

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

B.

OA 1338/2019

Ex Cpl Rajeev Kumar

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Mr. Baljeet Singh, Advocate
For Respondents : Mr. Waize Ali Noor, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE LT. GEN C.P. MOHANTY, MEMBER (A)

ORDER
09.02.2024

Vide our detailed order of even date we have allowed the OA 1338/2019. Learned counsel for the respondents 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 ANU MALHOTRA)
MEMBER (J)

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

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ORDER

The applicant vide the present OA 1338/2019 makes the following prayers:

"(a) To set aside the impugned order Air HQ/99801/905457/5/DAV(Med) dated 28.05.2019(Annexure A-1)

(b) Direct the respondents to conduct Appropriate Medical Board for assessing the present medical condition of the applicant and grant him disability pension from the date of discharge by treating his disabilities ID(i) Cervical Spine Pain and ID(ii) Hypertension as attributable to and aggravated by Air Force service(in case he is still found suffering from the same)

(c) Direct the respondents to grant the benefit of rounding off the disabilities in terms of law settled by Hon'ble Supreme Court of India in Civil Appeal

No.418/2012 titled as UOI & Ors vs. Ram Avtar vide judgment dated 10.12.2014 as well as in a catena of judgments by this Hon'ble Tribunal

(d) To direct the respondents to pay the due arrears of disability pension with interest @12% p.a. from the date of discharge till actual payment.

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

2. The applicant in the instant case was enrolled in the Indian Air Force on 27.09.2005 in a fit medical condition and was discharged from SMC(32 Wing, AF) on 09.04.2015 in Medical Category A4G1. The applicant's Release Medical Examination was held at Air Force Station, Jodhpur vide AFMSF-18 on 16.06.2015 which found the applicant fit to be released from service in low Medical Category A4G1 at his own request in the rank of Cpl after rendering 09 years, 08 months and 20 days of active service in the Indian Air Force. The Release Medical Examination advised to the effect:

"Fit to be released from service in Medical Category A4G1. No disability claimed or detected."

3. The applicant, however, submits that in the months of August-September, 2012 whilst posted at 750 SU AF, Jodhpur he was discharging duties of his trade as Administrative Assistant and he shifted heavy iron almirahs alongwith other air warriors and on the next day he felt pain in

his right hand but he could not find the time to make a sick report due to the ongoing AOC-in-Cs visit. The applicant submits that he suffered from right side body pain and was admitted to Military Hospital, Jodhpur and after long treatment of three months in the SMC Air Force Station, Jodhpur and Military Hospital, Jodhpur, he was declared a patient of Hypertension and block vertebrae of C6-C7 in Cervical Spine.

4. The applicant has placed reliance on the Medical Case Sheet dated 21.09.2012 of the SMC 32 Wing, AF to submit that he had presented himself with pain in right side of his body on 21.09.2012 and had also been admitted on 24.09.2012. Reliance was also placed on behalf of the applicant on the Medical Case sheet dated 28.09.2012 of SMC, 32 Wing, AF which shows his admission there on 24.09.2012 for ache in the right side since 7 days whereafter treatment he was to be reviewed by the Medical Specialist at Military Hospital, Jodhpur after a month. The applicant has placed on record as Annexure A-2(Colly), the records of the MRI/Medical case sheet/slips of treatment undergone by him while still in service. Reliance was also placed on behalf of the applicant, *inter alia* on the hospital discharge slip dated 28.09.2012 of the Hospital-SMC-32 Wing, AF wherein the brief Case Summary is depicted as under:

"22. Brief Case Summary:-A case of Hypertension(inv) Admitted with C/O body pain right side x 01 week. H/O sudden onset not relief with medicine. No h/o any other

complaints. On exam patient found to have raised NP level 150/108 mm of Hg. He was inv for hypertension & reviewed by medical spl MH Jodhpur. He is advised review after one month with ibid profile report by the spl. Presently, asymptomatic no complaints. O/E TPR normal BP-140/80 mm of Hg Gen & Systematic exam-NAD. Fit for discharge.

23. Diagnosis-Hypertension(inv)."

The applicant thus submits that he was clearly suffering from Hypertension on the date i.e. 28.09.2012.

6. The applicant thus submits that after his discharge from service his disability manifested manifold though he continued taking treatment for the diseases from civil doctors. The applicant has also submitted to the effect that he made a representation dated 18.01.2019 with copy of the MRI treatment slip to the respondents with a request to re-conduct his medical examination and grant him medical benefits which was responded to by the respondents vide impugned order No. Air HQ/99801/905457/5/DAV(Med) dated 28.05.2019 which is to the effect:

"2. It is apprised that your application for re-conduct of medical examination and grant of DP has been carefully examined at this Directorate and it is intimated that you were released from service in Medical Cat A4G1 with NIL disability detected or claimed.

