

COURT No.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI
OA 411 /2017

Lt. Col Subodh Kumar Sharma ... Applicant
Versus
Union of India and Ors. ... Respondents

For Applicant : Mr. SS Pandey, Advocate
For Respondents : Dr. Vijendra Singh Mehndiyan, Advocate

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

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 accept the disabilities of the applicant as attributable to/aggravated by military service and grant disability element of pension @50% rounded of to 75% with effect from the date of retirement of the applicant; along with all consequential benefits.

2. The applicant was commissioned in the Indian Army on 15.06.1969 and prematurely retired on 18.02.1997 after serving for approximately 28 years of qualifying service. The Release Medical Board held that the applicant was fit to be discharged from service in composite low medical category for the disabilities - (i) FRACTURE PATELLA (L) (OPTD)

@20% (Aggravated) (ii) ESSENTIAL HYPERTENSION @30% (Aggravated) (iii) IMPAIRED GLUCOSE TOLERANCE @ NIL% (iv) HYPER CHOLESTROLEMIA @NIL% while the composite assessment was recorded as 50% for two years.

3. It is the case of the Respondents that the initial claim of the applicant for grant of disability in respect of the above named applicant was not processed as the applicant had retired prematurely prior to 01.01.2006. As per GoI MoD letter No.16(5)/2008/D (Pen/Policy) dated 29.09.2009, disability pension is entitled to those officers who become non-effective on or after 01.01.2006 on account of premature retirement.

4. It is further submitted by the Respondents that as per the latest policy in vogue i.e. GoI MoD letter no. 16(05)/2008/D (Pension Policy) dated 19.05.2017, the disability element of disability pension has also been granted to pre-2006 retirees w.e.f. 01.01.2006. However benefit of broad-banding has not been extended to pre 2006 retirees. It is submitted that as per the rules broad-banding of disability pension is applicable only to those who are invalided out from service as per GoI letter dated 31.01.2001.

5. On the other hand, it is the contention of the applicant that after the judgement of the Hon'ble AFT in Maj (Retd.)

Rajesh Kumar Bhardwaj Vs. Union of India, [OA 336 of 2011; Date of Decision: 07.02.2012] the benefit of disability pension is applicable to the officers retired on premature retirement as well.

6. 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 extent of disability (i) and (ii) was assessed to be above 20% which is the bare minimum for grant of disability pension in terms of Regulation 81(a) and 53(a) of the Pension Regulations for the Army, 2008. As far as disability (iii) and (iv) are concerned, it is well below the 20%, thereby, not exceeding the benchmark.

7. We find that the two questions for adjudication before us are - (i) Whether the applicant would be entitled to grant of the disability element of pension in view of the disabilities (i) and (ii) being aggravated even though the applicant proceeded on premature retirement and (ii) Whether the applicant would be entitled for grant of disability pension for life even when disabilities have been assessed for two years ?

8. As far as issue (i) we find that the aforesaid issue is no longer *res integra* in view of the judgement of this Tribunal in Maj. Rajesh Kumar Bharadwaj (supra) wherein this Tribunal

has dealt with this particular issue and held that the officers retired on premature retirement before 01.01.2006 are also entitled for grant of disability pension and the same has been implemented *vide* GoI MoD letter no. 16(05)/2008/D (Pension Policy) dated 19.05.2017.

9. With respect to issue (ii), we find that the disability (ii) is - Essential Hypertension, which is a disability of permanent nature, and therefore has to be assessed for life instead of two years in view of Judgement of Hon'ble Supreme Court in Civil Appeal No. 5970/2019 Commander Rakesh Pande Vs. Union of India & Ors. wherein applicant was found to be suffering from (i) Diabetes Mellitus and (ii) Hyperlipidemia, which was assessed by the Release Medical Board (RMB) @ 20% and 6-10% for 5 years, but was held as NANA, and was not granted Disability Pension. Aggrieved, said applicant approached Armed Forces Tribunal, Principal Bench, New Delhi which held in his favour and found him entitled for disability pension @ 20% for 5 years rounded off to 50% in the light of Union of India & Ors. Vs. Ram Avtar (supra).

