

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

OA 60/2022
with
MA 67/2022

Ex JWO Devendra Singh
Versus
Union of India and Ors.

... Applicant

... Respondents

For Applicant : Mr. V.S. Kadian, Advocate
For Respondents : Mr. D.K Sabat, Advocate

CORAM :
HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN P.M. HARIZ, MEMBER (A)

ORDER

MA 67/2022

Keeping in view the averments made in this application and finding the same to be bona fide, in the light of the decision in the case of Union of India and others Vs. Tarsem Singh [(2008) 8 SCC 648], the instant application is allowed condoning the delay in filing the OA.

2. The MA stands disposed of.

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3. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant wants a direction to the respondents to conduct Re-survey/re-assessment Medical Board for assessing the percentage of disability of the

applicant and to grant him disability element of pension along with benefits of broad banding. The said benefit having been rejected vide Annexure A-1 dated 18.08.2021, the applicant is before this Tribunal.

4. The applicant was enrolled in the Indian Air Force on 12.07.1991 and was discharged on 23.08.2016 after completing 25 years, 01 month and 11 days of service. According to the applicant he was suffering from PIVD (L2 – L3, L4 – L5), namely, low back ache. It is the case of the applicant that he was performing the duty of an Engine Fitter which involved lifting of heavy weights as a result of which he sustained aforesaid ailment sometime in the year 2015. The applicant submitted various representation for his Medical Board but nothing was done. The applicant was granted a sanction by the DGAFMS for conduct of post discharge medical at Base Hospital, Delhi Cantt, and the applicant reported to the Base Hospital for Resurvey Medical Board (RSMB). However, according to the applicant, the Medical Board was completed up to opinion and the applicant was discharged from the hospital but no RSMB was done. Grievance of the applicant is that as he has suffered the ailment while in service and as the same was present at the time of discharge, he is entitled for the RSMB as he has suffered the ailment while performing the duty as an Engine Fitter.

Though the DGAFMS had initially issued necessary sanction for conduct of post discharge medical board vide their letter dated 11.05.2020, this was subsequently cancelled vide DGAFMS letter dated 18.08.2021 (Annexure A-1).

5. Reference is also made to Para 33 of Guide to Medical Officers, 2008 to say that low back pain of 20% is an ailment for which the applicant is entitled to for grant of disability element of pension. Referring to rules and regulations and the judgments of this Hon'ble Tribunal in OA No.371/2015 titled Hony Capt Jagat Singh Rawat Vs. Union of India & Ors., OA No.1563/2017 titled Lt Col Sharad Dua (Retd.) Vs. Union of India & Ors. (Annexure A-4), and OA No.343/2015 titled Ex Sgt Ram Kishor Singh Vs. Union of India & Ors., the applicant claims for the following relief mainly on the ground that while entering the service, in the medical reports, the applicant was not found to be suffering from any ailment and that as he contracted the ailment after entering into the service, and therefore, in view of the law laid down by the Hon'ble Supreme Court in the case of Dharamvir Singh Vs. Union of India & Ors. (Civil Appeal No.4949 of 2013) [2013 (7) SCC 36], he is entitled to the benefit.

“(a) Direct respondents to conduct Re-Survey/re-assessment Medical Board to assess percentage of the disability of the applicant and to grant disability element of pension along with benefits of broad banding. And/or

(b) Direct respondents to pay the due arrears of disability element of pension with interest @12% p.a from the date of stoppage of disability element of pension.

(c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost of the application in favour of the applicant and against the respondents."

6. Learned counsel for the applicant invited our attention to Annexure A-2, AFMSF-8(VER 2002) and Para 22 thereof to show that the applicant is suffering from the ailment as indicated in the application. He also referred to the treatment given to him and submitted that he had PIVD with severe root compression and even though he was referred to be medically examined for the post discharge claim, to the Base Hospital, Delhi Cantt, but no survey medical board was done and he has not been granted any benefit. *Inter alia*, contending that the aforesaid ailment is attributable to and is aggravated on account of military service, he is entitled to the benefit claimed for.

