

COURT NO. 2, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 1476/2018

Col. Pradeep Dixit (Retd)

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant

: Mr. Shobit Shukla, Proxy for Mr Aditya
Singh Puar, Advocate

For Respondents

: Mr. Rajeev Kumar, Advocate

CORAM :

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)

HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

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

- a) *" Directions to the respondents to get the petitioner examined by the competent Medical authority for his post discharge claims for disability pension at any suitable establishment;*
- b) *Release his disability element of pension alongwith benefit of broadbanding with arrears and interest, if any, in the event of a positive finding resulting from the Medical examination conducted in terms of Prayer(i) above*
- c) *With a further prayer that the rejection letter (Impugned order) may be quashed and any prohibitory stipulation mentioned in therein may*

also be quashed or directed to be ignored being arbitrary and in contravention of the validly(and subsequently) issued specific rules and regulations on disability awards”

2. The applicant was commissioned in the Indian Army on 11.06.1977 and retired from service on superannuation on 28.02.2010 in the category SIH1A1P1E1. The applicant was re-employed in the Army from 08.03.2010 to 08.03.2012. The applicant submits that he had served the Indian Army at various places after being commissioned on 11.06.1977 inclusive of his posting at High altitude areas and thus was exposed to extreme weather, sunrays reflected off snowfields and ultraviolet radiation and consequently he had to undergo a surgery for Bilateral Immature Cataract in both eyes, i.e. on 16.08.2005 for the left eye and on 15.09.2005 for the right eye and the said surgeries were carried out at the Command Hospital, Eastern Command, Kolkata. The applicant submits that these eye surgeries caused irreparable damage and trauma which could not be discerned in clear cut terms at that point of time and that he continued to feel poor vision especially in the left eye and the same was dismissed as a normal post-operative irritant. The applicant submits that after superannuation on 28.02.2010 and finally after re-employment on 08.03.2010 till 08.03.2012 when he served in the modified field area(HQ 17 Mtn Division), he continued to face the agonizing problem. The

applicant submits through this OA further that on examination at the Department of Ophthalmology, Command Hospital(WC) on 02.01.2014, it was opined that that he was suffering from retinal detachment and it was also confirmed that he also suffered from Secondary Glaucoma incurred due to trauma during cataract surgery. The applicant thus submits that his disability was attributable to military service. However, the application dated 08.05.2012 of the applicant to the respondents seeking the disability element of pension was rejected by the respondents vide letter dated 21.08.2017 which reads to the effect:

“(a) Post Disch Claims are 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. These cases may be recognized as attributable to mil 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 in terms of the Entitlement Rules for Casualty Pensionary Awards for Armed Forces Personnel 2008(ER 2008). Sanction of the DGAFMS is required for constitution of a medical board in such cases as per Service HQ policy letter B/41022/MA(P)/AG/PS-5 dt 20 Jul 2006.”

(b) In the instant case, you underwent cataract surgery for both the eyes in the year 2005 with phacoemulsification with PCIOL(Lt eye-Aug 2005, Rt eye-Sep 2005). As per documentary evidence, you had uneventful course of recovery and were upgraded to SHAPE-1 in the year 2006. You remained SHAPE-1 thereafter till your superannuation from the service in 2010. There is no documentary evidence that you were suffering from any complications of cataract surgery while in service and you did not claim any such disability at the time of Release Med Exam(RME) either. Also, service related factors cease to play their role after

discharge from the service. Therefore, possibility of other environmental factors and age related degeneration causing the above mentioned disabilities after the retirement from service needs to be considered more strongly and further, glaucoma occurred post VR surgery for retinal detachment in the instant case.

3. In view of the above mentioned facts, both the disabilities "Retinal detachment Lt eye" and "Glaucoma Lt eye" as contended by you cannot be considered to be Attributable to or Aggravated by Military Service(Para 8a) of Entitlement Rules, 2008 and Para 43 and Para 47, Chap VI, GMO 2002, amendment 2008 refer). Hence your Post Disch Medical Claim is not tenable, as confirmed by office of the DGAFMS."

3. The applicant in the instant case retired from the Indian Army on superannuation on 28.02.2010 and filed this OA on 24.08.2018 seeking the post retirement claim qua disabilities in relation to the cataract surgery carried out on him on 16.08.2005 and 15.09.2005 which has been filed within a period of 07 years from 08.03.2012 after his retirement from re-employment and thus has to be deemed to have been filed within the permissible limit of 07 years in terms of Para 8(a) of the of Entitlement Rules for Casualty Pensionary Awards for Armed Forces Personnel 2008(ER 2008) which provide as under:

"Post discharge claims:

8(a) Cases in which a disease was not present at the time of the member's retirement/discharge from service but arose within 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”

The manifestation of disability requisite after retirement/
discharge in terms of Pension Regulations for the Army(Part-I) 2008
is to the effect:

“86. Service personnel who had retired/discharged (otherwise than at his own request or in any of the circumstances specified in Regulation 29 and Regulation 41) on a retiring/service pension/gratuity, but who within a period of 10 years from the date of retirement is found to be suffering from a disease which is accepted as attributable to his military service, be granted in addition to his retiring/service pension/gratuity, a disability element with effect from the date of Review Medical Board constituted by the Director General Armed Forces Medical Services.”

4. Thus the applicant's prayer for the grant of post discharge medical claim to assess the stated disabilities that he suffered from has essentially to be allowed to be conducted to ascertain whether the disability of Retinal Detachment Lt Eye and secondly the Glaucoma Lt Eye are due to cataract surgeries connected whilst the applicant was in service and to ascertain the duration of the said disabilities as also the percentage of disablement.

5. The OA is thus disposed off with directions to the respondents to conduct the post discharge medical board *qua* the applicant to ascertain the existence of disabilities, if any, the percentage of disablement as directed hereinabove and the attributability thereof to military service and the said medical board be conducted within three months from the date of this order.

6. It would be open to the applicant to seek redressal, if any, required thereafter in accordance with law.

Pronounced in the open Court on this 7 day of February, 2024.

[REAR ADMIRAL/DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/Chanana/