

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

O.A. No. 1328 of 2018

with

M.A. No. 1317 of 2018

In the matter of :

Ex Sigmn Ram Milan Sharma

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri U.S. Maurya, Advocate

For Respondents : Shri Avdhesh Kumar Singh, Advocate

CORAM :

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

ORDER

Invoking the jurisdiction of the 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 respondent to set aside the respondent order/letter dated 02.11.1974 and 08.12.2017.

(b) Direct respondents to grant Disability Pension (Service Element and Disability Element Both) @ 20% wef date of discharge (23.09.1974) as applicant case is squarely covered by Dharamvir Singh Vs. Union of India and others, 2013 STPL(Web) 498 SC, 7 SCC 316, Civil Appeal No. 4949 of 2013 (arising out of SLP (c) No. 6940 of 2010) decided 02.07.2013 by Hon'ble Supreme Court.

(c) Direct respondents to grant Disability Pension from 20% to 50% for life wef 01.01.1996 in terms of Govt. of India, Ministry of Defence letter No. 1(2)/97/D(Pen-C) dated 31.01.2001.

(d) Direct respondents to treat applicant's RMB as IMB as applicant case is squarely covered with T.A. No. 41 of 2011 decided on 17.05.2013 titled Atul Chandra Karmakar Vs. Union of India by Hon'ble Armed Forces Tribunal (RB) Kolkata.

(e) Direct respondents to pay the due arrears of disability pension with interest @12% p.a. from the

date of discharge with all the consequential benefits.

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

2. Briefly stated, the facts of the case are that the applicant was enrolled in the Indian Army on 12.11.1965 and was discharged from service on 23.09.1974 in low medical category 'BEE' Permanent. The Release Medical Board (RMB) held on 30.07.1974 assessed his disability 'CARPEL TUNNEL SYNDROME (RT)' @ 20% for two years and the same was considered as neither attributable to nor aggravated by military service (NANA). Based on the same, the disability pension was not granted to the applicant.

3. It is the case of the applicant that he approached the respondents authorities as well as Records Signals through Rajya Sainik Board, Govt. of NCT of Delhi several times seeking disability pension. The Records Signals informed the applicant vide letter dated 15.06.2018 about the rejection of

his disability claim by the PCDA (P) Allahabad vide their letter dated 02.11.1974. Aggrieved by the rejection of his claim, the applicant has filed the present OA.

4. Learned counsel for the applicant submitted that at the time of joining the Army, the applicant was declared fully fit medically and physically and no note was made in his medical record to the effect that the applicant was suffering from any disease at that time and, therefore, any medical disability contracted by him during the course of his service should be treated as attributable to and aggravated by the stress and strains of service. Learned counsel further submitted that the applicant had fought in Indo-Pak war of 1971 from 03.12.1971 to 31.03.1972; that the applicant was released from service before completion of his term of engagement due being in low medical category after rendering 8 years and 311 days of qualifying service and thus he is entitled to the disability pension for his disability occurred during the service.

5. Learned counsel for the applicant further submitted that the instant matter is squarely covered by the judgment of the

Hon'ble Supreme Court **Dharamvir Singh Vs. Union of India & Ors. [2013 (7) SCC 316]**, which was followed in subsequent judgments of the Apex Court in **Union of India & Anr. Vs. Rajbir Singh [2015 (2) SCALE 371]** and submitted that the respondents' action in denying the disability pension is unjustified and unlawful, that the disability recorded by the RMB occurred during the military service and got worsened while performing military duties and it was held by the Hon'ble Supreme Court that an Army personnel shall be presumed to have been in sound physical and mental condition upon entering service except as to physical disability noted or recorded at the time of entrance and in the event of his being discharged from service on medical grounds, any deterioration in his health, which may have taken place, shall be presumed due to service conditions.

6. Learned counsel further contended that when the individual was found medically fit at the time of joining the army but subsequently detected with a disability during service, the respondents have to provide cogent reasons for

denying the disability pension and without giving any sufficient cause for denying the disability pension would be unjustified and hence in view of the law laid down by the Hon'ble Apex Court, the opinion of the RMB, the decision of the respondents may be set aside and the applicant may be granted disability pension. Learned counsel referred to Rules 5 and 14(b) of the Entitlement Rules, 1982 to submit that when no note was made about the disease at the time of joining the service, the deterioration of health in the course of service is to be presumed to be due to service conditions. Learned counsel, therefore, prayed that the disability of the applicant may be held as attributable to and aggravated by military service and that the disability pension may be granted to the applicant.

