

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

OA 277/2019

Cmde MVK Rao(Retd.) **Applicant**
VERSUS
Union of India and Ors. **Respondents**

For Applicant: Mr. Indra Sen Singh and
Mr. Shakti Jaidwal, Advocates
For Respondents: Mr. Arvind Patel, Advocate

CORAM

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

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

***“(a) Direct the Respondents to conduct RSMB of the Applicant at an early date to assess his current disease/disability and also to ascertain whether the same pre-existed before Applicant's retirement from service, or is a delayed manifestation of the pathological process set in motion by the service-conditions obtaining prior to his retirement and/or;
(b) Issue such other order(s)/direction(s) as may be deemed appropriate in the facts and circumstance of the case.”***

2. The applicant Cmde M.V.K. Rao(01356-F) as per averments made in the OA was commissioned in the Indian Navy on 01.01.1973 in a fit medical condition, without any note of any disability recorded on the medical records at the time of his induction into the Indian Navy. He retired prematurely with effect from 31.05.2001, admittedly as per averments made in the counter affidavit dated 15.01.2020. It is the submission of the applicant that in February, 1978 he was flying as a co-pilot of the military aircraft, namely Super Constellation off- Mumbai and the nose undercarriage of his aircraft was not coming down by use of primary or secondary methods and to deal with the emergency, the aircraft was climbed up at high altitude and negative G-force was used several times to release the undercarriage. According to the averments made in the OA by the applicant, the undercarriage finally came down and the aircraft landed safely, but whilst doing the negative G-force maneuvers repeatedly, his right eardrum got burst due to sudden variations in air pressure. The applicant submits that he was taken to INHS Asvini at Mumbai and was treated there and placed him in medical category A3G3 temporarily, which made him unfit to fly and after about a year,

the applicant started facing a problem of intermittent discharge from his Right ear, for which, he was again referred to INHS Asvini where he underwent Tympano Plasty operation. The applicant submits that during the operation he suffered from mild to severe hearing loss in higher frequencies, due to which his medical category was permanently downgraded to A2 G2 with a degree of disablement assessed at 20% for life and that he was permitted to fly in unpressurized aircraft only below ten thousand feet with a co-pilot.

3. The applicant submits that as he was unable to do complete justice to his job as a military pilot because of his medical disability coupled with domestic compulsions, he applied for premature retirement from service which was duly approved by the Competent authority and that the applicant retired from service on 31.05.2001 after more than 28 years of service.

4. Inter alia, the applicant submits that the copies of the medical documents of his operation and Re-cat medical boards were not given to him and he does not have the same records and efforts made by the applicant to trace his medical documents after becoming eligible for disability pension have not yielded any

result. The applicant however has submitted on record a copy of his Pilot Flying Log Book with an entry dated 06.12.1979 to state that he was shown therein in medical category A3G3 and that he had been sent for medical Re-categorization to INHS Aswini. The copy of the said document placed on record by the applicant has scanned reads as under:-

“

M. V. K. RAO

Retired Group 1

| Medical Category (with Sub-category if any) | Place | Date | Remarks |
|---|------------------------------|----------|----------------|
| A1-G1 (Fit CP) A1-G1 (Fit CP) | INHS Aswini / INHS Ganada | 17.11.77 | <i>Retired</i> |
| A3 G3 (A3G3 THREE G3 THREE) | INHS Aswini | 18.12.79 | |

Medical Category

Officer has gone for medical re-categorisation to INHS ASWINI.

06/12/79

”

5. The applicant submits further that though he was in low medical category A2G2 at the time of retirement from service, it was not recorded in his official documents and he does not have the copies of the Re-cat medical board proceedings. The applicant submits that he was retired from service in medical category A1G1 by just conducting a release medical examination by the General

Duty medical officer instead of conducting the Release Medical Board which is conducted by various medical specialists.

6. The applicant submits that since at the relevant time disability pension was not given to prematurely retired officers the applicant did not pursue the matter further to trace his Re-cat medical board papers and to get himself examined by the RMB.

7. Inter alia, the applicant submits that even after retirement from the Indian Navy, he continued to suffer from the said medical disability with occasional discharge from his right ear becoming a regular feature with increased infection and attendant loss of hearing necessitating medical intervention.

8. It is further submitted by the applicant that as his problem continued to aggravate, he approached the ECHS Polyclinic, Secunderabad on 24.12.2007 which referred him to their empanelled hospital that is Yashoda Hospital at Secunderabad.

