

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

O.A. 151/2021

Col Om Prakash Mishra(Retd) ... Applicant

Versus

Union of India and Ors. ... Respondents

For Applicant : Shri R.K. Tripathi, Advocate
For Respondents : Gp Capt Karan Singh Bhati, Sr. CGSC

CORAM

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

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant is aggrieved by the order of respondents declining the request of the applicant to conduct a RSMB. The applicant has made the following prayer :

(a) To call for the records of all the relevant medical documents related to the applicant for perusal of the Court.

(b) To direct the respondents to conduct resurvey Medical Board of the Applicant in accordance with the provisions of Regulation 86 of Pension Regulations 2008, Part -I.

(c) To grant any other relief as the Hon'ble members of the Tribunal may deem appropriate.

Brief Facts of the Case

2. The applicant was enrolled in the Army Dental Corps on 06.03.1986 and was discharged on 31.07.2016 in a SHAPE-1 category. Prior to his discharge, Medical Examination(AFMSF-18) was conducted on 11.05.2016 wherein he was observed to be in a SHAPE-1 Category. While in service a TMT was carried out on 07.08.2000 at Army Hospital(R&R) wherein the specialist opined that "there is no evidence of Inducible Ischemia". Post discharge an angiography was conducted on 17.11.2019, at the Command Hospital(Central Command), Lucknow wherein the applicant was diagnosed for Coronary Artery Disease(CAD). Subsequent to this the applicant submitted a representation vide letter dated 21.01.2020 requesting the respondents to conduct an RSMB. This was rejected vide letter dated 17.02.2020 stating that since the applicant was discharged in a SHAPE-1 Category, no medical documents were held with the office. The applicant further submitted another representation dated 03.03.2020 requesting an RSMB, however this

was also rejected vide letter dated 18.03.2020. The applicant further submitted a representation to DGMS vide letter dated 07.09.2020 ,stating that his cardiac problem might have started back in the year 2000 while he was in an operational area. This representation was further rejected vide letter dated 10.11.2020, stating that Post Discharge Claim(PDC) of the Applicant was processed but it was rejected by the competent authority, since the applicant was diagnosed of the illness four years after his discharge while he was at home, hence it cannot be treated as being attributable to military service. Aggrieved by this the applicant preferred the current OA.

Contention of the Parties

3. Learned Counsel for applicant argues that the disability of the applicant first arose when he suffered chest pain in the year 2000 while he was in an operational area and was admitted to 159 General Hospital, and further transferred to Army Hospital(R&R). He further stated that even though his disability could not be diagnosed at that time, his service in the operational area in the 2000 was the starting point for the disability.

5. Ld. Counsel submits that as per Pension Regulations for Army and Para 8(a) of the Entitlement Rules for Casualty Pensionary Award to the Armed Forces Personnel, 2008, the applicant has a right to be examined by the Re-assessment Medical Board (RAMB) after retirement to determine whether the disability, from which, he is now suffering pre-existed before his retirement from service or is a delayed manifestation of a pathological process set in motion by service conditions obtaining prior to his retirement.

6. Per contra, Learned Counsel for the respondents submits that as per the procedure in vogue, the applicant was discharged in a SHAPE-1 Category as mentioned in the Medical Examination Report(MER) dated 11.05.2016. Hence, no medical documents regarding the claim of the applicant are kept in record. He further stated that the PDC of the applicant was not approved by the competent authority since IHD/CAD could be considered only if the applicable to individual was posted in CI Ops/HAA/Field Area. Herein, the disease accrued after four years of his discharge, while the applicant was at home, hence it cannot be termed as attributable to military service.

7. The counsel for the respondents mentioned that the TMT held at Army Hospital (R&R) clearly reveals that the specialist opined that there is no evidence of 'Inducible Ischemia' hence the applicant was not suffering from CAD at that time contrary to what was alleged by the applicant. The counsel further stated that the applicant never bought out his disability before any Authorized Medical Attendant(AMA)/ Regimental Medical Officer(RMO)/Medical Officer during the conduct of Annual Medical Examination(AME) & Periodic Medical Examination (PME) or during his service.

Consideration

8. Notwithstanding the aforesaid submission made, we proceed to decide the issue in question which 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 OA?

9. 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 Post Discharge Claims:

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."

10. 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 seven years of the retirement/discharge from service. This is well established in the instant case that though the disability does not find itself in MER dated 11.05.2016, CAD was first assessed on 17.11.2019 after Coronary Angiography was conducted at Command Hospital(CC), Lucknow. And since it is within seven years from the date of discharge, the first condition is fulfilled.

