

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

A.

OA-879/2016 WITH MA 673/2016

Ex Hav Kirpa Ram ..... Applicant  
Versus  
Union of India & Ors. .... Respondents

For Applicant : Mr. Archana Ramesh, Advocate  
For Respondents : Mr. Neeraj Sr CGSC for R 1-3, Advocate

CORAM

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

ORDER  
18.10.2024

Vide our orders of even date, we have dismissed the OA. Faced with the situation, learned counsel for the applicant makes an oral prayer for grant of leave to appeal under Section 31 of the Armed Forces Tribunal Act, 2007, to the Hon'ble Supreme Court. We find no question of law much less any question of law of general public importance involved in the matter to grant leave to appeal. Hence, the prayer for grant of leave to appeal is declined.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

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

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OA 879/2016 WITH MA 673/2016

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For Applicant : Ms. Archana Ramesh, Advocate  
For Respondents : Mr. Neeraj, Sr. CGSC for R 1-3  
Ms. Anjali Vohra, Advocate for R-4

CORAM :

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

ORDER

MA 673/2016

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. MA stands disposed of.

OA 879/2016

2. The applicant through the instant OA is seeking the grant of disability pension for the disability of - Pulmonary Tuberculosis from the date of his discharge.

3. The applicant was enrolled in the Indian Army on 30.11.1961 and medically invalidated on 10.09.1978 for the ID, "Pulmonary Tuberculosis" after rendering 16 years, 9 months and 10 days of service.

4. It is the contention of the applicant that the Invaliding Medical Board opined that the disease is attributable to military service and assessed the ID @ 100% . Subsequently, his disability was re-assessed by subsequent medical boards but was not granted disability element of pension and the same needs to be continued.

5. On the other hand, the Respondents submit that the disability of the applicant were re-assessed post his retirement, and that the first Resurvey Medical Board (RSMB) assessed the ID @ 80% for five years w.e.f 09.09.1979. Subsequently, his disability was assessed by second RSMB @60%, third RSMB assessed the disability @20%, and fourth RSMB assessed the disability @15-19%% wef 01.11.1987 for life.

6. It is further submitted by the Respondents that while the disability pension granted to the applicant was discontinued w.e.f. 01.11.1987 with the disability being assessed at less than 20%, and therefore, the Applicant is not entitled for Disability Element in terms of Para 173 of the Pension Regulations for the Army 1961 (Part I), and accordingly the payment of Disability Pension was stopped.

7. We have heard learned counsel for the parties and perused the material placed on record. We have also gone

through Invalid Medical Board dated 09.09.1978 and subsequent Re-assessment Medical Boards as well as the rejection order of disability pension claim. Now, the limited question for consideration is whether the applicant is entitled for the grant of disability element of pension for the period, wherein RSMB has assessed his disability at less than 20%, which is minimum benchmark for grant of disability pension as per Para 173 of the Pension Regulations for the Army 1961 (Part I).

8. On an analysis of medical literature, we find that as per the report of World Health Organization, and American Lung Association, the disability of the applicant is now curable with time and regular medication. It is important to note that the RSMB has itself assessed the disability @ 15-19 % for life, which is clear evidence that the disability has healed with time, and in absence of any contrary medical record, we find no reason to dispute the finding recorded by the Medical Board, and that the applicant is not entitled to disability pension for a disability, which has been assessed at less than 20%.

9. In view of the aforesaid analysis, we are of the opinion that this OA is devoid of merit and deserves to be dismissed.

10. Accordingly, OA 879/2016 is dismissed.
11. No order as to cost.
12. Pending miscellaneous application(s), if any, stand disposed of accordingly.

Pronounced in the open Court on 18 <sup>th</sup> day of October, 2024.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

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

Ps