COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

F.

OA 1699/2019 with MA 2678/2023

Col Pritpal Singh (Retd) ..... Applicant
VERSUS
Union of India and Ors. ..... Respondents

For Applicant : Mr. Virender Singh Kadian, Advocate
For Respondents : Mr. Neeraj, Sr CGSC

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER
01.04.2024

Order allowing the OA pronounced, signed and dated.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

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

KT/TS

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Col Pritpal Singh (Retd.) ... **Applicant**
Versus
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For Applicant : Mr. Virender Singh Kadian, Advocate
For Respondents : Mr. Neeraj, Sr CGSC with
Mr Sanjay, Advocate

CORAM :

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER(J)
HON'BLE LT GEN CP MOHANTY, MEMBER (A)

O R D E R

MA 2678/2023

This is an application filed under Rule 12(5) of The Armed Forces Tribunal (Procedure) Rules, 2008 seeking condonation of delay of 51 days in filing the additional documents in the present OA. In view of the reasons mentioned and in the interest of justice, the MA 2678/2023 is allowed and the delay in filing the additional documents is condoned.

OA 1699/2019

2. Invoking the jurisdiction of this Tribunal; under Section 14, the applicant has filed this application and the reliefs claimed in Para 8 read as under:

"(a) Direct respondents to conduct Re-Survey/re-assessment Medical Board to assess percentage of all the disabilities compositely. And/Or to grant the disability element of pension along with benefits of broad banding accordingly.

(b) Direct respondents to pay the due arrears of disability element of pension with interest @2%p.a. for all disabilities

(c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost of the application in favour of the applicant and against the respondents."

BRIEF FACTS

3. The applicant was commissioned in the Indian Army on 23.09.1977 and superannuated from service on 31.05.2012 in a low medical category, S1H1A1P2E1. The applicant was downgraded to the low medical category as per AFMSF-16 dated 27.04.2012 for the disabilities (i) Primary Hypertension @30% (ii) Obesity-Nil (iii) Diabetes Mellitus Type-2 @20% (iv) CAD-P/CABG (OPTD) @30%, whereby his percentage of disability was assessed @ 70%, however, net qualifying percentage for disability was @30% for life.

4. The competent authority after examining the relevant rules and medical provisions decided that the disability No. (iv) CAD-P/CABG (OPTD) @30% for life as aggravated by military service and thus, granted disability element of Disability Pension @30% for life to the applicant vide PCDA (P) Allahabad PPO No

M/DIS/001635/2010. The disabilities No (i) to (iii) were adjudged neither attributable to nor aggravated by military service.

CONTENTIONS OF THE PARTIES

5. The learned counsel for the applicant submitted that the applicant was granted disability element of pension @30% for life for the disability - CAD, from which he was suffering before retirement but the disability was not appropriately assessed by the Release Medical Board and the disability has been getting aggravated day by day, due to which he has suffered from Left MCA Stroke as well.

6. It is argued by the Learned Counsel for the applicant that the Army Hospital (R&R), New Delhi has recommended for Re-assessment of his disabilities vide certificates dated 13.09.2017, 09.01.2018 and 09.05.2019 as the applicant was suffering from Coronary Artery Disease (CAD) and Left MCA Stroke with Right Hemiplegia with Broca Aphasia, and that the applicant is disabled @96% (Physical speech & impairment) with disabilities being permanent as per Army Hospital (R&R) Medical Certificate dated 29.05.2019 whereby he was granted disability element @30% broad banded to 50% whereas the applicant was entitled for 100% disability element.

7. The learned counsel further submitted that the prolonged stressful working conditions, strict military discipline, and various other socio-geographical factors have immensely contributed to the onset and aggravation of the applicant's disability.

8. Placing reliance on the orders passed by Hon'ble Supreme Court of India in ***Dharamvir Singh Vs UOI & Ors [2013(7) SCC 36]*** the applicant submits that he is entitled for the disability element of pension after conduct of a Re-Survey /Re-assessment Medical Board and computing all the disabilities compositely in terms of the Govt of India, Min of Def vide letter No 4(17)/2015/D(Pen/Legal) dated 29.06.2017 and that he is also entitled to the benefits of the broad banding of disability pension in terms of Govt of India, Min of Def letter No 1(2)/97/D(Pen-C) dated 31.01.2001 and Orders passed by Hon'ble Supreme Court of India [***Civil Appeal No 418/2012 UoI & Ors Vs Ram Avtar***].

9. Per contra Learned Counsel for the respondents submit that the Medical Standard is a pre-requisite for grant of commission in Army Medical Corps and that the medical tests at the time of entry are not exhaustive, the scope of which is limited to broad physical examination and therefore dormant diseases, hereditary/

constitutional and congenital disease manifest at later stages in life. The respondents submit that merely because the disease manifested itself during military service does not *per se* establish it to be either attributable to or aggravated by military service.

10. The learned counsel for the respondents further argues that after examining the case, the medical authorities conducting RMB have assessed that out of the disabilities ID (i) "Primary Hypertension @30% (ii) Obesity-Nil (iii) Diabetes Mellitus Type-2 @20% (iv) CAD-P/CABG (OPTD) @30%, only the disability (iv) has been aggravated by military service and is assessed @30% for life. Hence the applicant is in receipt of disability element of Disability Pension @ 30% for life vide PCDA (P)Allahabad PPO No M/DIS/001635/2010.