9. Inter alia, the applicant submits that after a detailed investigation at Yashoda Hospital, his right ear was operated for

the second time on 04.01.2008 and though after the second operation, discharge from the right ear has reduced to some extent, his hearing loss continues unabated which is reflected in the Audiometry Report. The applicant has placed on record the documents of the ECHS Polyclinic, Secundarabad under the Ex-Service Contributory Health Scheme wherein he is indicated to have been registered vide OPD Registration no. 366/E on 24.12.2007 and the date of his medical examination dated 19.12.2007 shows that the patient had an old problem of CSOM+VMR Right ear and had been advised mastoid exploration on 24.12.2007.

10. The discharge summary of the Yashoda Hospital, Department of ENT, Head & Neck Surgery dated 05.01.2008 brings forth the Summary of the Hospital Course to the effect:-

“

SUMMARY OF HOSPITAL COURSE:

Mr. Rao known case of previous ear surgery in 1978, presented with complaints of right ear hardness of hearing, right ear discharge and difficulty in breathing.

Patient was evaluated and all necessary investigations were done, which revealed normal blood chemistries.

C.T.C

Patient was diagnosed to have Right CSOM and VMR. After preoperative work up, patient underwent Mastoidectomy + Tympanoplasty + Turbinectomy under General Anaesthesia on 04/01/08.

Intra and postoperative periods were uneventful. Postoperatively, patient was stabilized in Postoperative Ward. During the hospital stay, patient received IV antibiotics, analgesics, nasal sprays, PPI, multivitamins, IV fluids and other essential medicare.

Patient recovered well and is being discharged in hemodynamically stable condition with the following advice.

DETAILS OF SURGERY:

Right post aural incision given, wound deepened and temporalis fascia graft harvested
Middle ear findings - all Ossicles intact and mobile

Antrum blocked

Modified radical Mastoidectomy done

- Antrum was filled with Cholesteatoma debris and granulation tissue, was cleared.
- Wide Meatoplasty was done and Ivalon pack placed in Mastoid cavity.
- Tympanoplasty + Turbinectomy done.

Wound sutured in layers and Mastoid bandage applied.

”

11. The audiometric report of the Yasoda Hospital, Secunderabad of the Department of ENT, Head & Neck Surgery in relation to the applicant dated 07.05.2008, gives the audiological interpretation of the examination conducted as under:-

“

Audiological Interpretation

Right Ear Mild mixed hearing loss.

Left Ear Normal hearing sensitivity

”

CONTENTIONS RAISED

12. The applicant has submitted that as per the letter bearing No.1(2)/97/D(Pen-C) dated 07.02.2001 as issued by the Government of India, Ministry of Defence to the three Chiefs of the

three Armed Forces, it has been stipulated therein that the Service personnel who suffer from any disease or disability post retirement/discharge from the service may, within 10 years of their retirement/discharge from the service seek a Re-survey/ Re-Assessment Medical Board to be held to ascertain their current disability and whether the same is a delayed manifestation of the pathological process set in motion by service conditions obtaining prior to his retirement/ discharge. The applicant has placed reliance on Para-11 of this letter, wherein it has been stated to be effect:

“11. These rules will be read in conjunction with Pension Regulations of the three Services, Entitlement Rules to Casualty Pensionary Awards to the Armed Forces Personnel, 1982 and Guide to Medical Officers (Military Pension) 1980, as amended from time to time.”

13. Rule-10 of the Entitlement Rules to Casualty Pensionary Awards to the Armed Forces Personnel, 1982 has applicable in the facts of the instant case reads to the effect:

“10. Cases in which a disease did not actually lead to the member's discharge from service but arose within 10 years thereafter, may be recognized as attributable to service if it can be established medically that the disability is



a delayed manifestation of a pathological process set in motion by service conditions obtaining prior to discharge and that if the disability has been manifest at the time of discharge the individual would have been invalided out of service on this account."

14. Inter alia, the applicant places reliance on Regulation 34 of the Pension Regulations for the Navy, 1964 to submit to the effect that an officer who had retired (otherwise than on his own request or in any of the circumstances specified in regulation 15) on a service pension of gratuity, but who, within a period of seven years from the date of retirement, is found to be suffering from a disease which is attributable to service may, at the discretion of the Central Government, be granted in addition to a service pension or gratuity, a disability element as the appropriate grade with effect from such date as the Central Government may determine.

