

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

OA 1889/2019 WITH MA 2750/2019

Maj Bhavesh Talera (Retd.) ... Applicant
Versus
Union of India and Ors. ... Respondents

For Applicant : Mr. S.S. Pandey, Advocate
For Respondents : Ms. Jyotsana Kaushik, Advocate

CORAM

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

ORDER

MA 2750/2019

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 1889/2019

3. 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 disabilities of the applicant as held to be attributable to/aggravated by military service by the Release Medical Board and grant disability element of pension @50% rounded off to 75% with

effect from the date of retirement of the applicant; along with all consequential benefits.

4. The applicant was commissioned in the Indian Army on 21.02.2005 and retired on 21.02.2012 after serving for approximately 7 years of contractual service period as he was not granted extension being in Permanent Low Medical Category. The Release Medical Board was not held before the release of the applicant from service. After getting due sanction of the competent authority on 29.08.2012, the Release Medical Board was conducted dated 26.09.2012 which held that the applicant was fit to be discharged from service in composite low medical category for the disabilities - (i) PIVD @ 30% for life - Aggravated, (ii) Malunited Fracture Head of Radius @20% for life - Attributable and (iii) Chronic Allergic Rhinosinusitis @5% - Attributable with composite @51% rounded off to @50% for life. The claim of the applicant for grant of disability pension was rejected vide letter No. MS-14914P/MPRS(O)/197/2013/AG/PS-4 (Imp-I) dated 07.05.2018. Aggrieved by the aforesaid rejection, the applicant has approached this Tribunal.

5. Inter alia, the respondents have placed reliance on the Rule 27(c) of ER-82 which reads as follows :-

“27(c) Assessment of disablement and acceptance of attributability/aggravation in cases of disabilities other than injuries are medical issues, views on such medical issues shall be given by the competent Medical Authorities as defined in rule 17(a)(i).”

As enumerated in amended Rule 17(a) (i) of ER 82, which reads as follows:-

“Rule 17(a) (i). Competent Medical Authorities in respect of for initial claim of commissioned officers is “Medical Advisor (Pension) Joint Director, AFMS (Pension) in the office of DG, AFMS.”

6. We have heard the learned counsel for the applicant as well as the learned counsel for the respondents and perused the documents available on record along with the relevant Regulations.

7. We are of the view that the administrative decision taken by the respondents to deny disability element of pension to the applicant is against the decisions of the Hon'ble Supreme Court in Ex Sapper Mohinder Singh v. Union of India and another (C.A No. 164 of 1993 decided on 14.01.1993) and Dharamvir Singh v. Union of India and others (2013) 7 SCC 316. The IHQ (Army) has also issued a letter dated 25.04.2011, the relevant portion of which is reproduced below:

“2 These alterations in the findings of IMB/RMB by MAP (PCDA(P)) without having physically examined the individual, do not stand to the scrutiny of law and in numerous judgments, Hon'ble Supreme Court has ruled that the medical Board which has physically examined should be given due weightage, value and credence.

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4. All Command HQs are requested to instruct all Record Offices under their command to withdraw unconditionally from such

cases, notwithstanding the stage they may have reached and such file be processed for sanction."

8. In a catena of judgments (pointedly, O.A No. 270 of 2016 of Armed Forces Tribunal, Regional Bench, Chandigarh), this Tribunal has reaffirmed with consistency that due credibility and primacy has to be given to medical board proceedings. Whether it be the PCDA or an administrative authority, refutation of a medical opinion can only be by another more competent medical opinion. We do not find any justifiable reason on the part of the respondents in denying the disability element of pension to the applicant, especially when the Release Medical Board had determined the disease and assessed his disability @ 50%.

9. Further, in view of the judgment of the Hon'ble Supreme Court in Union of India and others v. Ram Avtar in C.A No. 418 of 2012 dated 10.12.2014, the applicant is entitled to get the disability element of pension broad banded to 75%, based on the Government notification dated 31.01.2001.

10. In the result, the O.A is allowed directing the respondents to grant disability element of pension to the applicant @ 50% and broadband the same to 75% from the date of his retirement, i.e. 21.02.2012. Noting that the initial claim of the applicant has been itself adjudicated by the competent authority

on 07.05.2018, with there being delay on the part of the competent authority and the OA has been filed on 25.10.2019, we are of the view that restriction on the arrears will not be applied in the instant case.

11. The respondents shall comply with this order within four months from the date of receipt of a copy of this order, failing which they shall pay interest @ 8% per annum on the entire arrears till the date of actual payment.

12. No order as to costs.

13. Pending miscellaneous application(s), if any, stands closed.

Pronounced in the open Court on 4 day of October 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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