

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

OA 2285/2019

Gp Capt Puthan Ramesh(Retd)

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Baljeet Singh, Advocate
For Respondents : Mr Y P Singh, advocate

CORAM :

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

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

“(a) To set aside the impugned order letter No. Air HQ/99797/2604/Dis/O/DAV-1(B) dated 10.04.2019 passed by the respondents.

(b) To direct the respondents to grant the disability element of pension @20% with effect from the date of retirement for life by treating the disability of the applicant @20% instead of @15-19% and considering the same as attributable to or aggravated by the Air Force service.

(c) To direct the respondents to grant the benefits of rounding off of the disability of the applicant @50% (20% to be rounded off to 50%) with effect from the date of retirement with all consequential benefits .

(d) To direct the respondents to pay the due arrears of disability pension with interest @12% p.a. with effect from the date of discharge till actual payment.

(e)To pass such further order or orders, direction/directions as this Hon'ble Tribunal may deem fit and proper in accordance with law."

2. The applicant was commissioned in the Indian Air Force on 17.12.1988 and took premature retirement from service at his own request on 30.11.2016. The Release Medical Board(RMB) held qua the applicant found him to be suffering from the Individual Disability(ID) viz Anterior Dislocation(RT) Shoulder. The applicant suffered from the said ID-Anterior Dislocation of (RT) Shoulder on 20.03.2009 due to his accidental fall from a bed at his home. The applicant was evaluated and managed by the orthopaedic surgeon at Base Hospital, Delhi Cantt. The initial medical board held at IAM, AF vide AFMSF-15 dated 11.05.2009 opined that the applicant be placed in LMC A3G2(T24) and during subsequent review, he was placed in LMC A2G2(P) vide AFMSF-15 dated 28.06.2010. The Release Medical Board not solely on medical grounds was held at AF Station Memaura vide AFMSF-16 dated 30.11.2016 which found the applicant fit- to be released from service in Low Medical Category A2G2(P) for the ID-Anterior Dislocation of RT) Shoulder but conceded the said ID as being neither attributable to nor aggravated by service. The percentage of disablement was assessed @ 15-19% for life long. The findings of the RMB were approved by the DMS(MB) Air HQ RKP dated 26.04.2017. The claim of the applicant for the grant of disability element of pension was initially rejected by the respondents vide letter No.Air

HQ/99797/3825/Dis/O/DAV-1(B) dated 22.06.2017. The First and the Second Appeal of the applicant for the grant of the disability were also rejected by the respondents vide letters both bearing No. Air HQ/99797/3825/Dis/O/DAV-1(B) dated 07.06.2018 and dated 10.04.2019 respectively.

The posting profile the applicant as detailed in Annexure A-2 to the OA forming part of the RMB is to the effect:

“

| “From | To | Place | Peace/ Field |
|------------|------------|-------------------------------|-----------------|
| 17.12.1988 | 10.06.198 | HTS/Hakimpet | Peace |
| 11.06.1989 | 07.02.1993 | 131 FAC FLT/Halwara | Peace |
| 08.02.1993 | 30.03.1997 | 130 HU/Jammu | Peace |
| 31.03.1997 | 23.04.2000 | 118 HU/Guwahati | Peace |
| 24.04.00 | 15.8.2004 | 128 HU Hindon | Peace |
| 16.08.04 | 29.10.05 | 109 HU/Sulur | Peace |
| 30.10.05 | 29.10.06 | PHS/UN Peace Keeping Force | Field |
| 30.10.06 | 27.05.07 | AHQ COM SWN New Delhi | Peace |
| 28.05.07 | 7.6.07 | 2401 SQN/Hindon | Peace |
| 8.6.09 | 14.1.11 | HQ SFC New Delhi | Peace |
| 15.1.11 | 27.4.13 | AFAC/Coimbatore | Peace |
| 28.3.13 | 20.09.15 | DRDL/Hyderabad | Peace |
| 21.9.15 | 30.11.16 | ADV HQ CAC/Lucknow | Peace |

”

The onset of the disability as reflected in the RMB is as under:

“

| S.No. | Illness, wound/ Injury | First Started Date | Place | Rank | Where | Approximate |
|-------|---|-----------------------|--------|--------|--------|-------------|
| 1. | ANTERIOR DISLOCATION (RIGHT) shoulder S-43 | 20..3.2009 | Hindon | Wg Cdr | 11 AFH | OPD |

”

The opinion of the Release Medical Board was as under:

PART V

OPINION OF THE MEDICAL BOARD

1. Causal relationship of the disability with service conditions or otherwise

“

| Attributable to Service YES/NO | Disability | Aggravated by Service YES/NO | Not connected With service Yes/NO | Reasons/cause specific condition and period of service |
|---|------------|------------------------------|-----------------------------------|---|
| ANTERIOR DISLOCATION (RIGHT) SHOULDER S 043 | NO | NO | YES | As per IAFF(P) 23 dated 22.6.09 duly approved by AOC AF Station Hindon dated 29.06.09. The individual had sustained an accidental fall from bed while sleeping at his residence |

”

The Referral Case Summary detailed dated 30.11.2016 of the SMC-505 Signal Unit Air Force was as under:

2. Disabilities(Principal/others) ANTERIOR DISLOCATION(RIGHT)
(OLD) FOR RECAT Z09.0

a. Date and Place of Onset

“20 Mar 2009 at Hindon. This 49 years old serving pilot of helicopter stream sustained injury at around 0245 hours due to an accidental fall from bed at his home. He was managed surgically with closed reduction and treated conservatively at BHDC following by a short spell of sick leave with immobilization. Now due for release medical board.”

