

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

OA 439/2019

Nk Rajender Singh (Retd) Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Ms. Archana Ramesh, Advocate
For Respondents : Ms. Barkha Babbar, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this application and the relief claimed in Para 8 reads as under:

“(a) Issue directions to the Respondents to call for the entire medical records of the case and after due satisfaction grant Disability Pension @ 50% for life with past arrears with penal interest based on Govt of India – Ministry of Defence Letter dated 07 Feb 2001 placed as Annexure A – 5 to meet the ends of justice;

(b) Pass such other and further orders/directions as may be deemed just and proper by the Hon'ble Armed Forces Tribunal in the attendant genuine circumstances of the case.”

2. The applicant was enrolled in 11 RAJ RIF on 19.10.1979 and it is the case of the applicant that on account of stress and strain of military service over a span of 17 years he developed a permanent ailment of Wasted Leg Syndrome (Right Leg) and Pulmonary Tuberculosis of lungs. It is the contention of the applicant that the ailments were contacted on account of infection from the environment and the stress and strain of the service. It is further submitted that the applicant had served in Counter Insurgency areas of Jammu & Kashmir from 1980 to 1983, Sri Lanka War, i.e., OP PAWAN from Sep 1988 to Oct 1989 and again in Jammu & Kashmir from 28.02.1992 to 26.11.1993. He was finally discharge from service on 09.02.1996 on account of the aforesaid ailments and in the Low Medical Category (LMC).

3. After the discharge of the applicant in the year 1996, when the benefit of disability pension was not granted to him, he invoked the jurisdiction of this Tribunal by filing OA 735/2010 and a Coordinate Division Bench of this Tribunal decided the claim of the applicant in the said OA by a detailed order passed on 11.05.2011 (Annexure A-2). It was the case of the applicant before this Tribunal in the earlier OA that he was medically examined and put in the

LMC w.e.f. 08.07.1994 and when he was produced before the Release Medical Board (RMB) based on his claim for voluntary discharge from service, he was found to be suffering from Pulmonary Tuberculosis @ 15-19% for two years which was attributable to military service and Wasted Leg Right Syndrome @ 06-10% for two years. However, this was held neither attributable to nor aggravated by military service. The applicant had claimed that the 20% disability for two years granted to him by the RMB which was held at the time of his discharge on 27.01.1996 was not paid to him. The learned Bench of this Tribunal considered the issue and even though it was found that the applicant had approached the Tribunal belatedly but instead of dismissing the application on the ground of delay, a direction was issued to the respondents to release the disability pension to the applicant @ 20% from 1996 for a period of two years. However, no penal interest on this amount was granted. Finally, the Tribunal in Para 7 of the order passed on 11.05.2011 issued the following directions:

"7. Now, as far as the question with regard to further disability is concerned, the respondents may convene a fresh medical board and examine the petitioner if he is still suffering from any disability, then the consequent benefits may be given to him, in accordance with the rules. The medical board may be convened as soon as possible within a period of three months."

4. In pursuance to the aforesaid order, records indicate that the fresh Medical Board was conducted and the Re-Survey Medical Board (RSMB) which was held on 02.12.2011 at Base Hospital, Delhi Cantt found that the applicant was not suffering from Pulmonary Tuberculosis, the assessment was found to be Nil and as far as Wasted Leg Right Syndrome was concerned, the disability was assessed at 06-10% for life. From the aforesaid documents filed by the applicant vide Annexure A-4, it is seen that in pursuance to the order passed by this Tribunal in the Medical Board, i.e., RSMB conducted on 02.12.2011, the applicant was found to have been cured from the ailment of Pulmonary Tuberculosis and the other ailment of Wasted Leg Right Syndrome was only to the extent of 06-10%.

5. Now, learned counsel for the applicant argued that in the earlier Medical Board conducted, before his discharge in the year 1996, when the composite assessment for the entire ailment was made at 20% only for two years, this was contrary to the law laid down by the Hon'ble Supreme Court recently in the case of Commander Rakesh Pande Vs. Union of India & Ors., Civil Appeal No.5970/2019 decided on 28.11.2019 and as laid down by the Hon'ble Supreme Court in the aforesaid judgement, there cannot be an assessment for a period of two years only, the

assessment of the ailment has to be done for the period of life and not for a particularly year of service. Based on the aforesaid judgement, the relief now claimed is that the applicant should be granted disability for life @ 20% rounded off to 50%.