15. Inter alia, the applicant places reliance on Rule 10 of the Entitlement Rules to Casualty Pensionary Awards to the Armed Forces Personnel, 1982 or Pension Regulations for the Navy, 1964 in relation to Post discharge claims to contend to the effect that in cases where the disease did not actually lead to the

members' discharge from service but arose within seven years thereafter, may be recognized as attributable to service if it can be medically established that the disability is a delayed manifestation of a prolonged pathological process set in motion by service conditions obtaining prior to its discharge and if the disability had been manifest at the time of discharge, the individual would have been invalidated out of service on this account.

16. The applicant has further submitted that as per Rule 2 of Appendix-V of the Pension Regulations for the Navy, 1964, an individual who at the time of his release under the release regulations is in a lower medical category than that in which he was recruited, will be treated as invalidated out of service. Inter alia, the applicant places reliance on the Government of India, Ministry of Defence letter no. 16(05)/2008/D(Pension/Policy) dated 19.05.2017 to submit to the effect that the benefit of disability pension to pre 01.01.2006 prematurely retired officers has been extended thereby as it has been stated vide Paras- 1,2,3,4,5 thereof to the effect:-

"1. The undersigned is directed to refer to this Ministry's letter No. 16(5)/2008/D(Pen/Policy) dated 29th September 2009

wherein disability element/ war injury element have been allowed to such Armed Forces Personnel who were retained in service despite disability and retired/ discharged voluntary or otherwise in addition to retiring/ service pension or retiring/ service gratuity, subject to condition that their disability was accepted as attributable to or aggravated by military service and had foregone lump sum compensation in lieu of that disability.

2. In terms of Para- 3 of the above referred letter the provisions stated above are applicable to the Armed Forces Personnel who were retired/ discharged from service on or after 01.01.2006. Armed Force Tribunal (Principal Branch) New Delhi in OA No. 336 of 2011 vide their order dated 07.02.2012 have struck down Para-3 of this Ministry's above letter.

3. The issue of extension of above benefit to the Pre-2006 retired/ discharged Armed Forces Personnel, who were retained in service despite disability attributable to or aggravated by military service, was under active consideration of Government. Now, the President is pleased to decide that all Pre-2006 Armed Forces Personnel who were retained in service despite disability and retired voluntarily or otherwise will be allowed disability element/ war injury element in addition to retiring/ service pension or retiring/ service gratuity, subject to the condition that their disability was accepted as attributable to or aggravated by military service and had foregone lump sum compensation in lieu of that disability. Further, concerned Armed Forces Personnel should still be suffering from the same disability which should be assessed at 20% or more on the date of effect of this letter.

4. Implementation of these orders is expected to be arduous and challenging. Documents like Medical Board proceedings, retention of the personnel in service despite disability, option of individual foregoing lump sum compensation and non-payment of lump sum compensation would be required in all cases which may not be available at the end of Pay Accounting Authorities/ Record offices and Pension sanctioning authorities readily. In such cases, pensioners/ family pensioners may be asked to produce the copies of relevant documents to the Executive authorities in support of their claims.

5. The claim for grant of disability element/ war injury element in affected cases will be submitted to the PSA concerned by PCDA(O) Pune/ NPO/ AFCAO/ Record office along-with copy of medical board/ fresh medical board proceedings showing extent of disability applicable as on date of effect of this letter in respect of Commissioned officers/ JCOs/ ORs. It will be responsibility of PCDA(O) Pune/ NPO/ AFCAO and Record office to confirm payment/ non-payment of lump sum-compensation in lieu of disability element to Commissioned officers and JCOs/ ORs. A sanction showing extent of disability and its attributability/ aggravation due to Military service in terms of MOD letter No. 4684/DIR(PEN)/ 2001 dated 14.08.2001 would be issued by the Service HQrs in case of Commissioned Officers and sanction would be issued by Ol/ C Record office in case of JCOS/ORs.”

17. The applicant submits that since he started suffering from the said disabilities within seven years of retirement from

service on 24.12.2007, he preferred an appeal dated 31.07.2017 to the respondents for conducting his RSMB in terms of the Government of India policy letter bearing No.1(2)/97/D(Pen-C) dated 07.02.2001 to assess his current disease/disability and to ascertain whether the same pre-existed before his retirement from service and as to whether it was a delayed manifestation of the pathological process set in motion by the service conditions obtaining prior to his retirement.

18. The applicant submits that despite a reminder dated 23.09.2018, the RSMB was not conducted and that the respondents vide IHQ, MoD(Navy) Order bearing no. PN/7635/DP/18 dated 26.09.2018 informed the applicant that his appeal was under examination but even after a period of four years therefrom, neither was the RSMB conducted nor was he informed of any response to his appeal which was stated to be under examination even on the date 26.09.2018.

