

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

O.A. No. 389/2019

Ex DFR Devendra Singh

..... Applicant

Versus

Union of India & Ors.

..... Respondents

For Applicant : Mr. Virendra Singh Kadian, Advocate

For Respondents : Mr. Shyam Narayan, Advocate

CORAM:

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

1. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 read as under: -

“(a) Direct respondents to treat disability as attributable to / aggravated by military service and grant disability element of pension from the date of discharge along with benefit of broad banding.

“(b) Direct respondents to pay the due arrears with interest @12% p.a. from the date of discharge with all the consequential benefits.

Ex DFR Devendra Singh

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

BRIEF FACTS

2. The applicant was enrolled in the Indian Air Force on 10.08.1998 and was discharged from service on 31.07.2017 prematurely at his own request on compassionate grounds. He has rendered 18 years, 11 months, and 22 days of qualifying service in the Army and had been granted a Service Pension @ Rs. 8,505/- per month with effect from 01.08.2017.
3. The Release Medical Examination had been carried out on 20.03.2017, and the applicant had been declared fit for release in medical category SHAPE-I. Subsequently, he had been admitted to Military Hospital, Ahmednagar on 11.07.2017 and then to Command Hospital (SC), Pune, for treatment of 'CARCINOMA ORAL CAVITY CASE (SC)', with his admission and discharge not being communicated to the Armoured Corps Records.
4. Following his discharge, the applicant had forwarded a petition dated 30.10.2017 for disability pension, which had been replied to by the Armoured Corps Records, stating the lack of Medical Board proceedings from Command Hospital. After receiving the AFMSF-15 from Command Hospital, it had been found that his disability was considered neither attributable to nor aggravated by

Ex DFR Devendra Singh

military service. The Release Medical Board held on 13.08.2018 had similarly assessed his disability as Nil for Life, which had been confirmed by the competent authority on 10.08.2018. The applicant was fit to be released in the low medical category S1H1A1P3(P)E1.

5. The applicant had served a Legal Notice dated 14.08.2018. Subsequently, he has filed the instant OA in the Armed Forces Tribunal, Principal Bench at New Delhi, on 22.12.2018, seeking the grant of disability element with rounding off benefits, after the denial of the disability pension. In the interest of justice, we take up the instant OA for adjudication.

CONTENTIONS OF THE PARTIES

6. The learned counsel for the applicant submitted that the applicant joined Army in fit medical condition as revealed from the records and no note of any disability was recorded in the service. He served the Army at various places in different environmental and service conditions in his prolonged service. Any disability at the time of his service is deemed to be attributable to or aggravated to military service. The Hon'ble Supreme Court in catena of Judgements had held that a person joins military service in a fit medical condition and if he retires with disability is deemed to be due to military service

and required to be compensated by grant of disability element of pension. The applicant is also entitled for grant of benefit of broad banding of disability pension from 30% to 50% in terms of Govt of India, Min of Defence letter No. 1(2)/97/D(Pen-C) dated 31.01.2001 and law settled in the light of the judgment of the Hon'ble Supreme Court delivered in Civil Appeal No. 418/2012 in **UOI & Ors Vs Ram Avtar.**

7. *Per contra*, the learned counsel for the respondent contended that the disability of the applicant, specifically "CARCINOMA BUCCAL MUCOSA (RT) (OPTD)," was deemed neither attributable to nor aggravated by military service. This assessment was made by the Release Medical Board, which found no causal connection between the applicant's condition and his military service. Therefore, as the disability was assessed at Nil for Life and did not meet the basic conditions required for a disability pension under Para 53 (a) of the Pension Regulations for the Army, 2008, the grant of disability element was denied.

8. The learned counsel for the respondent submitted that the question of rounding off of benefits does not arise as the disability is NANA.

9. The learned counsel for the respondent addressed the procedural delays and issues raised by the applicant, emphasizing that the Armoured Corps Records followed the correct procedure in dealing with the delayed Release

Medical Board. It was noted that the Medical Board's findings and the process adhered to the relevant rules and regulations. The delays in receiving the necessary medical documentation from Command Hospital (SC), Pune, were acknowledged, but the subsequent actions taken to address these delays and conduct the Release Medical Board were in line with the established procedures.

10. The learned counsel for the respondent cited judicial precedents, including a Supreme Court judgment, to assert that the opinion of the Medical Board should be given primacy in cases of disability pension claims. The counsel emphasized that the Medical Board's findings are considered final regarding the attributability and aggravation of disability due to military service. The contention was that the applicant's arguments against the Medical Board's assessment were misplaced, as the Board's specialized opinion should be respected and upheld in accordance with established legal standards and medical guidelines.