6. Respondents have refuted the aforesaid and contended that as the ailment of Pulmonary Tuberculosis is curable and after the RSMB conducted on 02.12.2011, the applicant was found to have been completely cured of the ailment of Pulmonary Tuberculosis and as the other ailment of Wasted Leg Right Syndrome was less than 20%, i.e., 06-10% only, the applicant is not entitled to any disability pension. In view of the provisions of Regulation 53(a) of the Pension Regulations for the Army, 2008, (Part-I), "an individual released/retired/discharged on completion of terms of engagement or on completion of service limits or on attaining the prescribed age (irrespective of his period of engagement), if found suffering from a disability attributable to or aggravated by military service and so recorded by Release Medical Board, may be granted disability element in addition to service pension or service gratuity from the date of retirement/dischARGE, if the accepted degree of disability is assessed at 20 percent or more".

7. As far as the applicability of the law laid down in the case of *Commander Rakesh Pande* (supra) is concerned, learned counsel for the respondents submitted that the same shall not be applied to the facts and circumstances of the present case.

8. We have heard learned counsel for the parties and we find that when the applicant approached this Tribunal and when his claim was decided on 11.05.2011 in OA 735/2010, the applicant was granted disability pension @ 20% for two years as held in the RMB held on 27.01.1996 at the time of his discharge. The applicant never challenged the aforesaid order and, therefore, *inter se* between the applicant and the respondents, the findings recorded in the aforesaid order by the Coordinate Bench of this Tribunal has attained the finality and now operates as a *res judicata*. The parties are bound by this judgement and the applicant is debarred from claiming any further benefit which was not granted to him in the initial ground of litigation by this Tribunal. Accordingly, once this Tribunal has held that the applicant is only entitled to disability @ 20% for a period of two years and thereafter, the question of further disability is to be assessed afresh based on the Medical Board which was to examine the case of the applicant, the applicant is bound by the aforesaid order as after the order was

passed on 11.05.2011, the applicant submitted to the RSMB held in pursuance to the directions issued by this Tribunal on 02.12.2011 at Base Hospital, Delhi Cantt and in this RSMB as is evident from the assessment made in Para 8 of the report (Page No.23) vide Annexure A-4, the applicant was found to be not at all suffering from Pulmonary Tuberculosis as the disability for this ailment was assessed at Nil and for Wasted Leg Right Syndrome, it was assessed less than 20%, i.e., only 06-10%.

9. Once, the re-assessment of the ailment of the applicant by a duly constituted Medical Board which was constituted on the directions issued by this Tribunal in OA 735/2010 on 11.05.2011, this Court now in these proceedings cannot go beyond the said directions. The ailment of Pulmonary Tuberculosis is curable and now when the applicant was subjected to Medical Board, it is found to be not existing and no benefit can be granted to the applicant. As the second ailment of Wasted Leg Right Syndrome is less than 20%, for this also no disability can be granted to the applicant. Accordingly, in our considered view, now based on the Medical Board conducted as per the direction of this Tribunal, the applicant is not entitled to any further disability pension.

10. However, as the applicant has relied upon the law laid down by the Hon'ble Supreme Court in the case of **Commander Rakesh Pande** (supra), the issue has to be considered. The contention of the applicant that a disability cannot be assessed for a particular period of time and it has to be assessed for life will not apply in the case of the present applicant. The applicant was assessed with disability for two years @ 20% for the ailment of Pulmonary Tuberculosis. This is a curable disease and is not a disease of permanent nature. In the case of **Commander Rakesh Pande** (supra), it has been clearly laid down by the Hon'ble Supreme Court that for disabilities which are of permanent nature, the employees are entitled to disability for life and the same cannot be restricted for a period of five years or less. A perusal of the law laid down in the case of **Commander Rakesh Pande** (supra) clearly indicates that if the ailment/disease pertains to assessment of disabilities which are only permanent in nature and not for temporary disablement like Pulmonary Tuberculosis, therefore, law in the case of **Commander Rakesh Pande** (supra) will not apply. That being so, in our considered view, the said judgement will not apply in the case of the applicant that apart in this case once the order was passed by this Tribunal on 11.05.2011 in OA 735/2010 had

attained finality, the same cannot be re-opened now on the basis of law laid down in the case of *Commander Rakesh Pande* (supra) also. This is not permissible under law.

11. Accordingly, finding no case made out for any interference now, the application stands dismissed for the simple reasons that the ailment of Pulmonary Tuberculosis is found to have been cured and not existing on the basis of the medical report dated 02.12.2011 and the other ailment, i.e., Wasted Leg Right Syndrome is less than 20%.

12. In view of the aforesaid, the OA stands disposed of.

13. No order as to costs.

14. Pending miscellaneous application(s), if any, stands closed.

Pronounced in open Court on this 14 day of October, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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