19. The applicant has inter alia placed reliance on the order dated 11.10.2017 of this Tribunal in the case of **Lt Col(TS) AS Malik(Retd) vs. UOI & Ors.** in OA 1735/2017 whereby the applicant thereof whilst in service of the Army was detected with

diabetes in 1986 and became insulin dependent in 2008. That applicant claimed that he also suffered a stroke on 11.01.2017, had been shown to be in medical category "SHAPE-1" in the medical board held on 12.03.2009. That applicant's letter dated 25.05.2017 to the authorities for grant of permission for Re-survey of medical board solicited no response from the respondents and it was observed vide para 4 of the order dated 11.10.2017 in OA 1735 of 2017 to the effect:

"4. The prayer for conducting of Re-survey Medical Board (RSMB) is the right of the officer, flowing from the Pension Regulations Consequently, we order that the RSMB will be conducted within two months from the date of copy of this order, within any Military hospital deemed appropriate within Delhi, by the respondents. Major B.V.S. Chaudhary has stated that the order will be conveyed to the concerned authorities at the earliest. Copy of this order shall be provided under signatures and stamp of the Tribunal Officer latest by tomorrow."

20. The applicant has also placed reliance on the order dated 22.10.2018 of this Tribunal in the case of **Cdr S.C. Jaidwal (Retd) vs UOI & Ors.** in OA 1715/2018 wherein that applicant, who was enrolled in the Indian Navy on 20.06.1977 suffered from Myopericardities in 1979 and was also operated for Lipoma in 1979 at the Command Hospital Air Force(CHAF), Bangalore. He had also suffered injuries in 2005 and retired on 05.06.2013 and was subjected to a Release Medical examination and subsequently on 09.07.2017 he was found to be suffering ECG Abnormality and Benign Structure Oesophagus. The said applicant was permitted the conducting of the Re-survey medical Board within a period of seven years from his retirement and in as much as he had retired from service on 30.11.2013 which was thus directed to be conducted.

21. During the course of submissions made on behalf of the applicant herein in the present hearing, reliance was also placed on the order dated 04.12.2017 of this Tribunal in OA 382/2014 in **Maj Ravi Gogna vs. UOI & Ors.** in which case, the facts of the said case were to the effect that that applicant was commissioned in the Indian Army on 10.06.1989 in SHAPE 1 and on 07.01.1991

was admitted to the Military hospital, Jabalpur in a serious condition and placed on the serious ill list whereafter he was shifted to the intensive care unit and suffered from viral hepatitis HBS AG positive. He was discharged from hospital on 04.03.1981 and placed in S1H1A1B4(T8)E. He was sent on sick leave for eight weeks. On reporting back after six weeks, he was placed in category P2(T-24) and was posted to Infantry Div Ord Unit at Allahabad. A Review medical board was held at the Military Hospital, Allahabad from 14.07.1992 to 22.07.1992. On 03.08.1992, he was upgraded to SHAPE 1 with the remarks "not to donate blood". He suffered a further dislocation of his shoulder as well as a head injury in 1995 and was again downgraded to S1H1A4(T4)P1E1 on 22.06.1995 and was admitted in Military Hospital, Jalandhar from 28.07.1995 to 02.08.1995. His medical category was thereafter revised to S1H1A3(T-24)P1E1 with restrictions not to be posted in extreme cold climate areas. On account of the deteriorating health and domestic circumstances, that applicant applied for premature retirement from service and he was relieved from service with effect from 16.01.2001 and contended that he was not provided with the Release Medical

Board proceedings and he applied for a Post discharge re-assessment Medical Board on 17.09.2013 and sent a reminder on 31.10.2013 and the AG's branch intimated that officers who had proceeded on premature retirement on or after 01.01.2006 alone were eligible for disability pension and since the applicant had proceeded on premature retirement from 16.01.2001, he was not entitled to disability pension. Vide the OA 382/2014, that applicant had sought the conducting of a Post discharge Re-assessment medical board to ascertain the aspect of the grant of disability pension to the applicant from the date of premature retirement for life. Inter alia, this Tribunal in the course of proceedings in OA 382/2014 permitted the constitution of a Medical board afresh to conduct the requisite tests for detection of Hepatitis B vide order dated 14.12.2015 and the medical board was held on 06.02.2017 where that applicant was found to be suffering from Chronic HBV infection with an assessment of his disablement of 30% for life, attributable to military service whereafter that applicant was also granted disability pension at 30% for life with effect from the date of the Post Discharge Medical Board which was vide the order dated 04.12.2017 in

OA 382/2014 of this Tribunal directed to be broad-banded to 50% for life.