10. While examining the implementation of para 7 of the Policy Letter No. 1(2)/97/D (Pen-C) dated 07.02.2001 in the above mentioned case, Hon'ble Apex Court summarised as under:

“Para 7 of the letter dated 07.02.2001 provides that no periodical reviews by the Resurvey Medical Board shall be held for reassessment of disabilities. In case of disabilities adjudicated as being of permanent nature, the decision once arrived at will be for life unless the individual himself requests for a review. The applicant is afflicted with diseases which are of permanent nature (emphasis applied) and he is entitled to disability pension for his life which cannot be restricted for a period of 5 years. The judgement cited by Ms. Parveena Gautam, Ld Counsel is not relevant and not applicable to the facts of this case. Therefore, the appeal is allowed and the appellants shall be entitled for disability pension @ 50% for life.”

11. The case of Col L.B. Malla (Retd.) Vs. Union of India & Ors, [OA 1698/2016] as decided by the Hon'ble Tribunal vide its judgement dated 20.07.2017 stands on the similar footing as that of Commander Rakesh Pande. In the said case, the applicant was suffering from Primary Hypertension @ 30% for 5 years, and he was granted benefit on the Para 7 of the aforesaid letter, considering his disability to be of permanent nature.

12. However, the case of the applicant with respect to disability (i) - Fracture Patella stands on a different footing from the judgments of Hon'ble Apex Court in Commander Rakesh Pande (supra) and the Hon'ble Tribunal in Col L.B. Malla (supra), as in both the cases, disabilities DIABETES MELLITUS, and PRIMARY HYPERTENSION respectively, are of permanent nature and not of temporary nature, unlike the disability of fracture in the instant case, which as per numerous studies, is known to heal with time

and the disability is not for life.

13. It is of no doubt that there has been an act of omission on the part of respondents in not calling back the applicant for Re-survey Medical Board (RSMB) on the expiry of two years. However, the equal responsibility lies on the applicant who should have applied for a Review Medical Board, which would have well cleared the issue in question. Applicant being an officer of the Army is presumed to be diligently aware of the procedure of the medical board and also the policy in vogue, particularly the letter referred to in paragraph 10. However, no such representation for conduct of the Review Medical Board is on record to support the case of the applicant that an effort was made on his behalf.

14. It is an undisputed fact that the applicant never underwent a Re-survey Medical Board, and consequently it is the Release Medical Board (RMB) proceedings which will be having primacy. A close analysis of Release Medical Board (RMB) proceedings reveals that the applicant was found to be suffering from FRACTURE PATELLA (L) (Optd), which is necessarily not a permanent disability.

15. There are ample medical studies which make it clear that the cases of fractures after surgical intervention can be healed well within the limited time period and not continue

for lifetime. The Tribunal, being well conscious of the primacy of the opinion of the medical board and upon due consideration of all the material on record placed before it, is of the opinion that as far as disability (i) is concerned, the applicant should be assessed by the Re-Assessment Medical Board to assess the percentage of disability at present with respect to disability (i).

16. In view of the aforesaid analysis, we dispose off the present OA with following directions:

- a) Respondents are directed to place the applicant before the Re-assessment Medical Board within one month of the date of pronouncement of this order. The RAMB shall assess %age of the disability (i) i.e Fracture Patella (L) and place the proceeding before the Competent Authority for adjudication; while informing the applicant of the same. The adjudicating authority shall adjudicate the assessment of disability (i) within one month of the receipt of case file from the Medical Board authorities.
- b) In case of the disability (i) is still found to be subsisting and 20% or more the applicant shall be entitled to grant of disability pension for the same, in addition to 30% being granted for the disability (ii) Hypertension.

- c) In case of disability (i) being assessed at less than 20%, the applicant shall be entitled to grant of benefit of disability element of pension @ 30% (for ESSENTIAL HYPERTENSION @30%) only; rounded off to 50% for life.
- d) However, in both the conditions (a) & (b), the arrears shall be restricted to three years prior to the date of filing of OA in view of the judgement of Hon'ble Apex Court in *Union of India v. Tarsem Singh*. The arrears shall be disbursed to the applicant within 45 days of the adjudication by the competent authority in terms of direction (a) failing which it shall earn interest @ 6% p.a. till the actual date of payment.

17. Consequently, the OA 411/2017 is disposed of in view of aforesaid directions.

18. No order as to costs.

Pronounced in the open Court on 31st day of May, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

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