

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

D..

OA 1133/2019 with MA 1841/2019

Hav Lal Chand (Retd)

..... Applicant

Versus

Union of India & Ors.

..... Respondents

For Applicant : Ms. Archana Ramesh, Advocate

For Respondents : Ms. Jyotsna Kaushik, Advocate

CORAM

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

ORDER
19.11.2024

Vide our orders, we have dismissed the OA. Faced with the situation, learned counsel for the applicant makes an oral prayer for grant of leave to appeal in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007 to assail the order before the Hon'ble Supreme Court. After hearing learned counsel for the respondents and on perusal of order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order to grant leave to appeal. Therefore, the prayer for grant of leave to appeal stands declined.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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

O.A. No. 1133 of 2019

with

M.A. No. 1841 of 2019

In the matter of :

Havildar Lal Chand (Retd) ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Ms. Archana Ramesh, Advocate

For Respondents : Ms. Jyotsna Kaushik, Advocate

CORAM :

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

ORDER

M.A. No. 1841 of 2019 :

Vide this application, the applicant seeks condonation of delay of 252 days in filing the OA. In view of the law laid down by the Hon'ble Supreme Court in the case of **Deokinandan Prasad Vs. State of Bihar [AIR 1971 SC 1409]** and in **Union of India & Ors. Vs. Tarsem Singh [2009 (1) AISLJ 371]**, delay in filing the OA is condoned.

Accordingly, MA stands disposed of.

O.A. No. 1133 of 2019 :

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. Issue directions to the Respondents to hold an Appellate Medical Board for assessing and quantifying the second disability of 'Primary Hypothyroidism' and declare the disability either as attributable or aggravated to military service and consequentially grant Composite Disability Pension duly rounded to the Applicant from the date of discharge for life with arrears with penal interests to meet the ends of equity, justice and fair play;**
- B. Issue directions to the Respondents to amend the Disability Pension of 50% of 'Fracture Shaft of Radius Left' to that of War Injury Pension @ 50% in the light of the injury sustained at Counter Insurgency Area in Kokrajhar in Assam which is an admitted and an undisputed fact to meet the ends of justice;**

C. Pass such other order and further orders to the Respondents by way of an adequate exemplary compensation in the attendant genuine circumstances of the case, to meet the ends of justice.

2. The facts of the instant case, in brief, are that the applicant, having been found medically and physically fit, was enrolled in the Rajput Regiment of Indian Army on 08.03.1996 and was discharged from service on 30.04.2018 under Army Rule 13(3)III (iii)(a)(i) in low medical category S1H1A2(Permanent)P2(Permanent)E1 and as no sheltered appointment was available in the unit. Before discharge, the applicant was brought before the Medical Board held on 09.03.2017, which held the injury of 'Fracture Shaft of Radius-Left' as 'attributable to military service' and thus the applicant was granted disability pension @ 30% which was further rounded off to 50% from the date of discharge. However, it is the case of the applicant that the Medical Board ignored the second disability of 'Primary Hyperthyroidism', suffered by the applicant whilst in service, which was held as aggravated by the earlier medical boards.

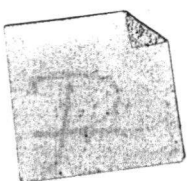
3. The applicant submitted a statutory petition dated 26.03.2018 seeking disability pension for Primary Hyperthyroidism also and for amendment of the disability pension already granted with respect to 'Fracture Shaft of Radius-Left' to 'War Injury Pension'. When no reply was received, the applicant had filed the present OA. In the interest of justice, in terms of Section 21 of the AFT Act, 2007, we take up the same for consideration.

4. The learned counsel for the applicant, relying on the judgment of the Hon'ble Supreme Court in Dharamvir Singh Vs. Union of India & Ors. [(2013) 7 SCC 316], submitted that at the time of joining the service, the applicant was declared fully fit medically and physically in SHAPE-1 and any disease notified during the service would be presumed to be attributable to or aggravated by military service. The learned counsel for the applicant further submitted that the injury of 'Fracture Shaft of Radius-Left' was admittedly sustained at Counter Insurgency Area in Kokrajhar in Assam and thus the applicant may be granted War Injury Pension instead of disability pension, as has been granted to him for the said injury. The learned counsel made a prayer that as the

disability 'Primary Hyperthyroidism' was left out while granting disability pension, hence an appellate medical board may be held for re-assessment of the said disability.

