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

OA 954/2018 WITH MA 829/2018

Col Rajbir Singh Gulia (Retd.) ... Applicant
Versus
Union of India and Ors. ... Respondents

For Applicant : Mr. Anand Shankar Jha, with
Mr. Sachin Mintri, Advocates
For Respondents : Gp Capt Karan Singh Bhati, Sr. CGSC

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

ORDER

MA 829/2018

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 954/2018

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 conduct a Post Discharge Medical Board of the applicant on the ground that the disability of 'Acute Right Middle Cerebral

Artery Ischemic Stroke' was not assessed by the Release Medical Board (RMB).

4. The applicant was commissioned in the Indian Army on 12.06.1982 and prematurely retired from service on 23.12.2008 in SHAPE-I after completion of 26 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.

5. At this point, learned counsel for the applicant submits that the applicant developed some heart ailment and was transferred from MH Jodhpur to Base Hospital, Delhi Cantt in 1997 and thereafter to Army Hospital Research & Referral for investigation, evaluation and subsequent treatment, including Coronary Angiography, post which the applicant was discharged since no further treatment was required.

6. Learned counsel further submits that the applicant was found positive of 'Reversible Myocardial Ischemia' during TMT process in 1997 and it is quite possible that the heart ailment of the 'Reversible Ischemia' continued in subdued manner and manifested later in the form of 'Acute Right Middle Cerebral Artery Ischemic Stroke' in the year 2015, and thus, has a connection with the military service.

7. Placing reliance on the judgment of the Hon'ble Supreme Court in ***Dharamvir Singh*** Vs. ***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 Army 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.

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. 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."*

13. 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.

14. 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.

15. We find that the applicant mentioned about the disability for the time in his representation dated 16.12.2015, after approximately 18 years of the first detection of medical issue related to heart, but more interestingly, no mention of the disability is found for almost 11 years in service once he was held to be fit without any requirement of treatment with 18 years till re-detection, and treatment.

16. It is difficult to accept that the disability for which applicant has been held to be fit in 1997, continued to exist till the date of discharge of the applicant, and even after 7 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 18 years even after its first detection, it is a highly improbable and far-fetched

conclusion that there is delayed manifestation of the aforesaid disability.

17. We find resonance in the observations of the Hon'ble Supreme Court in *Union of India* Vs. *Ex. Sep. R. Munusamy* [2022 SCC OnLine SC 892], of which Para 16 reads to the effect:

> *16. The Tribunal does not sit in appeal over the expert opinion of a Medical Board holding that the disability suffered by a soldier was not attributable to or aggravated by military service. There was no reason for the Tribunal not to accept the opinion of the Release Medical Board held on 30th January 1997 and no reasons have been disclosed. In the absence of any finding of infirmity in the decision making process adopted by the Release Medical Board, there could be no reason to direct the constitution of a Resurvey Medical Board, and in any case, not after two decades from the date of discharge.*

18. 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 was 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.

19. 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 with respect to the disability being aggravated in the intermediate period of 18 years, we do not find it fit to borrow far-fetched conclusion that there is delayed manifestation of the aforesaid disability and therefore, the relief asked for by the applicant is unsustainable.

20. Consequently, the OA 954/2018 is dismissed.

21. No order as to costs.

22. Pending miscellaneous application(s), if any, are disposed off.

Pronounced in the open Court on 18 day of October, 2024.

(JUSTICE RAJENDRA MEMON)
CHAIRPERSON

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

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