11. The second essential for the post discharge claim is that if a disability can be recognized as attributable to service. We find at this point it is relevant to refer to Para 47 Chapter VI - Assessment of

Guide to Medical Officers (GMO) - 2008 (Military Pensions), which is reproduced as under:

47. Ischaemic Heart Disease (IHD). IHD is a spectrum of clinical disorders which includes asymptomatic IHD, chronic stable angina, unstable angina, acute myocardial infarction and sudden cardiac death (SCD) occurring as a result of the process of atherosclerosis. Plaque fissuring and rupture is followed by deposition of thrombus on the atheromatous plaque and a variable degree of occlusion of the coronary artery. A total occlusion results in myocardial infarction in the territory of the artery occluded.

Prolonged stress and strain hastens atherosclerosis by triggering of neuro hormonal mechanisms and autonomic storms. It is now well established that autonomic nervous system disturbances precipitated by emotions, stress and strain, through the agency of catecholamines affect the lipid response, blood pressure, increased platelet aggregation, heart rate and produce ECG abnormality and arrhythmias.

The service in field and high altitude areas apart from physical hardship imposes considerable mental stress of solitude and separation from family leaving the individual tense and anxious as quite often separation entails running of separate establishment, financial crisis, disturbance of child education and lack of security for family. Apart from this, compulsory group living restricts his freedom of activity. These factors jointly and severally can become a chronic source of mental stress and strain precipitating an attack of IHD. IHD arising in while serving in Field area/HAA/CI Ops area or during OPS in an indl who was previously in SHAPE-I will be considered as attributable to mil service.

Entitlement in Ischemic heart disease will be decided as follows:-

(a) Attributability will be conceded where: A myocardial infarction arises during service in close time relationship to a service compulsion involving severe trauma or exceptional mental, emotional or physical strain, provided that the interval between the

incident and the development of symptoms is approximately 24 to 48 hours. IHD arising in while serving in Field area/HAA/CI Ops area or during OPS in an indl who was previously in SHAPE-I will be considered as attributable to mil service.

Attributability will also be conceded when the underlying disease is either embolus or thrombus arising out of trauma in case of boxers and surgery, infectious diseases. E.g. Infective endocarditis, exposure to HAA, extreme heat.

(b) Aggravation will be conceded in cases in which there is evidence of:-

IHD occurring in a setting of hypertension, diabetes and vasculitis, entitlement can be judged on its own merits and only aggravation will be conceded in these cases. Also aggravation may be conceded in persons having been diagnosed as IHD are required to perform duties in high altitude areas, field areas, counter insurgency areas, ships and submarines due to service compulsions.

There would be cases where neither immediate nor prolonged exceptional stress and strain of service is evident. In such cases the disease may be assumed to be the result of biological factors, heredity and way of life such as indulging in risk factors e.g. smoking. Neither attributability nor aggravation can be conceded in such cases.

12. In the case of **Ex MWO(HFL) Satyabir Singh Yadav** Vs. **Union of India & ors** the Hon'ble AFT vide its order dated 03.05.2023 allowed the conduct of RSMB. The relevant paras are extracted below:

17. As regards, the reliance placed on behalf of the respondents on the order dated 06.10.2021 of the AFT, RB, Lucknow in OA 44/2020, it is essential to observe on a bare perusal thereof that the facts of the said case relied upon on behalf of the respondents are not in pari materia with the facts of the instant case for in as

*much as in the said case of OA 44/2020 titled as Ex WO Surendra Pratap Narain Singh (supra) before the AFT, RB, Lucknow what had been claimed by the applicant thereof was the grant of disability pension in view of the stated changed low medical category which was held to be not maintainable. In the instant case before us the prayer made by the applicant though he seeks setting aside of the impugned communication dated 31.03.2020 No. Air HQ/99801/5/648359/DAV (Med); seeks the directions to the respondents to conduct a belated Release Medical Board for the disabilities of DM Type-II and mild SNHL as well as the ID for **CAD CSA II** and to grant the disability pension to the applicant and underline and highlight in case he is found suffering from any disease and apparently the prayer made by the applicant before us is not simplicitor for the grant of disability pension as was in OA 44/2020 before the AFT, RB, Lucknow.*

18. In the circumstances, in view of the order of the OA 346/2022 in Air Cmde Jagdish Chandra Goyal (Retd.) (supra) and the provisions of the para 8(a) of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008, the OA is disposed of with the directions to the respondents to the conduct the Re-survey Medical Board for assessment of the disabilities of the applicant within a period of three months of the receipt of the copy of this order.

13. In view of the above, RSMB of the applicant is required to be conducted to ascertain whether the applicant's disability is a delayed manifestation of a pathological process set in motion by service conditions obtained prior to retirement.

14. Consequently, OA 151 of 2021 is allowed with the directions to the respondents to conduct the post discharge Re-Survey Medical

Board for assessment of the disability of the applicant within a period of three months.

15. MA, if any, stands disposed of.

16. Pronounced in the open Court on 17th day of September, 2024.


(RAJENDRA MENON)
CHAIRPERSON


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

/ashok/