22. Reliance was also placed on behalf of the applicant on the order dated 14.02.2013 of this Tribunal in the case of **Wg Cdr R Govind(Retd) vs. UOI & Ors.** in OA 645/ 2018. The facts of the said case are to the effect that, that applicant was commissioned in the Indian Air Force as a Pilot Officer on 28.12.1997 and took premature retirement on 31.03.2004. He had reported to the Station sick quarters on 26.04.1988 with a complaint of injury to both his ankles, for which he was hospitalized, and on examination he was diagnosed as suffering from ID-Sprain ankle bilateral, which was treated conservatively and he was discharged in full medical category on 12.05.1988 and reported again with pain and swelling of bilateral ankle and was transferred to Base Hospital, Udhampur and discharged with recommendation of sick leave for eight weeks and on completion of sick leave, he was admitted to the Base Hospital at Udhampur for review. That applicant was further medically examined and he continued in medical A4G5(T) till 21.06.1988 and the next review medical board on 22.06.1989 upgraded his medical category as A4G3(T) and

subsequently the medical board held on 17.01.1988 upgraded his medical category as A4G2(P). The respondents in that case had submitted that after the initial categorization report dated 23.08.1988, he had been placed in LMC A4G2(P), vide AFMSF-15 dated 27.12.1989 and was upgraded to Medical Category A4G1 on 30.10.1995. That applicant on the other hand had submitted that the injury caused to him on 26.04.1988 at 7.00 pm was whilst participating in an organized physical training in performance of the official duty while jumping across a ditch in the hilly terrain, when he sustained the injuries in both his ankles and after a preliminary treatment, a cast was put on both his legs and on continued acute pain and excessive swelling of both ankles, the cast had been removed at the SSQ on 03.05.1988 and he had been transferred to the Base hospital, Udhampur, where he remained till 12.05.1988 and was discharged with recommendation for sick leave and as per the existing leave policy, was granted his full annual leave. In that case, the applicant had submitted that the Advisor orthopedic surgery had opined on 31.03.2001 that he was suffering from 'chronic pain both ankles- more on right swelling and tenderness just below last malleolus

Right knee-early arthritis and he submitted that he was suffering from aggravation of his ankle(bilateral) injury due to increased weight stress and that the ankle sometime in future may need to be fused and that there was no cure by medicine for the disability. That applicant had submitted that his posting profile post injury involved jobs with high degree of physical stress and that the Release Medical Board was held on 24.11.2003 at the Air Force Station, Race Course, New Delhi before pre-retirement on 31.03.2004. That applicant further submitted that that no note of swelling/deformity of ankles was made without examining and assessing the injury, overlooking medical history of injury available perhaps due to the then existing policy of the Government of India of non-eligibility for disability pension to pre-mature retirees.

ANALYSIS

23. It is essential to observe that vide the order dated 14.02.2023 in OA 645/2018 in **Wg Cdr R Govind(Retd)**(Supra), this Tribunal took into account the Letter No. PERS/2017/03 dated 14.02.2017 to the Directorate of Air Veterans/DGAFMS and Para-12(b)(i), of the Entitlement Rules for Casualty Pensionary

Awards to Armed Forces Personnel 2008 and the observations in order of the AFT(RB), Jabalpur in OA 124/2013 in **Capt Dilip Awasthi vs. UOI** vide Para-24 thereof were taken into account which reads as under:-

"however we noticed that the case of the applicant does not fall exclusively under the category of injury cases, but is a combination of an injury and a disease. Hence the applicant is entitled for a re-assessment medical board(RAMB) vide para (1)(III)(aa) above as he is a pre 96 pensioner. The assessment made in the RAMB will be final and for life unless the applicant himself seek a review. We therefore are inclined to allow the applicant to be subjected to a reassessment medical board for a final assessment of the disabilities".

Though the injuries to the applicant were assessed in his release medical board but he was not awarded the disability element of pension since the same was not authorized as per then existing rules on the subject.

