

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

OA 1340/2019

Ex Cpl KK Chopra	...	Applicant
Versus		
Union of India and Ors.	...	Respondents
For Applicant	:	Mr. Virender Singh Kadian, Advocate
For Respondents	:	Mr. Shyam Narayan, Advocate

CORAM

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

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this OA praying to direct Respondents to consider his disability - Fracture Calcaneum with Volkman and Ischaemic Contracture @20% for two years as attributable to or aggravated by service for life and grant disability element of pension @ 50 % for life.

2. The factual matrix of the case is that the applicant was enrolled in Indian Air Force (IAF) on 06.02.1986 and discharged from service on 16.01.1995. At the time of enrollment, he was found fit in the medical category AYE.

3. Applicant was subjected to Release Medical Board (RMB) before his discharge, wherein his disability- Fracture Calcaneum with Volkman and Ischaemic Contracture @20% for two years and held as Neither Attributable Nor Aggravated by Air Force Service. His initial claim was rejected vide Letter No. AirHQ/99801/9/DAV(Med) dated 07.09.2018.

4. Learned counsel for the applicant submits that at the time of enrolment, the applicant was fully fit and the aforesaid disability occurred as his ankle twisted while playing volleyball as a part of his service, and thus, the claim is preferred for Disability Pension.

5. Placing reliance on the judgement of Hon'ble Supreme Court in Dharamvir Singh v. UOI & Ors CA No 4949/2013, Learned counsel for the applicant submits that the Release Medical Board (RMB) while holding the disability for two years failed to appreciate that the applicant has been continuously posted to various squadrons and his role and responsibilities during his entire service career were directly affecting his disability and therefore, the disability is of permanent nature and he is entitled for the disability pension @20% rounded off to @50% in view of the judgement by Hon'ble Supreme Court in their judgment in Civil Appeal No. 418/2012 titled as Union of

India & ors Vs Ram Avatar decided on 10.12.2014.

6. Per contra, at the very outset, Ld. Counsel for the Respondents has vehemently opposed the maintainability of the aforesaid OA on the ground of inordinate delay of approximately 23 years.

7. Ld. Counsel submits that the RMB had assessed the disability @ 20% for 2 years in the year 1995 with the disability being held neither attributable nor aggravated (NANA) by Indian Air Force, and that being so, the applicant has approached this Tribunal after extraordinary delay, on 21.08.2019 which cannot be considered as a regular case of grant of disability pension.

8. Addressing on merits, Ld. Counsel submits that the disability was held as neither attributable nor aggravated (NANA) by the Release Medical Board and not only this, the disability was held existent only for two years, and therefore, the claim for disability pension does not sustain.

9. We have heard the Learned Counsels for the parties at length and have perused the records placed before us for our scrutiny. Now, the point for consideration is whether on a careful perusal of the materials on record, in the proper perspective, 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 Application?

10. It is pertinent to note that this application has been filed after an inordinate delay of about 23 years from the date of discharge, while the first representation for the claim was sent to the competent authority after the expiry of 22 years from the date of discharge, wherein as such, it becomes relevant to refer to the observations of the Hon'ble Apex Court in the case of *Maniben Devraj Shah Versus Municipal Corporation of Brihan Mumbai [(2012) 5 SCC 157]*, on the issue of delay and laches, wherein Hon'ble Supreme Court has held that:

"No doubt, sufficient cause should be construed liberally on facts without any hard and fast rule and substantive rights of parties cannot be ignored on account of delay, but a distinction must be made between delay of a few days and inordinate delay causing prejudice to the other side."

11. While dismissing the petition, the *Hon'ble Supreme Court in the judgement passed in C. Jacob v. Director Geology & Mining & Anr reported in (2008 (10) SCC 115)* had held as under:

"a dead or stale claim is not permitted to be revived. The person who sleeps over his right is not entitled for any indulgence"

12. On a perusal of the medical documents on record, we find that as per the opinion of Surg Cdr Y.P. Monga, Classified

Specialist, Surgery & Reconstructive Surgery, dated 19.07.1991, the Fracture Calcaneum (L) has healed well both clinically and radiologically. A similar opinion is resonated in the Re-Cat Medical Board dated 08.09.1992, and the opinion of Lt. Col. S.M. Bhatnagar, Classified Specialist dated 13.09.1994.

13. Further analysis of medical records show that while the disability Fracture Calcaneum (L) has healed, the pain and restriction in the movement of the ankle of the applicant, while running or prolonged walking or weight bearing continues till his Release Medical Board because of the disability of Volkman and Ischaemic Contracture.

14. An analysis of the medical literature with respect to the Volkmann contracture reveals that it develops when there is sustained ischemic damage to the muscles. Diminished blood flow to the forearm, causing ischemia, may be due to increased compartmental pressures or acute arterial emboli.

15. While we are not medical experts to assess the extent of disability, the most prudent way could have been a reassessment after the expiry of two years, by an expert Medical Board, an issue which has been adequately dealt by Para 7 of the Letter No. 1(2)/97/D (Pen-C) dated 07.02.2001 of Ministry of Defence, Government of India which deals with the assessment

with regard to the percentage of disability as recommended by the Release Medical Board (RMB), which is reproduced as under:

“7. Re-assessment of Disability: There will be no periodical reviews by the Re-survey Medical Boards for re-assessment of disabilities. In cases of disability adjudicated as being of a permanent nature, the decision once arrived at will be final and for life unless the individual himself requests for a review. In cases of disabilities which are not of a permanent nature, there will be only one review of the percentage by a Reassessment Medical Board, to be carried out later, within a specified time frame. The percentage of disability assessed/recommended by the Re-assessment Medical Board will be final and for life unless the individual himself asks for a review. The review will be carried out by the Review Medical Board constituted by DGAFMS. The percentage of disability assessed by the Review Medical Board will be final.”

16. It is of no doubt that the applicant should have applied for a Review Medical Board, which would have well cleared the issue in question. However, no such representation for conduct of the Review Medical Board is on record to support the case of the applicant that an effort was made on his behalf, and it was only after 22 years that the applicant suddenly woke up one day and filed a representation claiming the disability pension.

17. We find it relevant to refer to the judgement of the Hon'ble Supreme Court in UoI vs. Ex Sepoy Munuswamy [Civil Appeal No. 6536/2021], wherein Hon'ble Apex Court has allowed the appeal of Union of India against the judgement of

this Tribunal directing the Respondents to conduct Review Medical Board in an application filed after a delay of approximately 20 years and held as under:

“26...The claim of the Respondent for disability pension should not have been entertained and that too, 20 years after his discharge.”

18. Noting that the applicant is approximately 56 years old at present, it is highly improbable for the medical experts to assess the accurate percentage of the disability and an accurate medical opinion is not possible in this case, we find it relevant to observe that the beneficial provisions of the statutes or legislations which have been brought in for the benefit and welfare of armed forces cannot be used as a tool to propagate unnecessary litigation after such unreasonable delay, without any any reasonable and justifiable explanation to that effect and just because a beneficial provision exists in a statute, it cannot be taken refuge of by the applicant disregarding his own responsibility and duty behind the veil of such beneficial provision and therefore, the Tribunals should restrict itself from interfering in such cases.

19. In view of the aforesaid analysis, we are of the considered opinion that the relief asked for by the applicant is unsustainable on the grounds of unreasonable delay, as well as

on merits and consequently, the O.A. 1340/2019 is dismissed.

20. No order as to costs.

21. Pending application(s), if any, stands disposed off.

Pronounced in the open Court on 24th day of April, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

/akc/