

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

57.

OA 1840/2017

Brig NK Mishra (Retd) ..... Applicant  
VERSUS  
Union of India and Ors. .... Respondents

For Applicant : Mr. Shakti Chand Jaidwal, proxy for  
Mr. IS Singh/Shakti Jaidwal, Advocate  
For Respondents : Mr. Anil Gautam, Sr. CGSC with  
Mr. R S Chhillar, Advocate

CORAM

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

ORDER  
02.09.2024

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

*“(a) Set aside the impugned order dated 07.09.2017 passed by the respondents;*

*(b) direct the respondents to hold a Re-survery Medical Board, or any other appropriate Medical Board, at New Delhi to assess his current disability and also to ascertain whether the same was set in motion due to the service related causes while he was in service; and*

*(c) Issue such other order(s)/direction(s) as may be deemed appropriate in the facts and circumstance of the case.”*

2. The applicant was commissioned in the Indian Army on 09.06.1979 and was discharged from service on 31.12.2013 on attaining the age of superannuation and as averred in the counter

affidavit of the respondents dated 04.09.2018 in Medical Category SHAPE-I.

3. It is the averred contention of the applicant that in the year 2012 whilst posted at Mumbai he was detected with suffering from "BENIGN PROSTATE HYPERPLASIA (BPH)" for which he was put on medication.

4. The applicant submits inter alia that in 2013 he was also diagnosed with "VERY EARLY PARKINSONS DISEASE/ MILD PARKINSONS DISEASE" and submits he is under medication which continues till date. Inter alia the applicant submits through the OA that he was subjected to a Release Medical Examination (RME) in April 2013 but his ailments/disabilities in the forms of BENIGN PROSTATE HYPERPLASIA (BPH) and BRONCHIAL ASTHMA (which ultimately resulted in "Parkinson's Disease") could not be detected during the RME.

5. The applicant further submits that he was re-employed in the BSF w.e.f 01.01.2014 and on being subjected to a Medical Board held on 16.06.2016 at the Composite Hospital, BSF, Kolkata he was found suffering from

FUC BRONCHIAL ASTHMA & GRADE-I PROSTATOMEGALY with mild fatty liver and suffering from the effects of PARKINSON'S DISEASE and due to which his Medical Category has been downgraded to S1H1A1P2E1 with it having been opined that the disability of the applicant was contracted in service under the circumstance on which he had no control.

The copy of the Medical Board Proceeding Part-II dated 10.06.2016 have been submitted on record by the applicant.

6. The applicant vide the present OA has placed reliance on Rule 4 of the Entitlement Rules for Casualty Pensionary Awards, 1982 as well as Para 86 of the Pension Regulations, 2008 and inter alia submits that in view of the Government of India, notification dated 07.02.2001 the applicant is entitled to seek a post discharge medical examination.

7. The respondents vide their counter affidavit have sought to submit that in the instant case there is documentary evidence in the form of medical case sheets and have sought to submit vide para-7 thereof to the effect:-

*"7. That the applicant vide letter dated 07 Jun 2017 has requested for holding Post Discharge Medical Board for diagnosis "Parkinson's Disease". The case was processed with competent authority for consideration and was rejected vice AG/MP-5 (B) letter no. 12681/IC-359471T-8/MP-5(B) dated 07 Sep 2017 (Para 8(s) of the Entitlement Rules 2008 and Para 20, Chapter VI, GMO 2002, amendment 2008 refer stating the following:-*

(a) *Post Discharge Claims are cases in which a disease ~~was~~<sup>was</sup> 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 Military Service if it can be established by the Competent 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 no B/410122/MA(P)/AG/PS-5 dated 20 Jul 2006.*

(b) *In the instant case, though there is documentary evidence on record in the form of medical case sheets to suggest the existence of*

*benign prostate hyperplasia and bronchial asthma prior to your retirement, you were in SHAPE-1 at the time of your retirement as your clinical condition may not have warranted placing you in LMC. Further, you did not claim any such disabilities at the time of your RME. It is also pertinent to mention that the ibid diseases have no role in the causation of Parkinson's disease as contended by you as Parkinson's disease is a long term degenerative condition of central nervous system. In the instant case, the onset of the ID was 01 year after your retirement from military service hence there cannot be any antecedent H/o service related aggravating factors cease to play a role after individual's discharge from the military service.*

8. Inter alia the respondents submit that the applicant was discharged from service on attaining the age of superannuation in medical category in SHAPE-I as per AFMSF-18 dated 02.05.2013 and thus is not entitled to prayer made by him.

