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

12.

OA 1908/2021 with MA 1920/2021

Sub Maj & Hony Lt Bharat Chandra Sahoo (Retd) ..... Applicant
Versus
Union of India & Ors. ..... Respondents

For Applicant : Mr. Bikrama Sah, Advocate
For Respondents : Gp Capt Karan Singh Bhati, Sr. CGSC

CORAM

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

ORDER
17.09.2024

Vide our orders of even date, we have dismissed the application. Faced with the situation, learned counsel for the applicant makes an oral prayer for grant of leave to appeal under Section 31 of the Armed Forces Tribunal Act, 2007 to the Hon'ble Supreme Court. We find no question of law much less any question of law of general public importance involved in the matter to grant leave to appeal. Hence, the prayer for grant of leave to appeal is declined.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN P. M. HARIZ]
MEMBER (A)

/Priya/

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O.A. 1908/2021
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For Applicant : Shri Bikrama Sah, Advocate
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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 conduct Re-Survey Medical Board (RSMB) to assess the disability percentage of the applicant of his second disease i.e. 'DEGENERATIVE DISC DISEASE AT L4-L5 LEVEL' and grant disability element after rounding off the disability percentage; along with all consequential benefits.

2. The applicant was enrolled in the Indian Army on 30.11.1989 and was discharged on 30.04.2019. While serving with No.2 Training

Battalion, ASC Centre(South), the applicant was diagnosed with disability "L1 Ependymoma(OPTD)" and placed in LMC P3 w.e.f. 13.02.2015 to 30.07.2015. Further in subsequent review he was downgraded to LMC P2(Perm) w.e.f. 13.01.2016 to 13.01.2018. Prior to his discharge the applicant was brought before a Release Medical Board(RMB) held at MH Meerut. The RMB dated 22.01.2019, assessed his disability as 'L1 Ependymoma(OPTD) @ 20% for life and held it as neither attributable nor aggravated(NANA) by military service. The applicant was communicated of the rejection of his disability pension vide letter dated 30.04.2019.

3. Aggrieved, the applicant preferred his First Appeal vide letter 01.05.2019, praying for a Re-assessment Medical Board for assessment of a different disability, which was subsequently rejected vide letter dated 06.11.2019 stating the ID 'L1 Ependymoma(OPTD)' was a tumor of spinal cord and no service related factors implicated in its causation. He further submitted a second appeal dated 13.12.2019, praying for a Re-assessment Medical Board for assessment of his second disability which was rejected vide letter

dated 02.02.2021. Aggrieved by this applicant preferred the instant OA.

Contention of the Parties

4. Learned Counsel for applicant argues that the applicant was diagnosed with 'L1 Ependymoma (OPTD)' in his RMB dated 22.01.2019, but he has a second disease 'DEGENERATIVE DISC DISEASE AT L4-5 L5-S1 LEVEL' which arose in Feb 2015 while he was in service and was later confirmed by MRI Report dated 02.02.2018 conducted at Base Hospital, Delhi Cantt, signifying that the disease was detected while the applicant was in service and the same is due to stress and strain of service.

5. Ld. Counsel submits that as per Pension Regulations for Army and Para 8(a) of the Entitlement Rules for Casualty Pensionary Award to the Armed Forces Personnel, 2008, the applicant has a right to be examined by the Re-assessment Medical Board (RAMB) after retirement to determine whether the disability, from which, he is now suffering pre-existed before his retirement from service or is a delayed manifestation of a pathological process set in motion by service conditions obtaining prior to his retirement.

6. Per contra, Learned Counsel for the respondents submits that as per the procedure in vogue, the applicant was brought before a Release Medical Board(RMB) with only one disability ID 'L1 Ependymoma (OPTD)' mentioned. The RMB held it as neither attributable nor aggravated since malignancy arising in spinal cord, has no causative factor which can be attributable to military service. Further his residual ID is part of the disease process itself and not a separate disorder and therefore the existing disability was categorized as NANA.