CONTENTIONS OF THE PARTIES

3. The applicant submits that he was commissioned in the Indian Air Force on 17.12.1988 and at the time of his entry in the Indian Air Force,

he was subjected to a thorough medical examination conducted by the Medical Board which found him medically fit to join the service and no note of any disability was recorded at the time of medical examination. The applicant submits that he took voluntary retirement on 30.11.2016 after rendering 27 years 11 months and 14 days of active service in the Indian Air Force. The applicant submits that though the Release Medical Board found him suffering from the disability (ID) Anterior Dislocation (RT) Shoulder and assessed the same @15-19% for life but considered the same as being neither attributable to nor aggravated by Air Force Service. The applicant submits that the Release Medical Board has wrongly assessed his disability @15-19%. The applicant submits that the onset of the disability ID Anterior Dislocation (RT) Shoulder has been recorded on 20.03.2009 whilst the applicant was in the active service and was posted to 2401 Sqn AF, Hindon as a Commanding Officer. The area of his responsibilities included meticulous planning, liaisioning with various authorities in the chain of command, assigning of duties to various officers/airmen working under him, operation trail of newly acquired assets, to manage all administrative issues of the Sqn personnel and to maintain strict military discipline. *Inter alia*, the applicant submits that the personnel of the armed forces are always treated on 24 hours duty. The applicant submits that as a Commanding Officer of a Squadron he could get an emergency service telephonic calls even during odd hours and he got a service telephonic call at 0245 hours on 20.03.2009 on AFNET telephone which is a secured network and exclusively used within

the Air Force only and to attend to the same, he roused from deep sleep and rushed out of bed and fell from his bed and got injured. The applicant submits that he was taken to the SMC, Hindon where he was given morphine and further transferred to BH, Delhi Cantt. wherein he was managed surgically for Anterior Dislocation of RT) Shoulder with closed reduction and treated conservatively. The applicant submits that he was granted sick leave with immobilization and was placed in Low Medical Category A2G2(T) and during subsequent review, he was placed in Low Medical Category A2G2(P) w.e.f. 25.06.2014 and submits that thus placing him in low medical category clearly indicates that his injury was aggravated by service since its occurrence was in March 2009.

4. The applicant places reliance on the order dated 25.09.2019 in OA No.1008/2018 titled *Lt.Col. Vinod CH(Retd) Vs Union of India & Ors* wherein the disability of the applicant had been assessed at 15-19%, however, considering the issues, the AFT(PB) opined that there is a very marginal but significant difference between 15 to 19% and 20% disability and thus the AFT(PB) had given the benefit of doubt to that applicant. The applicant further places reliance on the verdict of the Hon'ble Supreme Court in case of *Sukhvinder Singh vs Union of India & Ors* dated 25.06.2014(2014 STPL(Web) 468 SC wherein, it was held as under:

“We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment

must be presumed to have been caused subsequently.”

5. The applicant also places reliance on the verdict of the Hon’ble Division Bench of the Punjab & Haryana High Court in the case of *Ex Naik Umed Singh vs Union of India* in CWP No.7277 of 2013 decided on 14.05.2014 wherein it was held to the effect:

“..... Therefore, in view of the judgment in Dharamvir Singh’ case(supra), we have no hesitation to hold that if no note is given of any disease at the time of acceptance of an individual into service, the disease would be deemed to have arisen in service. The invalidation Medical Board or Review Medical Board has to record a categorical opinion that the disease, the reason of invaliding out of service could not have been detected on medical examination at the time of enrolment. In the absence of any such finding of the Medical Board, the disease would be deemed to have arise in service.”

6. Placing reliance on the judgment of the Hon’ble Supreme Court in *Dharamvir Singh v. UOI & Ors [2013 (7) SCC 36]*, the learned counsel for the applicant submits 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 Air Force 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.

7. The learned counsel for the respondents on the other hand submits that under the provisions of Regulation 37 of the Pension Regulations for the Indian Air Force, 1961 (Part-I), "*An officer who is retired from Air Force Service on account of a disability which is attributable to or aggravated by such service and is assessed at 20% or over may, on retirement, be awarded disability pension consisting of a service element and a disability element in accordance with the regulations in this section*", and since the ID Anterior Dislocation of RT) Shoulder of the applicant was considered as being neither attributable to nor aggravated by service with the assessment of the same being less than 20%, he is not eligible for the grant of disability element of pension in terms of the provisions of the Regulation 37 above.

