

COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

4.

OA 1198/2024

Sgt Santosh Kumar Mishra (Retd) Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Ravi Kumar, Advocate
For Respondents : Gp Capt Karan Singh Bhati, Sr. CGSC
with Mr. Yogendra Krishna, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
10.04.2024

The applicant vide the present OA makes the following
prayers :-

“(a) To direct the respondents to conduct the RE-SURVEY MEDICAL BOARD of the applicant to assess his disabilities, viz, (i) PRIMARY HYPERTENSION (ii) BOTH KNEE PAIN (BILATERAL OSTEO ARTHRITIS) (iii) LOW BACK ACHE (PROLAPSED INTERVERTEBRAL DISC (PIVD) WITH LUMBAR SPONDYLOSIS (DISC DEGENERATIVE DISEASE) (iv) NECK ACHE (PROLAPSED INTERVERTEBRAL DISC (PIVD) (DISC DEGENERATIVE DISEASE), in a time bound manner, viz, within two months.

(b) To direct the respondents to consider the case of applicant for grant of disability element of pension, if after RSMB, the applicant is found suffering from the abovesaid disabilities, as the said disabilities, in view of GMO 2008 is considered as attributable/aggravated by service and his case shall be processed further in accordance with law for grant of

disability pension and in that case the arrears shall also be paid accordingly.

(c) To pass such further order or orders, direction/directions as this Hon'ble Tribunal may deem fit and proper in accordance with law."

2. Notice thereof is issued to the respondents and accepted on their behalf. The applicant has submitted to the effect that he having been enrolled in the Indian Air Force on 30.12.1996 was thereafter discharged on 31.12.2019. He submits that during the course of his services in March 2010, he suffered from the disability of Disc Degenerative Disease; that the Ortho specialist gave him medicines and advised him to avoid heavy weights and that he was excused from PT, Parade Games, long standing duties, etc for a month but his medical category was not downgraded and he was discharged from service in A4G1 category.

3. *Inter alia* the applicant has submitted through the instant OA that at the time of discharge, the respondents have failed to assess the degree of disablement of multiple disabilities that he suffered from and submits to the effect that he is suffering from (i) PRIMARY HYPERTENSION (ii) BOTH KNEE PAIN (BILATERAL OSTEO ARTHRITIS) (iii) LOW BACK ACHE (PROLAPSED INTERVERTEBRAL DISC (PIVD) WITH LUMBAR SPONDYLOSIS (DISC DEGENERATIVE DISEASE) (iv) NECK ACHE (PROLAPSED INTERVERTEBRAL DISC (PIVD) (DISC DEGENERATIVE DISEASE).

4. *Inter alia* the applicant submits that he had sent a representation dated 22.08.2023 for the constitution of the RSMB to which there has been no response received from the respondents and thus the instant OA had to be instituted which was so instituted on 02.04.2024.

5. Reliance is placed on behalf of the applicant on Rule 8(a) of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008 which reads to the effect :-

“8. Post discharge claims

(a) 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 service conditions obtaining prior to discharge.

(b) In cases where an individual in receipt of a disability pension dies within a period of 7 years from the date of release/retirement, may be considered to have died of the disease for which he was granted disability pension if it can be so established by the competent medical authority. If the medical certificate as to the cause of the death is not available, other factors and circumstantial evidence would be taken into account.”

6. Apparently, in terms of the said Rule 8(a) of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008, the applicant is entitled for the conducting of the Re-survey Medical Board proceedings to assess the disabilities if any,

that have arisen within a period of seven years from the date of discharge. The instant OA having been instituted on 02.04.2024 within a period of seven years of the discharge of the applicant from the Indian Air Force on 31.12.2019 with a submission made on behalf of the applicant that he has suffered from all these disabilities as a consequence of his service with the Indian Air Force, the claim that the applicant has made is maintainable and falls within the ambit of Rule 8(a) of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008 which the learned Sr. CGSC for the respondents fairly does not refute.

7. The OA is disposed of with directions to the respondents to conduct the Post Discharge Re-survey Medical Board qua the applicant qua his stated disabilities to the effect :-

(i) PRIMARY HYPERTENSION

(ii) BOTH KNEE PAIN (BILATERAL OSTEO ARTHRITIS)

(iii) LOW BACK ACHE (PROLAPSED INTERVERTEBRAL DISC (PIVD) WITH LUMBAR SPONDYLOSIS (DISC DEGENERATIVE DISEASE)

(iv) NECK ACHE (PROLAPSED INTERVERTEBRAL DISC (PIVD) (DISC DEGENERATIVE DISEASE).

which be conducted within a period of three months from today.

The report of the said Re-survey Medical Board conducted be supplied by the respondents to the applicant on the conducting of

the same. The applicant would be entitled thereafter to seek redressal if any, in accordance with law.

[REDACTED]
(JUSTICE ANU MALHOTRA)
MEMBER (J)

[REDACTED]
(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

Yogita