7. The respondents have filed a detailed counter affidavit and argued that in 2015 while the applicant was posted in Nagpur, he was admitted to SMC HQ MC (U), AF Nagpur on 14.12.2015 for investigation where it was revealed that he was having PIVD L4 – L5 with nerve root compression. The applicant was planned to be transferred to a Tertiary Care Center for review and further management by a neurosurgeon. However, the applicant refused to

undergo further evaluation and treatment. The applicant was, therefore, discharged from the hospital in medical category A4G1 on 22.12.2015, i.e., immediately after about eight days. The Release Medical Examination was held at HQ MC (U), AF vide AFMSF-18 on 19.08.2016 (Annexure R-1) and the applicant was released from service in medical category A4G1 with no disability claim. This examination was approved by the Competent Authority and the applicant was discharged without any disability.

8. It is the case of the respondents that the applicant by his refusal to give consent for investigation and further treatment by the neurosurgeon and not accepting the advice of the authorities is himself responsible for the consequential action. It is the case of the respondents that the resultant damage, if any caused, to the applicant by his own action cannot be ascribed to anything attributable to service and in this case as the applicant was discharged in medical category A4G1, referring to Clause 8 of the Medical Guidelines quoted herein below, it is argued that no case is made out for any post discharge RSMB.

"8. Post Discharge claims:

(a) Cases in which a disease was not present at the time of the member's retirement/discharge from service but arose within 7 years thereafter, may be recognized as attributable to service if it can be established by the competent medical authority that the disability is a delayed manifestation of a pathological process set in motion by service conditions obtaining prior to discharge.

(b) In cases where an individual in receipt of a disability pension dies within a period of 7 years from the date of release/retirement, may be considered to have died of the disease for which he was granted disability pension if it can be so established by the competent medical authority. If the medical certificate as to the cause of the death is not available, other factors and circumstantial evidence would be taken into account."

9. It is the case of the respondents that only such case can be referred to the Post Discharge Medical Board if the ailment was not present at the time of the member's retirement/discharge from service but arose within seven years thereafter. As the case of the applicant does not fall in the aforesaid category, it is the contention of the respondents that in terms of Para 8 of ER – 2008, no case is made out for a Post Discharge Medical Board.

10. We have heard learned counsel for the parties at length and find from the records that the applicant was found to be suffering from low back ache when he was subjected to medical examination on 14.12.2015 at Nagpur. He was advised to be transferred to Tertiary Care Center for further review and management by the neurosurgeon. However, the applicant refused the same and after eight days was discharged from the hospital on 22.12.2015 in medical category A4G1. Admittedly, when the applicant was released from service neither any disability was assessed nor claimed as he was in A4G1 medical category. It is submitted that the examination was approved by the Competent Authority

on 16.09.2016 and the applicant now in the year 2021 after more than 1886 days prays for conduct of a medical board for post discharge disability claim.

11. As far as Post Discharge Medical Board and claim is concerned, the same is governed by the provisions of Para 8 of ER – 2008 which we have reproduced hereinabove. The Medical Board under this category can only be granted in cases of such persons who were discharged from service without any disease and the disease manifested within seven years of retirement or discharge thereafter. The ailment may be recognized as attributable to service if on re-assessment under this category the disability is held to be a delayed manifestation of a pathological process set into motion by service conditions obtaining prior to discharge.

12. In the case of the applicant, the ailment was already detected at the time of applicant's discharge. The applicant was directed for further treatment and assessment. However, the applicant refused, took discharge and kept quiet for more than seven years right from 2015 up to 2021 and raised the claim for the first time after more than six years.

13. In our considered view, once the claim for post discharge medical claim is not permissible in view of the rules applicable, no directions can be issued contrary to rules to conduct a medical

board of the applicant. Clearly, he is not entitled to a Resurvey Medical Board (RSMB) as that is applicable only where a RMB has been held and there was a disability granted for a specified period. The cases relied upon by the applicant are all distinguishable on facts. In the cases in question, the medical board as per Para 8 was permissible and accordingly in the facts and circumstances of this case we see no reason to make any indulgence.

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

15. No order as to costs.

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

Pronounced in open Court on this 16th day of February, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN P.M. HARIZ]
MEMBER (A)

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