7. Counsel for the respondents mentioned that the applicant was discharged upon completion of service according to the Rule 13 (3) I (i) (a) of Army Rules 1954. His percentage for ID 'L1 Ependymoma (OPTD)' was assessed as @ 20% for life, whereas, net assessment qualifying for disability element of pension was assessed as Nil for life as the disability was neither attributable or aggravated by military service. The decision of the RMB was affirmed by the adjudicating authority and both Appellate Committees. Hence, the applicant is not entitled to the disability element of pension in terms of Para 53(A) of Pension Regulation of Army , 2008 Part-1.

Consideration

8. Notwithstanding the aforesaid submission made in Para 6 above, we proceed to decide the issue in question which is whether on a careful perusal of the materials on record, in the proper perspective, the applicant is entitled to get relief as sought for in the above mentioned OA for the reasons and grounds stated in the said Original Applications ?

9. Before proceeding to answer this question, it is important to refer to Paragraph 8(a) of the Entitlement Rules (ER) for Casualty Pensionary Awards, 2008, reproduced as under:

> *"8 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 the service conditions obtaining prior to discharge."*

10. A detailed analysis of the aforesaid provision dealing with the post discharge claim lays down two essentials to be fulfilled for the grant of post discharge claim, of which first essential condition is that

the disease was not present at the time of retirement/discharge of the claimant from service, but must have arisen within 7 years of the retirement/discharge from service, which is well established in the instant case by the fact that though the disability does not find itself in RMB Proceedings, it existed prior to that which is evident from the medical records placed by the applicant on record. Furthermore, it is seen from the records that the MRI Reports at various times of recategorization have noted the process of Disc Degeneration at LV4-LV5 Level . Relevant extracts of the MRI report dated 05.02.2015 and MRI Report dated 02.02.2018 conducted at Base Hospital Delhi Cantt; are extracted below:

MRI Report dated 05.02.2015

Findings:

- *Lumbar lordotic is maintained*
- *Post Laminectomy status of LV1 with fat seen in situ*
- *Focal dural thickening seen at operative site posteriorly*
- *Focal haemangioma sean in DV11:*
- *Disc dessication is seen at LV4-LVS level*
- *At L4-L5 level- There is diffuse disc bulge with bilateral foraminal components seen causing indentation of spinal theca. No compression of existing nerve roots seen. Spinal canal area at this level is adequate.*
- *Rest of the vertebrae and IV: discs are normal in morphology and signal characteristics.*
- *There is no abnormal pre or paraspinal soft tissue*
- *MR Myelogram is corroborative of above findings*
- *Both Sacro-illac joints are normal in morphology and signal characteristics.*

- *Screening MRI of cervical spine reveals multilevel degenerative disc.*

MRI Report dated 02.02.2018
Findings:

- *Lumbar lordotic curvature is maintained*
- *Disc desiccation changes are seen at L4-5 levels.*
- *L4-5: Diffuse disc bulge seen causing thecal sac indentation, bilateral neural foramina compromise and mild left traversing nerve root indentation, No secondary canal stenosis.*
- *Vertebral bodies are normal in height, alignment and signal intensity.*
- *Facet joints appear normal.*
- *Cord ends at L1 and shows normal signal characteristics. No abnormal enhancement noted on post contrast images. No abnormal enhancement on post contrast images.*
- *MR Myelogram is confirmatory.*
- *Both SI joints appear normal in morphology on coronal STIR images.*
- *No abnormal pre or paravertebral soft tissue signal intensity seen.*

11. However, it is observed by various medical studies that disc desiccation is a part of the aging process . The relevant extracts are extracted below:

> *Disc desiccation is a feature of degenerative disc disease, and is caused by the cumulation of wear and tear on the spine as we age, and related lifestyle choices. Less commonly, it can also be caused by trauma. Disc desiccation, in medical terms, refers to the degenerative process in which the intervertebral discs in the cervical spine lose their natural hydration, causing them to dry out and potentially lead to various symptoms. Treatment options for disc desiccation may include non-surgical approaches such as physical therapy, medication, or artificial disc*

replacement, while severe cases may require spinal fusion surgery to alleviate pain and stabilize the affected area.

