsel for respondents further submits that the aforesaid disabilities of the applicant were assessed as “neither attributable to nor aggravated” as vide RMB, it was clearly stated that he suffered the disability due to injury while on leave; thus, the injuries sustained were not attributable to service conditions as the

applicant was not on a service related duty when he suffered the injury.

9. With respect to the submissions made on behalf of the parties, we are of the opinion that it is not in dispute that the extent of disability was assessed to be 20% which is the bare minimum for grant of disability pension in terms of Regulation 101 of the Pension Regulations for the Navy, 1964 (Part-I).

10. On a perusal of the medical documents, we find that in Part II of the Opinion of Specialist titled "clinical assessment", it has been specified that the onset of the disability was in the year 2005 and subsequently he had three episodes of shoulder dislocation, of which last episode was on 20.05.2015 during the injury which he suffered on leave. He was advised surgery, for which he refused, and the certificate of unwillingness for surgery has been attached.

11. At this moment, two questions arise for our adjudication - first, when the onset of the disability has been specified to be in 2005, can his attributability or aggravation be decided on the basis of an injury he suffered subsequently, due to his third episode, and second, whether unwillingness for surgery can be presumed to be denial of disability pension ?

12. With regard to the first question, we are of the opinion that it is clearly worded in the 'History' column of clinical assessment that the onset of disability is in 2005 during games, when he was posted 'Afloat' on INS Viraat, the question of attributability has to be considered from the onset of the disability, and the fact that it is recorded that the last episode of the subsequent three episodes were on 20.05.2015 clearly shows that the injury suffered during the last episode was nothing more than a subsequent injury that happened on leave, and thus, the benefit of doubt has to be granted in the favour of the applicant and the disability has to be held attributable to the naval service.

13. In support of the aforesaid observations, we find resonance in the by the ratio laid down by the Apex Court in Sukhvinder Singh (supra), with specific reliance on Para 9 thereof to the effect:-

"9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Thirdly, there appears to be no

provisions authorising the discharge or invaliding out of service where the disability is below twenty per cent and seems to us to be logically so. Fourthly, wherever a member of the Armed Forces is invalided out of service, it has to be assumed that his disability was found to be above twenty per cent. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension.”

(emphasis supplied)

14. That apart, even if the question of attributability is not considered for a moment, it is clear from the medical records that the onset of the disability was in the year 2005, and subsequently, the applicant has been posted on ‘Afloat’ service four times, computing to almost 7 years in field service, and hence, the aggravation of the disability cannot be denied as well.

15. Answering the first question, we find that the issue raised in the second question has been answered by this Tribunal in the identical case of Maj Upwan Saini Vs. UoI & Ors. [OA 1463/2016] vide Para 7 & 8, which reads to the effect:

7. On a consideration of the submissions made on behalf of either side, it is essential to observe in the instant case vide para-5(f) Part V in AFMSF, it had been specifically stated that the probable percentage to which the disablement could be reduced by operation was 50% and in response to Para-5(f) of Part V in AFMSF-16 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 “50%”.

8. The refusal to undergo medical treatment by the applicant herein has to be held to be reasonable as it is apparent that in the RMB Proceedings itself it had been expressed therein that the percentage of success after

surgery was only 50%; and the reduction of the percentage of disablement of the applicant from 30% to 15% just because the applicant was unwilling to undergo surgery, for a disablement which is well attributable to service, is wholly erroneous.

16. While we find that the percentage of the disability has not been reduced in the instant case, yet it has been expressly specified that the percentage of reduction of disablement post surgery would only be 50%, and thus, we are of the view that the refusal/unwillingness to undergo surgery in such cases with 50% success rate cannot be considered to be unreasonable, and hence, such refusal/ unwillingness cannot be held to be reasonable ground for denial of disability pension.

17. Therefore, in light of the settled law laid down by the Apex Court in Sukhvinder Singh (supra) and the observations made above, we are of the opinion that the applicant is entitled to grant of disability element of pension @20% for life and rounded off to 50% in view of judgement of Hon'ble Apex Court in UOI Vs. Ram Avtar (supra) from the date of discharge. Respondents are further directed to give effect to the order within three months from the date of receipt of a certified copy of this order failing which the respondents shall have to pay interest @ 6% per annum till the date of actual payment.

18. Consequently, the OA 2051/2018 is allowed.

19. No order as to costs.

20. Pending miscellaneous applications, if any, stand closed.

Pronounced in the open Court on 24 day of July, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

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