5. *Per contra*, the learned counsel for the respondents controverted the submissions made on behalf of the applicant. The learned counsel submitted that the applicant on 14.05.2016, while serving with 3 RAJPUT, located in Kokrajhar (Assam), was diagnosed a case of 'Primary Hyperthyroidism' and after due treatment, he was placed in temporary medical category as P3(T-12) for three months and thereafter the subsequent categorisation medical board held in 06.09.2016 again placed him in medical category P2(T-24) for six months; that on 06.10.2016, the applicant was diagnosed with 'Fracture Shaft of Radius (Lt) (Optd) and was placed in medical category A3(T24) from 13.12.2016 for the said injury, both the disabilities were compositely classified as S1H1A3(T-24)P2(T-24)E1 by the re-categorisation medical board dated 20.12.2016.

6. The learned counsel contended that in the subsequent re-categorisation medical boards held on 13.02.2017 and 29.05.2017, the applicant was placed in low medical



category S1H1A3(T-24)P2(P)E1 and S1H1A2(T-24)P2(P)E1, respectively for both the disabilities. It has been further contended that a Show Cause Notice dated 17.08.2017 was issued to the applicant as to why he should not have been discharged from service being in low medical category S1H1A2(Permanent)P2(Permanent)E1 as his retention in service was not considered to be in public interest as per IHQ of MoD (Army) letter No. B/1020/Vol-VI/MP-3(PBOR) dated 30.09.2010, to which the applicant replied that 'he is satisfied with the decision of the commanding officer, 3 Rajput and there is no objection either from his or his family side on this decision' and accordingly, the applicant was discharged from service.

7. The learned counsel for the respondents submitted that the Release Medical Board held on 27.02.2018 assessed the disabilities 'PRIMARY HYPERTHYROIDISM' @ 1-5 % for life as 'Aggravated by military service' and 'FRACTURE SHAFT OF RADIUS (LT) (OPTD) @ 20% for life as 'Attributable to military service', compositely assessed @ 20% for life; and that after due adjudication, the PCDA (P), Allahabad sanctioned the disability element of pension to the

applicant @ 20% duly rounded off to 50% for life with effect from 01.05.2018 vide PPO No. 163201800579. The learned counsel submitted that the RMB already considered the disability of Primary Hypertension along with the second disability i.e. Fracture Shaft of Radius (Lt), hence, the prayer of the applicant to carry out an appellate medical board for Primary Hypertension needs not to be considered.

8. The learned counsel further submitted that the second disability of the applicant i.e. Fracture Shaft of Radius (Lt) does not fall in the category 'E' of Regulation 82 of the Pension Regulations for the Army Part-1 (2008) and, therefore, this prayer does not merit for grant of War Injury pension, whereas he had already been granted disability pension. The learned counsel denied receipt of any statutory petition or legal notice from the applicant. Therefore, the learned counsel for the respondents prays that the instant OA deserves to be dismissed.

ANALYSIS

9. We have heard the learned counsel for the parties and have perused the record produced before us.



10. In this case, we have gone through the RMB proceedings dated 11.12.2017 and while in Part IV, the date and place of origin of both the disabilities and unit are given, in Part V thereof the opinion of the medical regarding attributability/aggravation of the disabilities and reasons are indicated. Part IV and V of the RMB proceedings are being reproduced for reference as under :

**“PART-IV
STATEMENT OF CASE**

Disabilities	Date & Place of origin	Rank of the Indl	Place and Unit where serving at the time
PRIMARY HYPERTHYROIDISM (e 03.9)	14 May 2016 Kokrajhar (Assam)	Hav	Kokrajhar (Assam) Unit : 3 RAJPUT
FRACTURE SHAFT OF RADIUS (LT) (OPTD) (S 52.1)	06 Oct 2016 Kokrajhar (Assam)	Hav	Kokrajhar (Assam) Unit : 3 RAJPUT

XXX

XXX

**PART-V
OPINION OF THE MEDICAL BOARD
(Not to be communicated to the individual)**

1. Causal Relationship of the Disability with service conditions or otherwise				
Disability	Attributable To service (Y/N)	Aggravated By service (Y/N)	Not connected with service (Y/N)	Reason/Cause/Specific condition and period in service
PRIMARY HYPERTHYROIDISM (E 03.9)	No	Yes	No	Can be aggravated by Mil Service. Ref Para 38 Chapter VI of GMO-2008
FRACTURE SHAFT OF RADIUS (LT) (OPTD) (S 52.1)	Yes	No	No	As per IAFY-2006 Injury Report Dt - 21 Dec 2016

Thereafter, in Clause 6 of Part V of the RMB, the assessment of degree of disablement of the applicant qua both the disabilities were recorded, which read as under :

Disabilities (as numbered in question 1 Part IV)	Percentage of disablement with duration	Composite assessment for all disabilities with duration (Max 100%)	Disability qualifying for Disability pension with duration	Net assessment qualifying for disability pension (Max 100%) with duration
PRIMARY HYPERTHYROIDISM (E 03.9)	1-5% (FOR LIFE)	20% (FOR LIFE)	PRIMARY HYPERTHYROIDISM (FOR LIFE)	20% (TWENTY PERCENT) (FOR LIFE)
FRACTURE SHAFT OF RADIUS (LT) (OPTD) (S 52.1)	20% (FOR LIFE)			