8. The respondents place reliance on the verdict of the Hon'ble Supreme Court in SLP(C) No.23727/2008 titled as *Union of India vs Damodaran AV*, wherein the Hon'ble Supreme Court has held that the Medical Board is an expert body and its opinion is entitled to be given due weight, value and credence. The respondents further submit that on similar grounds the order passed by the Hon'ble High Court of Kerala in WA No.1071 of 1997(OP No.18002 of 1993) titled as *UoI vs Sreekumar P*, it was held to the effect:

"a) The disability has been assessed by a competent expert body like the medical board whose conclusion are to be accepted as correct unless contradicted by any other medical board by cogent evidence.

b) Once the expert body like the medical board expresses an opinion it is entitled to great weight. Unless the medical findings are utterly perverse this court exercising jurisdiction under Article 226 of the Constitution of India go behind the said opinion and substitute its own opinion for that of the expert body.

c) The court while exercising jurisdiction under Article 226 of the Constitution is not sitting as an Appellate Court. The findings of the expert body cannot be interfered with unless it is palpably wrong.”

9. Furthermore, the respondents placed reliance on the verdict of the Hon'ble Supreme Court in *Controller of Defence Accounts(Pension) & Ors vs Balachandra Nair*, AIR 2006 SC 4391, to contend that the opinion of the medical board consisting of experts in the field cannot be interfered with by the Court or Tribunal. *Inter alia*, the respondents submit that the Hon'ble Supreme Court in para 9 of its judgment dated 11.12.2019 in Civil Appeal No.10870 of 2018 titled *UoI & Ors Vs Wing Commander S.P.Rathore*, has observed to the effect:

“....both Regulation 37(a) and(b) of pension regulation and Para 8.2 of circular dated 31.1.2001 issued by MoD, clearly provide that the disability element is not admissible if the disability is less than 20%. In that view of the matter, the question of rounding off would not apply if the disability is less than 20%. If a person is not entitled to the disability pension, there would be no question of rounding off.”

ANALYSIS

10. It is essential to observe that the averments made in the OA itself indicate that as brought forth from the injury report dated 29.06.2009 that the injury sustained by the applicant which resulted into the disability of Anterior Dislocation(RT) Shoulder was because the applicant had accidentally fallen from his bed. The applicant seeks to contend that in as much as he received a service telephone call at 2.45a.m. on 20.03.2009 on the AFNET telephone which is a secured network and exclusively used within the Air Force only and to attend the same he woke from his deep sleep and fell down thus suffered the disability and that the said disability has to be held attributable to military service. Apparently, the said contention is groundless and cannot be accepted in view of law laid down by the Hon'ble Supreme Court in *Secretary, Govt of India Vs Dharamvir Singh* (Civil Appeal No.4981 of 2012) which brings forth that in as much as the disability that the applicant had suffered from is the result of an accident which could be attributable to risk common to human existence and even though the applicant got up to pick up from his bed to receive the call on an Air Force telephone network and consequently fell down, the same is not in the nature of an injury which can be held to have even a remote connection to military service. Furthermore, it cannot be overlooked that the disability that the applicant suffered from was assessed with disablement percentage of 15-19% for life vide RMB dated

30.11.2016 which does not fall within the ambit of admissibility for the grant of the disability element of pension in terms of Regulation 37 of the Pension Regulations for the Air Force 1961(Part-I) which provides to the effect:

“An officer who is retired from Air Force Service on account of a disability which is attributable to or aggravated by such service and is assessed at 20% or over may, on retirement, be awarded disability pension consisting of a service element and a disability element in accordance with the regulations in this section.”

11. The reliance that has been sought to be placed on behalf of the applicant on the order dated 23.09.2015 of the AFT(RB) Kochi in OA No.154/2014 titled L.S. *Ajith Kumar Vs Union of India & Ors.* in which case the applicant thereof suffered from Recurrent Dislocation of Right Shoulder, had been granted disability element of pension for such disability and the benefit of rounding off for the same is misplaced for it is essential to observe that the observations in Para 18 of the said order were to the effect:

“18. It is also observed that in keeping with the principles laid down in the Entitlement Rules, the applicant has been granted disability pension for his recurring problem of dislocation of right shoulder, even though that disability was not the reason for his invalidment. The applicant has also been given the benefit of rounding off for it. Hence, we do not see any merit in the claim of the applicant that the percentage of his disability be enhanced considering his other disabilities, which, as brought out

earlier, were self created and in no way can be considered attributable to or aggravated by service.”

which even bring forth that the recurrent problem of right shoulder was not the reasons for invalidment of that applicant and the aspect of the said disability being attributable to or aggravated by military service was not the issue involved therein and rather applicant had sought enhancement of the disability pension in relation to that disability.

CONCLUSION

12. As the disability of the applicant in question had no remote connection with military service, and was pursuant to an accident that could befall any individual in view of the law laid down by the Hon'ble Supreme Court in *Secretary, Govt of India Vs Dharamvir Singh* in Civil Appeal No.4981/2012, the OA 2285/2019 being devoid of all merit is thus dismissed.

13. Pronounced in the open Court on this 9 day of January, 2024.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

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