

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

C.

OA 517/2018

Ex Nk Kamal Singh Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. SS. Tiwari, Advocate
For Respondents : Ms. Barkha Babbar, Advocate

CORAM

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

ORDER
24.07.2024

Vide our orders of even date, we have allowed the application. Faced with the situation, learned counsel for the respondents makes an oral prayer for grant of leave to appeal under Section 31 of the Armed Forces Tribunal Act, 2007 to the Hon'ble Supreme Court. We find no question of law much less any question of law of general public importance involved in the matter to grant leave to appeal. Hence, the prayer for grant of leave to appeal is declined.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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Ex Nk Kamal Singh ... Applicant
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For Applicant : Mr. S.S. Tiwari, Advocate
For Respondents : Ms. Barkha Babbar, Advocate with
Ms. Deepanjali Tyagi, Advocate

CORAM :

HON'BLE MR. 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 has filed this OA praying to quash the order of Additional Directorate General (Personnel) services AG's Branch IHQ of MoD (Army) and seeking directions to the respondents to hold an RSMB and consider the applicant's claim for grant of disability pension.

2. The facts germane to this case are that the applicant was enrolled in the JAT Regiment of the Indian Army on 23.02.1979. After rendering a service of 19 years and 220 days, he was discharged from the service on 30.09.1998 on medical grounds,

due to non-availability of sheltered appointment. The RMB assessed the applicant's disability "OSTEOARTHRITIS (LT) KNEE 715, V62" (aggravated by military service) @ 20% for two years and thereafter he was given disability pension @ 50% w.e.f. 01.10.1998 to 17.08.2000 vide PCDA (Pension) Allahabad PPO No. DE/010428/99 dated 21.04.1999, which was revised vide Corr. PPO No. DE/27889/2001 dated 22.05.2001.

3. It is the case of the respondents that the applicant was intimated vide Records Jat Regiment letter dated 03.05.1999 that he would be brought before a Re-Survey Medical Board in March 2000 to assess the disability after 18.08.2000 for further grant of disability pension. However, in spite of call up notices issued by the Base Hospital, Delhi Cantt, the Applicant did not report to the Base Hospital for RSMB and the documents were returned to the respondent's establishment unactioned.

4. It is the contention of the respondents that the applicant's case for grant of sanction of Competent Authority for obtaining condonation of delay in preferring an appeal against the rejection of disability pension was processed to Addl Dte Gen of Pers Services, AG/PS-4(Imp-II), IHQ of MoD (Army) along with

connected documents vide Record The Jat Regiment letter dated 29.04.2017. However, the case was returned unactioned by the IHQ of MoD (Army), ADGPS vide letter dated 28.07.2017 on the plea that one year relaxation for filing time-barred appeal beyond five years had been exhausted on 16.05.2017 vide MoD letter dated 17.05.2016 and the Applicant was further informed vide Records The Jat Regiment letter dated 17.08.2017 that time-barred cases that were more than five years old would not be accepted by the respondents Office.

5. On the other hand, learned counsel for the applicant has submitted that the applicant's case is related to pension payments and being the recurring cause, it cannot be denied on grounds of limitation as per the judgment made in the case of M.K. Gupta by the Hon'ble Apex Court.

6. Learned counsel for the applicant further submits that there is no specific evidence that exhibits the non-appearance of the applicant in the RSMB was due to his fault but was rather the failure on the part of the respondents as the intimation was sent to

the wrong address even though the respondents had the correct address on record.

7. We have heard learned counsels for both the parties, and have perused the documents placed on record, including letters addressed to the applicant and the policy letters on the subject. The only limited question left for adjudication is whether the applicant is entitled for Re-Survey Medical Board or not ?

8. We find it pertinent to refer to Para 7 of the letter No. 1(2)/97/D (Pen-C) dated 07.02.2001 of Ministry of Defence, Government of India which deals with the assessment with regard to the percentage of disability as recommended by the Release Medical Board (RMB), which is reproduced as under:

“7. Re-assessment of Disability: There will be no periodical reviews by the Re-survey Medical Boards for re-assessment of disabilities. In cases of disability adjudicated as being of a permanent nature, the decision once arrived at will be final and for life unless the individual himself requests for a review. In cases of disabilities which are not of a permanent nature, there will be only one review of the percentage by a Reassessment Medical Board, to be carried out later, within a specified time frame. The percentage of disability assessed/recommended by the Re-assessment Medical Board will be final and for life unless the individual himself asks for a review. The review will be carried out by the Review Medical Board constituted by DGAFMS. The percentage of disability assessed by the Review Medical Board will be final.”

9. On a perusal of aforesaid paragraph, we find that it is well clear that even in cases involving disability of permanent nature, the individual can request for a review, and there being no bar or limitation attached to the same.

10. We have perused the medical records on record, and it is important to note that the Release Medical Board is required to assess the percentage of the disability, the period for which the disability is expected to continue and also express an opinion whether the disability was attributable to or aggravated by military service, which in this case has been held as attributable to service @ 20% for 2 years. Notwithstanding above, the discharge of the applicant on ground of non-availability of sheltered appointment is a case of 'Deemed invalidation' as laid down by the Hon'ble Supreme Court in Sukhvinder Singh Vs. UoI [C.A. No. 5605/2010; Date of Decision: 25.06.2014]

11. It is of no doubt that the applicant should have applied for a Review Medical Board earlier, which would have well cleared the issue in question. However, even when such representation for conduct of the Review Medical Board was made, the respondents should have applied Para 7 of the Letter No. 1(2)/97/D (Pen-C)

dated 07.02.2001 of Ministry of Defence, Government of India, and directed for the conduct of Review Medical Board, but the same has not been done.

12. Accordingly, we allow this application and direct the respondents to conduct the Re-assessment Medical Board of the applicant within two months from the date of this order, and grant disability pension if the assessment is found to be 20% or above.

13. No order as to costs.

14. Pending miscellaneous application, if any, stands disposed of.

Pronounced in the open Court on 24 day of July, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

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