9. Further the respondents submit through the counter affidavit vide para-4 in response to grounds 5( A to K) of the OA, that the applicant made no mention of benign prostate hyperplasia, bronchial asthma and tremors experienced till retirement in his RME of his own free will and chose to suppress it for reasons best known to him and thus submit that the plea taken by the applicant is an afterthought after due consultation of legal experts and it has further been submitted by the respondents that even if the ailments mentioned by the applicant were suppressed during his service, then he has benefitted in the form of privileges accruing by way of promotion attained.

10. A perusal of the reply 07.09.2017 of the respondents to the applicant's request for holding post discharge medical board dated 07.06.2017 which is reply dated 07.09.2017 and is the order impugned the present OA, indicates that the respondents have stated vide para 2(a) and b) thereof, to the effect:-

*2. Your request for holding Post Disch Med Board was processed to the Competent Authority for adjudication. Competent Authority after examining the case in light of relevant rules has held that :-*

*(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 recognised 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/410122/MA(P)/ AG/PS-5 dt 20 Jul 2006.*

*(b) In the instant case, though there is documentary evidence on record in the form of medical case sheets to suggest the existence of BENIGN PROSTATE HYPERPLASIA and BRONCHIAL ASTHMA prior to your retirement, you were in SHAPE-1 at the time of your retirement as your clinical condition may not have warranted placing you in LMC. Further, you did not claim any such disabilities at the time of your RME. It is also pertinent to mention that the ibid diseases have no role in the causation of Parkinson's disease as contended by you as Parkinson's disease is a long term degenerative condition of central nervous system. In the instant case, the onset of ID was 01 year after your retirement from military service hence there cannot be any antecedent H/o service related infection, trauma or exposure to drug therapy. Further, service related*

*aggravating factors cease to play a role after indl's discharge from the military service."*

Significantly para-2(b) of the reply dated 07.09.2017 states categorically to the effect. there is documentary evidence on record in the form of medical case sheets to suggest the existence of BENIGNPROSTATE HYPERPLASIA (BPH) and BRONCHIAL ASTHMA prior to retirement of the applicant though they also state to the effect that he was in SHAPE-I.

11. In these circumstances, in terms of para-8 of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008 which are applicable in the instant case which provides to the effect:-

*"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 service conditions obtaining prior to discharge.*

*(b) In cases where an individual in receipt of a disability pension dies within a period of 7 years from the date of release/retirement, may be considered to have died of the disease for which he was granted disability pension if it can be so established by the competent medical authority. If the medical certificate as to the cause of the death is not available, other factors and circumstantial evidence would be taken into account Injury Pension, War injury Relief, or the appropriate 'Capitalized Impairment Relief shall be paid directly by the Pension Sanctioning Authority, based on the casualty report and the percentage of assessment. In case of death of the Armed Forces personnel under Category 'D' or 'E', Liberalized Family Pension shall be paid to the Next-of-kin,"*

in as much as the prayers made by the present OA by the applicant have been made vide the OA filed on 26.10.2017 with the date of superannuation of the applicant being 31.12.2013, the present OA has been filed within a period of 7 years of the date of discharge of the applicant from Military service and clearly the claim made by the applicant seeking the conducting of the Post Discharge Claim falls with the ambit of para-8 of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008.

12. In view thereof, the OA 1840/2017 is disposed of with the direction to the respondents to conduct the Post Discharge Medical Board qua the applicant within a period of two months from the date of this order, in relation to the stated disabilities of the applicant of *"BENIGN PROSTATE HYPERPLASIA (BPH) and BRONCHIAL ASTHMA and PARKINSONS DISEASE"* and to also ascertain medically the aspect of the same having been set in motion due to service related causes or otherwise whilst he was in service w.e.f till his discharge on 31.12.2013.

(JUSTICE ANU MALHOTRA)  
MEMBER (J)

(LT GEN C P MOHANTY)  
MEMBER (A)