

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

114.

OA 136/2023

JWO Sanjit Kumar (Retd) Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Nawneet Krishna Mishra and
Mr. Raj Kumar, Advocates
For Respondents : Mr. R S Chhillar, Advocate

CORAM

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

ORDER
03.09.2024

This OA has been filed by the applicant under Section 14 of Armed Forces Tribunal Act, 2007 with prayers for conduct of the Re-Survey Medical Board for assessment of disease "Cervical Spondylosis" which the applicant claims to have suffered during his service in the Air Force.

2. The applicant was enrolled in Indian Air Force on 12.12.1995 and was discharged from service on 31.12.2021 on fulfilling the conditions of his enrolment after rendering 26 years and 18 days of regular service. The applicant was initially detected to have Hypothyroidism and placed in Low

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Medical Category (LMC) A4G4 (Temp) (T-24) with effect from 29.07.2020. The Release Medical Board (RMB) conducted, prior to discharge of the applicant, at 9 Wing Air Force on 24.02.2021 declared the applicant fit to be released in Low Medical Classification A4G2(P) for Hypothyroidism (old) @ 10% for life as per Para 2(a)(ii) of DGAFMS letter No. 16036/RMB/IMB/DGAFMS/MA(Pen) dated 20.05.2019 but held the same as neither attributable to nor aggravated by service. His appeal for Disability Pension was accordingly rejected by the respondents vide their communication dated 18.04.2023 for above reason and for being less than 20%.

3. It is now the prayer of the applicant that while in service he was also detected with Cervical Spondylosis and Sciatica Radiculopathy in October 2020 and the same was recorded in his Annual Medical Examination report dated 19.10.2020. It is his submission that the respondents have failed to take note of his disability of Cervical Spondylosis during the RMB and therefore, he is entitled to Re-survey Medical Board for assessment of second disability of Cervical Spondylosis.

4. We have heard the arguments and perused the medical documents placed on record. Before proceeding to answer this question, it is important to refer to Paragraph 8(a) of the Entitlement Rules (ER) for Casualty Pensionary Awards, 2008, reproduced as under:

“8. (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 the service conditions obtaining prior to discharge.”

5. A detailed analysis of the aforesaid provision dealing with the post discharge claim lays down two essentials to be fulfilled for the grant of post discharge claim, of which first essential condition is that the disease was not present at the time of retirement/discharge of the claimant from service, but must have arisen within 7 years of the retirement/discharge from service, which is well established in the instant case by the fact that though the disability does not find itself in Release Medical Board Proceedings, it existed prior to that which is evident from the medical records placed by the applicant on record,

inter alia Annual Medical Board conducted at 9 Wing Air Force
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on 19.10.2020, wherein the Medical Board has detected the ailments of the applicant as Hypothyroidism (Fresh), Cervical Spondylosis BPPV and Sciatica Radiculopathy, and that it exists post the discharge of the applicant, with the applicant representing the same to the respondents.

6. Therefore, in view of the aforesaid conditions fulfilled by the applicant, we direct the respondents to conduct Reassessment Medical Board to assess the disability of 'Cervical Spondylosis' with the attributability at the nearest Military Hospital and the composite disability be thus calculated, alongwith the existing disability of Hypothyroidism @ 10% within three months from date of pronouncement of this order.

7. No order as to costs.

8. Pending miscellaneous application, if any, stands disposed of.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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