7. *Per contra*, the learned counsel for the respondents contended that the applicant is not entitled to the relief claimed since the medical boards being expert body, after thorough examination of the applicant found the disability as "Neither Attributable to Nor Aggravated by Military Service". Learned counsel contended that the disability claim of the

applicant was forwarded for adjudication to the PCDA (P) Allahabad and the claim was rejected on the ground that the disability was NANA and the said decision was communicated to the applicant vide letter dated 04.12.1974 with an advice to file an appeal within six months, however, the applicant had not filed any appeal. Learned counsel further submitted that the applicant's disability does not fulfil the necessary conditions for being eligible to get disability pension in terms of Regulation 173 of the Pension Regulations for the Army, 1961 (Part-I), thus the applicant is not entitled to disability pension and, therefore, the OA deserved to be dismissed.

8. We have heard learned counsel for the parties and have also perused the record.

9. In the present case, the applicant was diagnosed with the disability i.e. Carpel Tunnel Syndrome on 02.06.1969 and the applicant was under treatment in CH Lucknow from time to time. Having perused the record of this case, we find that in the RMB proceedings, in Part III at clause 2(d), it is stated that the applicant sustained electrical shock while on annual

leave at vide AFMSF 15. Even in Part I of the RMB-Personal Statement, at clause 4 i.e. *Give details of any incidents during your service which you think caused or make your disability worse*, to this applicant answered : *Electric shock sustained to rt hand while on leave*'. Further, the Summary attached to the RMB giving the past history of the illness stated to the effect :

"Past History : The individual sustained electric shock rt hand accidentally in April 69 while on leave. He gradually started feeling numbness and weakness Rt hand after about 2 months and was admitted at 151 BH in Jun 69 as a case of Progressive muscular atrophy Rt hand. He was transferred to CH (CC) LUCKNOW where diagnosis of Carpal Tunnel Syndrome was made. He was operated by Neurosurgeon (decompressious of Medion Nerve) after which patient had slight improvement. He was placed in Cat CER for one year wef 18 Dec 69 for Carpal Tunnel Syndrome -Rt (Optd). Further categorisation were as under :....."

OPINION OF SURGICAL SPECIALIST LT COL GO PANT OF 30 JUL

An old case of Carpel Tunnel syndrome - OPTD in Cat BEE) Person admitted for release medical board. In April 1969 he sustained electric shock while on annual leave at home vide AFSF-15. On 11.9.69 dec..... ssious of Carpal Tunnel done at CH (CC) LUCKNOW and the patient made good recovery. He is in low medical category since then.

Clinically there is wasting of a Thumb muscles. There is weakness of grip due to weak flexors with action of RT thumb. Wasting muscles of it forearm (Flexors) Weakness of flexors of wrist. Neurologically-NAD. The transverse scar front of writ has healed well.

Recommended category on Release BEE permanent. Disability 20%."

10. In view of the above and on the applicant's own admission, the disability of the applicant was a subsequent effect of the electric shock accidentally sustained in April, 1969, while on annual leave, and on complaining of the medical condition, the applicant was given required treatment at the Command Hospital, Lucknow. It is commonly known that the electric shock can cause nerve damage to the site, in this case the right hand and could lead to carpal tunnel syndrome and other medical conditions. There is no evidence, direct or circumstantial, available on record of the case to suggest that the disability was caused due to stress and strain or any circumstances or reasons related to the military service. Thus, there is no doubt that the disability suffered by the applicant has no causal connection with the service and by no stretch of imagination, the disability can be held as attributable to or aggravated by military service. Accordingly, there being no causal connection between the disability of the applicant and the military service, we find no reason to interfere with the opinion of the RMB.

T

11. In view of the aforesaid, the original application stands dismissed being devoid of merits. Consequently, the pending miscellaneous application(s) also stands closed.

12. There is no order as to costs.

Pronounced in open Court on this 17 day of
September, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN P.M. HARIZ]
MEMBER (A)

/ng/