

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

141.

OA 2098/2022

Ex Sigmn Ajay Kumar Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Ved Prakash &
Mr. Devender Kumar, Advocates

For Respondents : Mr. Y P Singh, Advocate

CORAM

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

ORDER
10.01.2024

Invoking the jurisdiction of this Tribunal under
Section 14 of the Armed Forces Tribunal Act, 2007, the
applicant has filed this OA claiming the following reliefs:

“(a) Quash the Impugned Order No.
P/1549823A/REJECTION/DP-1/NER dated 20.11.2021.

(b) Direct respondents to grant Disability Element of
Pension to the applicant duly rounded off to 50% w.e.f. his
date of discharge.

(c) Direct respondents to pay the due arrears of disability
element of pension with interest @12% p.a. from the date of
retirement with all the consequential benefits.

(d) 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.”

2. The applicant was enrolled in the Indian Army

on 09.12.2004 and discharged from service on 31.12.2021 after serving for 17 years and 23 days. The Release Medical Board dated 10.07.2021 held that the applicant was fit to be discharged from service in low medical category S1H1A3(P)P1E1 for the disability CRUSH INJURY (LT) HAND (OPTD) (S 67.22) @ 14% for life. The qualifying element for disability pension was recorded as 14% for life on account of disability being treated as attributable to military service as per Injury Report (IAFY 2006) dated 13th November, 2015.

3. Consequently, his claim for disability pension was rejected by the competent authority on the grounds that his disability has been assessed @ less than 20% (i.e.14%) for life and the same was communicated to him vide letter No. P/15498235A/REJECTION/DP-1/NER dated 20.11.2021. Countering the said decision, applicant sent a legal representation/appeal dated 28th January, 2022 for grant of disability pension, which was rejected vide letter No. P/15498235/DP-2/NER dated 16th April, 2022. Aggrieved by the aforesaid rejection, the applicant has approached this Tribunal.

4. Learned Counsel for applicant argues that the applicant while in active service sustained the injury for which he was placed in Low Medical Category, and the applicant got

injured during field firing in Mahajan Field Firing Ranges on 05.11.2015 (as per the injury report).

5. Learned counsel for the applicant placing reliance on various judgments of Coordinate Bench of this Tribunal in case of Sukhbir Singh Vs. Union of India (OA 238/2014) and Hav Kuldip Singh (Retd) Vs. Union of India (OA 311/2016) submits that in the aforesaid cases the disability of the applicant less than 20% have been rounded off to 50% by the Hon'ble AFT and the applicant was granted disability element of pension. He further contends that the Re-categorisation Medical Board dated 18th June, 2018 assessed the disability of the applicant @ 20% and the same was approved by the higher medical authority, however, at the time of Release Medical Board, the percentage of the same disability has been reduced to 14% for life.

6. Per Contra, Learned Counsel for the Respondents submits that opinion of Medical Authority is legal and based on medical regulations; placing reliance on the judgment of Hon'ble Supreme Court in Civil Appeal No. 164/1991 Union of India Vs. Ex Sapper Mohinder Singh, wherein it was stated that "opinion expressed by Medical Board being an expert body who physically examined the petitioner to be given due weightage, value and credence."

7. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, we are of the opinion that it is not in dispute that the disability was held as attributable to service which is one of the conditions to be fulfilled for grant of disability pension in terms of Regulation 53 of the Pension Regulations for the Army, 2008 (Part-I). Now, the only question that arises in the above backdrop is whether the percentage of disability suffered by the applicant was assessed correctly by the Release Medical Board vis-a-vis Re-Cat Medical Board dated 18.06.2018?

8. However, it is pertinent to refer to the opinion of the Graded Specialist (Surgery) forming part of the Release Medical Board, wherein it has been specified under the heading of 'Clinical Examination' that on an examination of Left Hand of the applicant, it was opined, *"Deformity of index finger, healed surgical scar, no sinus/discharge is noted."*

9. It is well clear that injuries like fracture are of temporary nature, like the disability of CRUSH INJURY (LT) HAND (OPTD) in the instant case, which as per numerous studies, is known to heal with time and specifically, post surgery of the injury, and thus, the percentage of the disability is mandated to be reduced unless aggravated, which

is clearly opined by the Graded Specialist (Surgery) examining the applicant at the time of the Release Medical Board.

10. In the present case, we find that there is no such infirmity in the report of the Medical Board which may warrant the grant of disability pension for life. Though the opinion of the Medical Board is subject to judicial review, the Courts are not possessed of expertise to dispute such a report unless there is strong medical evidence on record to dispute the opinion of the Medical Board. There are ample medical studies which make it clear that the cases of fractures can be healed well within the limited time period and not continue for lifetime.

11. For the foregoing reasons, this OA is devoid of merit and liable to be dismissed.

12. Therefore, OA 2098/2022 is dismissed.

13. Pending MA(s), if any, also stand closed.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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