12. It is further seen from the MRI reports that presence of Disc Dissection is not a causation factor for the "Degenerative Disc Disease" which is in the GMO Para 51, Chapter VI of the GMO (Military Pension) 2008. The relevant para is extracted below:

> *51. Low backache. Low backache is a clinical entity which is characterised by pain in the lower back which may be associated with sciatica and neurological deficit. The causes of low backache are:*
>
> *(a) Musculofascial strain*
> *(b) Lumbar spondylosis*
> *(c) Facet joint arthropathy*
> *(d) Prolapsed inter vertebral disc*
> *(e) Sacroilitis*
> *(f) Ankylosing Spondylitis*
> *(g) Spondylolisthesis*
> *(h) Trauma*
>
> *Post traumatic low backache will be attributable. Aggravation due to stress & strain of service should be conceded in other cases.*

Based on the above mentioned observation and the medical opinion that the second essential of attributability is not fulfilled, we therefore uphold that the RMB of the applicant has been correctly done and therefore we find no reason to give directions to conduct a RSMB.

13. With regards to the ID 'L1 Ependymoma(OPTD)' mentioned in the RMB, it is seen from medical studies that the genetic mutation

may be associated with this disease. The relevant para is reproduced below:

> *Ependymomas have no known environmental cause. A number of genetic mutations have been associated with ependymomas, but a causal relationship between these mutations and tumor progression has not yet been determined.*

14. It was further mentioned in the RMB that ID 'L1 Ependymoma(OPTD)' was NANA and not connected to service as it is a malignancy arising in the spinal cord and it has no known causation factor which is attributable to military service, or its aggravation. Hence it was held to be neither attributable nor aggravated by military service as per Para 10 of GMO 2008. Relevant Para is extracted below:

> *10. Malignancies Considered Attributable to Service*
>
> *(a) Due to Occupational Hazards:*
>
> *(i) Any cancer in those personnel working or exposed to radiation source in any forms:*
>
> *(aa) Acute leukaemia*
> *(ab) Chronic lymphatic leukaemia*
> *(ac) Astrocytoma*
> *(ad) Skin cancers*
>
> *(ii) Any cancer in those exposed to chemical especially Petroleum products or other chemicals:-*
>
> *(aa) Carcinoma bladder*
> *(ab) Renal cell carcinoma*
> *(ac) Carcinoma of Renal Pelvis*

(iii) Any cancer in those exposed to coal dust, asbestos, silica & iron

(aa) Bronchogenic Carcinoma
(ab) Pleural Mesothelioma

(b) Due to Viral Infection:
(i) Hepato-cellular carcinoma (HV B&C)
(ii) Ca nasopharynx (EB virus)
(iii) Hodgkin's disease (EB virus)
(iv) Non-Hodgkin's Lymphoma (Viruses)
(v) Acute Leukaemia (HTLV1)
(vi) Ca anal canal (HTLV 1)
(vii) Any cancer due to HIV infection (contracted out of blood transfusion/needle stick injury in service)
(viii) Ca Cervix (HPV)

15. We agree with the medical opinion given by the specialists mentioned in the RMB wherein the ID 'L1 Ependymoma(OPTD)' was categorized as a form of glial tumour which originates from the ependymal layer of the CNS. Further it was stated that specific environmental factors have not been proven to have any association with the condition either in its cause or course. It was further supported by the judgment of the Hon'ble Supreme Court in the case of ***Ex Sapper Mohinder Singh*** Vs. ***UoI & Ors.*** CA No 164/1993 which has given importance to the findings of the Medical Boards. Moreover, the Hon'ble Supreme Court in judgment of ***Union of India Vs. Baljit Singh*** (1996) 11 SCC 315 held a view that "*any disease or injury arising during military service does not necessarily*

become attributable to or aggravated by military service. The Hon'ble Supreme Court has observed that when a disability pension is sought for, it must be established as to whether the injury sustained was due to or aggravated by military service which contributed to the invalidment." Hence, the applicant is not entitled to the disability element of pension for ID 'L1 Ependymoma(OPTD)'.

16. Based on the above mentioned consideration, the OA is dismissed.

17. MA, if any, stands disposed of.

18. Pronounced in the open Court on 17 day of September, 2024.

(RAJENDRA MENON)
CHAIRPERSON

(LT GEN P.M. HARIZ)
MEMBER (A)

/ashok/