ANALYSIS

11. We have heard the learned counsel for the parties and have gone through the records produced before us. The copy of the RMB as annexed by the respondents as Annexure R-III apparently shows that the ID i.e.,

CARCINOMA BUCCAL MUCOSA (RT) of the applicant is assessed below 20%, *i.e.*; 11-14% and nil for life.

12. The RMB conceded the said disability as NANA as per Para 10, chapter VI, GMO (mil pension), 2008. The relevant extract of GMO, 2008 is as follows: -

“10. Malignancies Considered Attributable to Service

(a) Due to Occupational Hazards:

(i) Any cancer in those personnel working or exposed to radiation source in any forms: (aa) Acute leukaemia (ab) Chronic lymphatic leukaemia (ac) Astrocytoma (ad) Skin cancers

(ii) Any cancer in those exposed to chemical especially Petroleum products or other chemicals: - (aa) Carcinoma bladder (ab) Renal cell carcinoma (ac) Carcinoma of Renal Pelvis

(iii) Any cancer in those exposed to coal dust, asbestos, silica & iron (aa) Bronchogenic Carcinoma (ab) Pleural Mesothelioma

(b) Due to Viral Infection:

(i) Hepato-cellular carcinoma (HV B&C) (ii) Ca nasopharynx (EB virus) (iii) Hodgkin's disease (EB virus) (iv) Non-Hodgkin's Lymphoma (Viruses) (v) Acute Leukaemia (HTLV1) (vi) Ca anal canal (HTLV 1) (vii) Any cancer due to HIV infection (contracted out of blood transfusion/needle stick injury in service) (viii) Ca Cervix (HPV)”

13. There is nothing produced on record by the applicant to support that the disability of the applicant was due to occupational hazards. From the open

medical literature (Bobdey S, Sathwara J, Jain A, Saoba S, Balasubramaniam G. Squamous cell carcinoma of buccal mucosa: An analysis of prognostic factors. South Asian J Cancer. 2018 Jan-Mar;7(1):49-54. doi: 10.4103/sajc.sajc_317_16. PMID: 29600236; PMCID: PMC5865098. Available on https://www.thieme-connect.de/products/ejournals/pdf/10.4103/sajc.sajc_317_16.pdf), it can be said that the Carcinoma of the Buccal Mucosa is the most common oral cavity cancer in the Indian subcontinent. The relatively high incidence of oral cancer in India is mainly because of extremely popular use of the smokeless tobacco product called *gutkha* and betel quid chewing (with or without tobacco), which renders its population and especially its youth to a greater risk of developing oral submucous fibrosis, a premalignant disease resulting in increased incidence of oral cancer in younger patients. Para 2, PART I – Personal Statement of the RMB shows that the onset of the disease was in December in the year 2016 when the applicant was posted in Nuyma (HAA), Leh. As per Para 10 of the GMO, 2008 (cited above), the posting in the HAA (High Altitude Area) does not fall under any occupational hazard whatsoever and it cannot be considered to be the primary cause of the said disability.

14. Upon perusal of the documents placed on record we find that there is no causal connection whatsoever of the ID **CARCINOMA BUCCAL**

Ex DFR Devendra Singh

MUCOSA (RT) suffered by the applicant with the military services. As per **Para 53 (a) of Pension Regulations for the Army, 2008**, "*An individual released/retired/discharged on completion of term of engagement or on completion of service limits or on attaining the prescribed age (irrespective of his period of engagement), if found suffering from a disability attributable to or aggravated by military service and so recorded by Release Medical Board, may be granted disability elements in addition to service pension or service gratuity from the date of retirement/discharge, if the accepted degree of disability is assessed at 20 percent or more*".

15. The applicant does not fulfill the twin conditions of Para 53 (a) of Pension Regulations for the Army, 2008. In view of the aforesaid consideration and parameters, applicant's claim for entitlement of the disability element of pension for the disability of **CARCINOMA BUCCAL MUCOSA (RT)** stands rejected.

CONCLUSION

16. There is no error in the findings of the medical board and we find no infirmity in the proceedings of the RMB, hence, the O.A. 389 of 2019 is dismissed being devoid of merit.

17. There is no order as to costs.

Pronounced in the open Court on this 29th day of August, 2024.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

/Parik/