The applicant further submits that in terms of para 7 of the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel-2008, issued vide GoI/MoD

Letter No.1(3)/2002 /D(Pen/Pol) dated 18.01.2007 the onus to prove the entitlement including applicant's retention in service despite disability and non-payment of lump sum compensation is on the respondents where the claim is preferred within 15 years and that the applicant retired prematurely on 31.03.2004 and his case is within 15 years after retirement."

24. It is essential to advert to Para-31 of the said order in OA 645/2018, whereby it was ordered to the effect:

"31. Thus, the prayer made by the applicant to the extent that he seeks that the respondents conduct a Review Medical Board to ascertain the percentage and extent of his disabilities is allowed and the respondents are directed to convene a Review Medical Board to assess the percentage/extent of the disabilities of the applicant qua the injuries sustained by him on 26.04.1988 during the course of performance of his official duties within three months from the date of this order. The applicant would be entitled to seek redressal of his grievances in accordance with law pursuant to the findings of the Review Medical Board, if required."

25. Though the respondents have vehemently contended that the medical records qua the applicant have been destroyed as per the extent policy in as much as the applicant had retired in

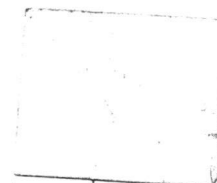
2001, and have submitted that the provision of the Re-survey medical board/ Re-assessment medical board is applicable only to the personnel released in low medical category, it is essential to observe that the letter no. 16(05)/2008 /D(Pension/Policy) dated 19.05.2017, the contents of Para 1 to 5 whereof have already been reproduced elsewhere hereinabove categorically vide para 4 thereof makes it apparent that the said letter comes into play with effect from 01.01.2006 and that despite the documents like medical board proceedings being not available at the Pay Accounting Authorities/ Record offices and Pension sanctioning authorities readily, in such cases the pensioners/ family pensioners have been asked to produce the copies of relevant documents to the Executive authorities in support of their claims. Apparently thus the mere non-availability of the medical record of the applicant with the respondents is of no avail to the respondents.

26. In relation to the said aspect the applicant has relied on the order dated 11.11.2014 of this Tribunal in OA 382/2013 in the case of **Ex Hav Clerk Amrik Singh vs. UOI & Ors.**, in similar circumstances as well as on the order dated 19.07.2017 of this

Tribunal in OA 1331/ 2016 in **Capt.M.K. Bopanna(Retd) vs UOI & Ors.** wherein the medical documents that the applicant had produced were taken into account.

27. On a consideration of the submissions that have been made on behalf of either side and the orders of this Tribunal relied upon, in **Wg Cdr R Govind(Retd)**(Supra), in **Lt Col(TS) AS Malik(Retd)** (Supra), **Cdr S.C. Jaidwal (Retd)** (Supra), it is apparent that the GOI letter no. 16(05)/2008/D(Pension/Policy) dated 19.05.2017, has made permissible the grant of the disability element of Pension / War injury pension to Armed Forces Personnel even in the case of pre-2006 retired/discharged Armed Forces Personnel who were discharged on their voluntary retirements.

28. Thus as the medical record dated 24.12.2007 of the ECHS Polyclinic, Secundarabad relied upon on behalf of the applicant indicates that the applicant was suffering from a disability, with the applicant having been discharged on having been retired from service prematurely on 31.05.2001 with a disability, being found in existence on 24.12.2007 within a period of seven years from the date of voluntary retirement, in terms of



Regulation 34 of the Pension Regulations for the Navy, 1964, Rule 6 of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 1982 and Appendix V to the Rule-2 of the Pension Regulations for the Navy 1964, it is apparent that the applicant is entitled to the conducting of a Post-discharge medical claim to ascertain whether the disability that the applicant suffers from is a delayed manifestation of a prolonged pathological process set in motion by service conditions obtaining prior to his discharge, and that if the disability had been manifested at the time of discharge, he would have been invalidated out of service on this account.

CONCLUSION

29. In these circumstances, the OA 277/2019 is disposed of with directions to the respondents to conduct a Post-discharge medical claim qua the applicant. The post-discharge medical board is directed to ascertain the percentage and extent of the disabilities of the applicant to assess whether the disability that he suffers from in his right ear drum existed at the time of retirement from service and also whether it is a delayed manifestation of the pathological process set in motion by service

conditions obtaining prior to his voluntary retirement on 31.05.2001.

30. The said Post discharge medical board is directed to be conducted within a period of three months from the date of this order. The applicant would be entitled to seek redressal of his grievances in accordance with law pursuant to the findings of the Post discharge medical board, if required.

Pronounced in the open Court on the 5 day of December, 2024.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/TS/