3. Once the individual is discharged/retires from service, the service conditions which could have worsened the disability also cease to exist. As per O/o DGAFMS, MoD letter No.16050/PDC/DGAFMS/MA(Pens)/Policy dated 20 Feb.19, even if the individual had reported to the authorized medical attendant with symptoms pertaining to

such conditions(Cervical Spine pain/Hypertension) while in service, the Specialist/Medical Officer attending to the veteran did not consider that the condition of the individual at that time warranted placement in Low Medical Category(LMC). Hence, worsening after leaving service cannot be held accountable to service.

4. In view of the above, your request for Medical Examination after discharge as PDC(Post Discharge Claim) is not recommended."

7. On behalf of the applicant reliance was thus placed on Para 8(a) of the Entitlement Rules for the Casualty Pensionary Awards for the Armed Forces Personnel- 2008. Reliance was also placed on behalf of the applicant on the order dated 09.12.2023 of the AF&(RB), Chandimandir at Chandigarh in the case of *Sandeep Bansal Vs Union of India & Ors.* in OA 2584/2013 in which case in terms of Para 10 of the Entitlement Rules for Casualty Pensionary Awards 1982 as applicable to that applicant who took premature retirement on 10.08.1993 on compassionate grounds that applicant was held entitled to the conducting of the Re-Survey Medical Board to ascertain the manifestation of the injury to his right foot(FRACTURE BASE OF 5th Metatarsal(RT) on 29.11.1990 while doing PT, post retirement and its extent for further actions if warranted. Reliance was also placed on behalf of the applicant on the order dated 03.05.2023 of this Tribunal in OA 1227/2020 titled *Ex MWO(HFL) Satyabir Singh Yadav Vs Union of India & Ors.*, the applicant whereof was held entitled for conducting of

the Re-Survey Medical Board for assessment of the disabilities of the applicant in terms of Para 8(a) of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008.

8. On behalf of the respondents, the learned counsel for the respondents does not refute that in terms of Para 8(a) of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008, post discharge claims are permissible if the parameters thereof are satisfied but submit that in the instant case, the applicant had been discharged from service in a fit medical category A4G1 without any disability and as stated by the Re-Examination Medical Board hereinabove there was no disability claimed or detected.

9. The respondents submit to the effect that the applicant was discharged from service on 16.06.2015 at his own request before fulfilling the conditions of enrolment after rendering total of 09 years and 263 days of regular service.

10. As regards the contentions of the respondents that the applicant had not completed the qualifying length of service for the grant of disability element of pension, the said aspect is presently not under consideration as the prayer made through the present OA and presently before us for adjudication is only to the extent of the prayer made by the applicant seeking the conducting of the post discharge medical board for assessment of his present medical condition to ascertain whether it

falls within the ambit of delayed manifestation of the process set in motion of service conditions obtained prior to the discharge and to ascertain the medical conditions for the grant of disability of pension are established by the competent medical authority being attributable to military service.

11. In as much as, according to the records of the respondents, the applicant suffered from no disability at the time of his discharge, the submission of the applicant that he continued to suffer from the disabilities of Primary Hypertension and Cervical Spine pain coupled with the factum that the present OA has been instituted on 22.08.2019 within a period of 07 years from the date of discharge of the applicant from military service in as much as he was admittedly discharged on 16.06.2015, the requisite parameters for conducting the post discharge claim in terms of Para 8(a) of the Entitlement Rules for the Casualty Pensionary Awards for the Armed Forces Personnel, 2008 are wholly met. We are fortified in our view in view of the order dated 03.05.2023 in OA 1227/2020 in case of *EX MWO(HFL) Satyabir Singh Yadav Vs Union of India & Ors* and the order dated 09.12.2013 in OA 2584/2013 of the AFT(RB), Chandimandir at Chandigarh in the case of *Sandeep Bansal Vs Union of India & Ors*.

12. In the instant case, the applicant is thus held entitled to the grant of the conducting of the post discharge medical board in relation to his

stated disabilities of Primary Hypertension and the Cervical Spine pain qua which the respondents in terms of Para 8(a) of the Entitlement Rules for the Casualty Pensionary Awards for the Armed Forcer Personnel, 2008 are liable to conduct to ascertain the extent of his medical conditions.

13. The OA thus stands disposed of with directions to the respondents to conduct the Re-Examination Medical Board for the assessment of disabilities of the applicant, if any, and to ascertain the duration thereof which Re-Examination Medical Board is directed to be conducted by the respondents within three months of the receipt of this copy of this order.

14. No order as to costs.

Pronounced in the open court on this 9th day of February, 2024.

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

[JUSTICE ANU MALHOTRA)
MEMBER (J)

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