ANALYSIS

11. It is essential to advert to the RMB proceedings in the instant case dated 27.04.2012 which indicate the posting profile of the applicant as depicted in Part-1 thereof as under:-

"

PART I PERSONAL STATEMENT									
1. Give details of the service (P=Pease OR F= Field/Operational/Sea Service)									
SL. NO	FROM	TO	PLACE/SHIP	P/F	SL. NO	FROM	TO	PLACE/ SHIP	P/F
(i)	23.09.77	02.02.79	Delhi	P	**(ii)**	**03.02.79**	**08.03.81**	**Field**	**F**

(iii)	**09.03.81**	**13.06.82**	**Field**	**F**	**(iv)**	**14.06.82**	**18.04.85**	**Field**	**F**
(v)	19.04.85	26.08.87	Cuttack	P	(vi)	27.08.87	25.11.89	Dholpur	P
(vii)	26.09.89	12.09.93	Dehradun	P	(viii)	13.09.93	20.10.96	Pathankot	P
(ix)	21.10.96	01.05.01	Delhi	P	(x)	**02.05.01** **05.10.02**	**20.08.03** **19.11.02** **OP PARAKRAM**	**FIELD**	**F**
(xi)	21.08.03	09.06.06	Pune	P	(xii)	10.06.06	19.05.09	Lucknow	P
(xiii)	20.05.09	Till date	Ahmedabad	P	-	-	-	-	-

PART-V

The chronological list of the disabilities of the applicant mentioned in part IV of the RMB is as under :

Disabilities	Date of Origin	Rank of the Indl	Place and unit where serving at the time
(a) PRIMARY HYPERTENSION	1988	Maj	Mil School Dholpur
(b) OBESITY	1988	Maj	Mil School Dholpur
(c)DIABETES MELLITUS TYPE-2	Jun 2009	Col	GH (TA) Ahmedabad
(d) CAD-P/CABG (OPTD)	Jun 2009	Col	GH (TA) Ahmedabad

Medical board having examined the individual and after Perusing all available documents is of the consensus opinion as under:-

1.Casual Relationship of the disability with service conditions or otherwise				
Disability	Attributable to service(Y/N)	Aggravated by service(Y/N)	Not connected with service(Y/N)	Reasons/ cause/specific conditions and period in service.
(i) PRIMARY HYPERTENSION	NO	NO	NO	Onset in peace. (Old documents not provided) (Para 43 page 34 of GMO)
(ii) OBESITY	NO	NO	NO	Onset in peace (old documents not provided)

(iii)DIABETES MELLITUS TYPE II	NO	NO	NO	Onset in peace (Old documents not provided)
(iv) CAD-P/CABG (OPTD)	NO	YES	NO	Aggravated in a setting of hypertension and diabetes mellitus causing toilet organ damage. (Old documents regarding hypertension and diabetes not provided. Charter of duty prior to occurrence of the attached.

Note: A disability "Not connected with service" would be neither Attributable nor aggravated by service.(This is in accordance with instructions contained in Guide to Medical Officers(Mil Pension)-2002

6. What is present degree of disablement as compared with a healthy person of the same age and sex?(Percentage will be expressed as Nil or as follows)

1.5%, 6-10%,11-14%,15-19% and thereafter in multiples of ten from 20% to 100%.

Disabilities(as numbered in Para 1 Part IV)	Percentage of disabilities with duration	Composite assessment for all disabilities with duration(Max 100)% with duration	Disability qualifying for disability pension with duration	Net assessment qualifying for disability pension(Max 100%) with duration
1	2	3	4	5
(i)PRIMARY HYPERTENSION	30%	70% for life	Nil	30% for life
(ii) OBESITY	NIL		Nil	
(iii)DIABETES MELLITUS TYPE II	20%		Nil	
(iv) CAD -/CABG (OPTD)	30%		CAD-P/CABG (Optd) for life	

12. It is a fact that the RMB dated 27.04.2012 assessed the disabilities (i) to (iii) of the applicant as NANA and disability No (iv) was assessed as Aggravated by Service by the RMB.

13. On a bare perusal of the medical certificates placed on record, we find that the applicant has been found to have suffered from *"Left MCA stroke with (R) hemiplegia & Broca aphasia"* on 06.02.2017, which is within 5 years from the date of his Release Medical Board and the retirement. It is further found that the applicant is recovering slowly from the aforesaid disability, and the Opinion of the Treating Specialist recommends 'Re-assessment'.

14. Before proceeding to adjudicate on the issue of conduct of Re-assessment Medical Board, it is important to refer to Para 6 of a letter no. 97/D(Pen)C issued by Ministry of Defence, Govt. of India dated 07.02.2001, reproduced as under:

> ***6. <u>Assessment.</u> The assessment with regard to percentage pof disability as recommended by the Invaliding Medical Board/Release Medical Board and as adjudicated by MA(P) in respect of PBOR and MoD in case of Commissioned Officers would be treated as final and for life unless the Individual himself requests for review, except in cases of disabilities which are not of a permanent nature. In the event of substantial difference of opinion between the initial award given by the Medical Boards and MA(P), the case will be referred to a Review Medical Board. The opinion of the Review Medical Board, which will be constituted by DGAFMS as and when required, shall be final.***

15. A perusal of the aforesaid provision makes it clear that if the individual requests for a review, there is no bar with respect to

conduct of the Re-assessment Medical Board/Review Medical Board, and therefore, the limited question for consideration before us, is answered by this provision, coupled with the observations made by the Treating Specialist at Army Hospital (R&R), New Delhi vide certificates dated 13.09.2017, 09.01.2018 and 09.05.2019.

16. In view of the aforesaid observations, we dispose off the OA 1699/2019, with directions to the Respondents to conduct the Review Medical Board of the applicant within three months from the date of this order and to grant consequential benefits, if any, accruing to him. It would be open to the applicant to seek redressal if any, in accordance with law, in the event of his being aggrieved.

17. No order as to costs.

Pronounced in the open Court on this day of 01st April, 2024.

[LT GEN CP MOHANTY]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

Akc/