

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

OA 1714/2017

Ex Nb Sub Kalyan Singh Teotia ... Applicant
Versus
Union of India and Ors. ... Respondents

For Applicant : Mr. Praveen Kumar, Advocate
For Respondents : Mr. Shyam Narayan, Advocate

CORAM

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

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant filed this OA praying to direct the respondents to accept the disability of the applicant as attributable to/aggravated by military service and grant disability element of pension @30% rounded of to 50% with effect from the date of discharge of the applicant; along with all consequential benefits.

2. The applicant was enrolled in the Indian Army on 02.05.1964 and discharged on 31.05.1990. The Release Medical Board dated 29.11.1989 held that the applicant was fit to be discharged from service in composite low medical category for the disability - Obstructive Uroathy @ 30% for

two years while the qualifying element for disability pension was recorded as NIL for life on account of disabilities being treated as neither attributable to nor aggravated by military service (NANA).

3. The claim of the applicant for grant of disability pension was rejected vide letter no. G-3/88/615/VIII dt 07.09.1990 and subsequently, his first appeal was rejected as well stating that the aforesaid disabilities were considered as neither attributable to nor aggravated by military service. Aggrieved by the aforesaid rejection, the applicant has approached this Tribunal.

4. Placing reliance on the judgement of the Hon'ble Supreme Court in Dharamvir Singh Vs. UOI & Ors [2013 (7) SCC 36], Learned Counsel for applicant argues that no note of any disability was recorded in the service documents of the applicant at the time of the entry into the service, and that he served in the Army at various places in different environmental and service conditions in his prolonged service, thereby, any disability at the time of his service is deemed to be attributable to or aggravated by military service.

5. Per contra, while the learned counsel for the respondents has not disputed the facts of the case regarding the disability, he highlighted the Opinion of the Release

Medical Board to the effect that the aforesaid disability of the applicant was assessed as "neither attributable to nor aggravated".

6. We have heard the learned counsel for the parties and have perused the record produced before us. However, we find it pertinent to refer to the Regulation 173 of the Pension Regulations for the Army, 1961 (hereinafter referred to as 'the Regulations'), which deals with the disability pension of P.B.O.Rs, being relevant in the present case, is reproduced as follows:

"173. Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20 per cent or over. The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II."

7. A perusal of the aforesaid Regulation 173, therefore, reveals that the disability pension is payable to an individual who is discharged from service on account of a disability which is attributable to or aggravated by military service and assessed at 20% or more. The question whether the disability is attributable to or aggravated by military service is to be determined under the rules contained in Appendix II. The said Appendix II contains the Entitlement Rules for Casualty

Pensionary Awards, 1982 as amended from time to time. Prior thereto, there had been other Entitlement Rules for Casualty Pensionary Awards. Rule 4 of the Entitlement Rules for Casualty Pensionary Awards, 1982, being relevant on the point, is re-produced as follows:

“4. Invaliding from service is a necessary condition for grant of disability pension. An individual who, at the time of his release under the Release Regulations, is in a lower medical category than that in which he was recruited will be treated as invalidated from service. ICO/OR and equivalents in other services who are placed permanently in a medical category other than 'A' and are discharged because of alternative employment suitable to their low medical category can be provided, as well as those who having been retained in alternative employment out are discharged before its completion of their engagement will be deemed to have been invalidated out of service.”

8. At this point, with respect to attributability and aggravation, we find it relevant to refer to report of *National Library of Medicine, National Center of Biotechnology Information*, which dissects the issue of ‘Obstructive Uropathy’, it has been specified as under”

“Obstructive Uropathy is a disorder of the urinary tract that occurs due to obstructed urinary flow and can be either structural or functional. The back-up of urine into the unilateral or bilateral kidneys, depending on the location of the obstruction, causes hydronephrosis.”

9. It can be concluded from the aforesaid analysis that the disability of the applicant cannot be held to be attributable, the same being not related to service. In the case of the

applicant, there is nothing to show that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service.

10. In view of the aforesaid analysis, we are of the view that the present OA is devoid of merit and therefore, is liable to be dismissed.

11. Hence, the OA 1714/2017 is dismissed.

12. No order as to costs.

13. Pending miscellaneous applications, if any, stand closed.

Pronounced in the open Court on ^{ed} 22 day of May, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

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