

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

93.

OA 1593/2018 WITH MA 1938/2018

Ex Rect Sanjay Kumar Applicant

Versus

Union of India & Ors. Respondents

For Applicant : Mr. Y.P. Sharma and
Mr. A.K Tyagi, Advocates

For Respondents : Mr. Y.P Singh, Advocate

CORAM :

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

ORDER
03.04.2024

MA 1938/2018

Keeping in view the averments made in the application and in the light of the decision in Union of India and others Vs. Tarsem Singh [(2008) 8 SCC 648), the delay in filing the OA is condoned.

2. MA stands disposed of.

OA 1593/2018

3. The applicant Ex Recruit Sanjay Kumar, through the instant OA, is seeking the following reliefs:-

- “(a) Respondent may be directed to keep continuing the disability pension of the applicant and also to be released without any further delay science the date of last month of pension paid.*
- “(b) Compensation of amount Rs. 2,00,000/- (Two lakh only) is to be awarded to the applicant against harassment and mental torture to the applicant.*

- (c) *Litigation charges are to be awarded to applicant of amount Rs 70,000/- (Seventy Thousand).*
- (d) *Any other order/relief as this Hon'ble Tribunal deems fit and proper under the given facts and circumstances may also be allowed in favor of the applicant and against the respondents."*

4. The applicant was enrolled in the Indian Army on 31.12.1993 in Army Medical Corps and medically invalidated on 10.02.1995 for the ID, "Pulmonary Tuberculosis" under Rule 13(3) table IV of Army Rules, 1954 due to the disability "Pulmonary Tuberculosis" after rendering 01 year, 01 month and 10 days of service.

5. It is the contention of the applicant that the Invaliding Medical Board conducted on 13.01.1995 at Military Hospital, Dehradun opined that the disease is attributable to military service and assessed the ID @ 100% for two years. Accordingly, he was granted disability element of pension @ Rs 450/- per month w.e.f 10.02.1995 to 12.01.1997 vide PCDA (P) Allahabad PPO No. D/002354/95 (ARMY) dated 05.02.1996.

6. On the other hand, the Respondents submit that the disability of the applicant were re-assessed post his retirement, and that the first Resurvey Medical Board (RSMB) held on 18.01.1997 at Military Hospital, Meerut assessed the ID @ 20% for one year w.e.f 13.01.1997, which PCDA (P) Allahabad had accepted the disability @50% and he was granted disability pension @ Rs. 225/- per month w.e.f 13.01.1997 to 17.01.1998 vide PPO No. D/RA/5545/97 dated 17.07.1997.

7. It is further submitted by the Respondents that the second RSMB conducted on 05.01.1998 at Military Hospital Meerut assessed the ID @20% for two years w.e.f 18.01.1998. Accordingly PCDA P) Allahabad had granted disability pension to the applicant @90/- per month w.e.f 18.01.1998 to 04.01.2000. Third RSMB was conducted on 18.02.2000 at Military Hospital Meerut, which assessed the ID @ 11-14% w.e.f 05.01.2000 and accordingly the payment of Disability Pension was stopped.

8. Respondents contend that the fourth RSMB held at Military Hospital Meerut on 10.04.2002 assessed the disability of the applicant as 'Nil' for life, therefore, the Applicant is not entitled for Disability Element in terms of Para 173 of the Pension Regulations for the Army 1961 (Part I).

9. We have heard learned counsel for the parties and perused the material placed on record. We have also gone through Invalid Medical Board dated 13.01.1995 and subsequent Re-assessment Medical Boards as well as the rejection order of disability pension claim. Now, the limited question for consideration is whether the applicant is entitled for the grant of disability pension for the period, wherein RSMB has assessed his disability at less than 20%, which is minimum benchmark for grant of disability pension as per Para 173 of the Pension Regulations for the Army 1961 (Part I).

10. On an analysis of medical literature, we find that as per the report of World Health Organization, and American Lung

Association, the disability of the applicant is now curable with time and regular medication. It is important to note that the RSMB has itself assessed the disability @ NIL % for life, which is clear evidence that the disability has healed with time, and in absence of any contrary medical record, we find no reason to dispute the finding recorded by the Medical Board, and that the applicant is not entitled to disability pension for a disability, which has been assessed at less than 20%.

11. In view of the aforesaid analysis, we are of the opinion that this OA is devoid of merit and deserves to be dismissed.

12. Accordingly, OA 1593/2018 is dismissed.

13. No order as to cost.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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