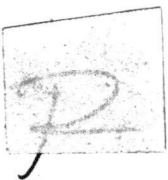
From the perusal of the RMB proceedings, it is evident that the applicant's both the disabilities, namely, 'Primary Hyperthyroidism' and 'Fracture Shaft of Radius (Lt) (Optd)' were taken note of by the medical board while making assessment of the said disabilities and giving opinion thereon. It is so evident that the first disability i.e. Primary Hyperthyroidism was assessed @ 1-5% only and the disability 'Fracture Shaft of Radius (Lt) (Optd) was assessed @ 20% and both the disabilities were compositely assessed @ 20% for life. It is also an admitted position that after the

recommendations of the RMB, the claim of the applicant qua disability pension was adjudicated upon and the pension sanctioning authority rightly granted the disability pension to the applicant at 20% for life, which is a composite assessment of disablement with regard to both the disabilities by the RMB, along with rounding off benefit @ 50% for life from the date of discharge.

11. In view of the aforesaid, the first prayer made by the applicant in this OA stands satisfied. As regards the second prayer regarding amendment of the disability pension to War Injury Pension *qua* the second disability i.e. Fracture Shaft of Radius (Lt) (Optd), we may refer to Regulation 99 of the Pension Regulations for the Army, Part-I 2008, wherein the circumstances have been given based on which the War Injury pension is admissible, which read as under :

“(i) Where Service personnel is invalided from service on account of disabilities sustained under circumstances mentioned in category ‘E’ of Regulation 82 of Pension Regulations for the Army, Part -1 (2008), he will be entitled to war-injury pension as enumerated in this Section. The verbatim of category ‘E’ of Regulation 82 is as under:-

(aa) Enemy action in International War.



(ab) Action during deployment with a peace keeping mission abroad.

(ac) Border skirmishes.

(ad) During laying or clearance of mines including enemy mines as also mine sweeping operations.

(ae) On account of accidental explosions of mines while laying operationally oriented mine field or lifting or negotiating mine field laid by the enemy or own forces in operational areas near International Borders or the Line of Control.

(af) War like situations, including cases which are attributable to/ aggravated by:-

(aaa) Extremist acts, exploding mines etc, while on way to an operational area.

(aab) Battle inoculation training exercises or demonstration with live ammunition.

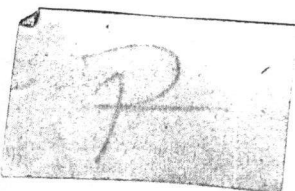
(aac) Kidnapping by extremists while on operational duty.

(ag) An act of violence/attack by extremist, anti social elements while on operational duty.

(ah) Action against extremists, antisocial elements etc. death/disability while employed in the aid of civil power in quelling agitation, riots or revolt by demonstrators shall be covered under this category.

(aj) Operations specially notified by the Government from time to time.”

In the GoI MoD letter No. 1(2)/97/I/D(Pen-C) dated 31.01.2001, Part II – Pensionary Benefits on Death/Disability



in Attributable/Aggravated Cases, namely, Para 4.1, the same conditions under Category 'E', which have been reproduced above, were given to be eligible for grant of war injury pension.

12. In the present case, it is admitted that the applicant had sustained the injury of 'Fracture Shaft of Radius (Lt) (Optd)' while he was posted to Kokrajhar (Assam) due to which he was admitted to the RR Hospital and was diagnosed as a case of Fracture Shaft of Radius (Lt) and was operated upon during treatment, and the said disability was conceded as 'Attributable to military service' in various categorisation and re-categorisation medical boards held from time to time and finally the RMB had also held this to be 'Attributable to military service'. However, it is nowhere indicated that the said injury/disability occurred due to the circumstances mentioned in the clauses of Category 'E' of Regulation 82 of the Pension Regulations for the Army, Part-1, 2008, as reproduced hereinabove. There is also no evidence, documentary or oral, which goes to suggest that the injury/disability of the applicant 'Fracture Shaft of Radius (Lt) (Optd)' was a battle casualty. Thus, the applicant failed to establish his case with regard to the aforesaid prayers.



13. Considering the aforesaid facts and circumstances of the case, we do not find any infirmity in the decision of the respondents in granting the disability pension only as the applicant is not entitled to war injury pension. Accordingly, the prayer of the applicant regarding amendment of disability pension granted to the war injury pension is rejected.

CONCLUSION

14. In view of the foregoing, finding no merit in the OA 1133 of 2019 filed by the applicant, the same stands dismissed.

15. There is no order as to costs.

Pronounced in open Court on this 19th day of November, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

/ng/