

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

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OA 893/2018 with MA 23/2020

Col Sujata Sirohi (Retd.) Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. K R Verma, Advocate
For Respondents : Mr. Anil Gautam, Sr. CGSC

CORAM

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

ORDER
06.02.2024

Vide our detailed order of even date we have dismissed the OA 893/2018. Learned counsel for the applicant makes an oral prayer for grant of leave to appeal in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007 to assail the order before the Hon'ble Supreme Court.

After hearing learned counsel for the applicant and on perusal of order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order to grant leave to appeal. Therefore, the prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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ORDER

MA 23/2020

This is an application filed on behalf of the respondents for condonation of delay of 74 days in filing the counter affidavit. In view of the reasons explained in MA and in the interest of justice, the MA 23/2020 is allowed and the delay in filing the counter affidavit is condoned.

1. The applicant vide the present O.A 893/2018 has made the following prayers:-

“(a) Direct respondents to treat the disabilities ID (i) FRACTURE ACROMION(RT), (ii) MINIMAL COGNITIVE IMPAIRMENT (AMENSTIC TYPE) and (iii) FRACTURE DISTAL ¼ ULNA(LT) compositely assesed 50% as attributable to or aggravated by military service and grant her disability element of pension including benefit of

broad banding/rounding off with effect from the date of his retirement. And/or

(b) Direct respondents to pay the due arrears of disability pension with interest @12% p.a. from the date of retirement with all the consequential benefits. And/or

(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."

2. During the course of submissions made on 09.10.2023, it was submitted on behalf of the applicant that the prayers made through the present OA are confined to seeking the grant of the disability element of pension in relation to the disabilities of Fracture Acromion (Rt) and Minimal Cognitive Impairment (Amnestic Type) and that the prayer made through the present OA seeking the disability element of pension in relation to disability of Fracture Distal ¼ Ulna(Lt) is not pressed.

3. The applicant Col Sujata Sirohi was commissioned in the Army Medical Corps on 27.12.1982 and retired from service on 30.09.2016 on attaining the age of superannuation. At the time of her retirement, the applicant was placed in Low Medical Category(LMC) S1H1A3P2E1 for the following disabilities:

“

Sl No	Disability	Attributable to service	Aggravated by Service	Disability element %	Composite assessment of disabilities	Net assessment qualifying disability pension

1.	FRACTURE ACROMION (RT)	-	-	15-19% for life	50% for life	To be decided by pension sanctioning authority
2.	MINIMAL COGNITIVE IMPAIRMENT (AMNESTIC TYPE)	NO	NO	20% for life		Nil for life
3.	FRACTURE DISTAL ¼ ULNA(LT)	NO	NO	15-19% for life		Nil for life

4. The competent authority after examining the case in the light of relevant rules and administrative/ medical provisions decided that of the disabilities (i) Fracture Acromion (Rt), (ii) Minimal Cognitive Impairment (Amnestic Type), (iii) Fracture Distal ¼ Ulna (Lt) from which the applicant was found to be suffering at the time of RMB, ID (i) did not fulfil the eligibility criteria for grant of disability pension, and ID (ii) & (iii) held to be neither attributable to nor aggravated by military service (NANA). Therefore, the claim for the disability pension was not approved vide respondent authorities letter dated 05.9.2017. Through the said rejection letter, the applicant was apprised that if she was not satisfied with the said decision, she may prefer an appeal to the ACFA within six months from the date of receipt of the said letter. The applicant however served a legal notice cum representation dated 17.10.2017 for consideration of her

disabilities as being attributable to / aggravated by military service. As per the averments made through the Counter Affidavit of the respondents vide Para-8 thereof, the said legal notice dated 17.10.2017 was treated as an appeal and had been pending before the ACFA as on 25.05.2018 as per the counter affidavit of the respondents dated 10.05.2019. The present OA having been instituted on 23.04.2018 after a period of six months of the representation dated 17.10.2017 sent on behalf of the applicant not disposed of by the respondents is thus taken up for consideration in terms of Section-21(2)(b) of the AFT Act, 2007.

CONTENTIONS OF THE PARTIES

5. The applicant submits that she joined the Indian Army on 27.12.1982 in a fit medical category and retired from service w.e.f. 30.09.2016 in low medical category. Inter alia, the applicant submits that she accidentally slipped and fell at her Govt Accommodation in Dec 2015 and was downgraded to low medical category for the injury diagnosed as Fracture Distal $\frac{1}{4}$ Ulna(Lt) qua the said injury sustained by the applicant, it has already been observed herein above, the prayer made in relation to grant of disability element for the same is not pressed on behalf of the applicant.

6. Inter alia, the applicant submits that whilst she was climbing the staircase in her office complex in a hurry to attend a meeting, her saree got stuck in her shoe on 21.07.2016 and she fell down and was admitted to the Military Hospital at Meerut Cantt. The applicant also submits that due to injury on her head, the disease of SYMPTOMATIC WITH FORGETFULNESS became aggravated from which she was suffering for 05 years whilst she was posted in the field area and which was aggravated by military service. The applicant submits that she was diagnosed with the ID-(i) FRACTURE ACROMION RIGHT and ID (ii) MINIMAL CONGNITIVE IMPAIRMENT(AMNESTIC TYPE) and was downgraded to low medical category S1H1A1P2E1. The applicant submits that the disabilities that she suffers from are attributable to and aggravated by military service and she seeks the grant of the disability element of pension in relation to the said two disabilities of FRACTURE ACROMION RIGHT and MINIMAL CONGNITIVE IMPAIRMENT(AMNESTIC TYPE) which were assessed by the RMB dated 28.09.2016 with the percentage of disablement as under:-

6. What is present degree of disease/disablement as compared with a healthy person of the same age and sex?(Percentage will be expressed as Nil or as follows) 5%,10%,15% and thereafter in multiples of ten from 20% to 100%

Disease/ Disability (As numbered in Para 1 Part VI)	Percentage of disablement	Composite assessment for all disabilities (Max 100%) with duration	Disability Percentage Qualifying for Disability Pension with duration	Net Assessment Qualifying for disability Pension (Max 100%) with duration
FRACTURE ACROMION (RT)	15-19% for life	50% for life	To be decided by pension sanctioning authority	To be decided by pension sanctioning authority
MINIMAL CONGNITIVE IMPAIRMENT (AMNESTIC TYPE)	20% for life		Nil for life	Nil for life
FRACTURE DISTAL ¼ ULNA(LT) (Not pressed)	15-19% for life		Nil for life	

Note: Assessment of disabilities not mentioned in the Guide to Medical Officers (Mil Pens) is to be done on the basis of best available medical evidence.

7. The opinion of the medical board in Part-V of the RMB as under:-

**PART V
OPINION OF THE MEDICAL BOARD**

1. Causal Relationship of the Disability with Service Conditions or otherwise.

Disability	Attributable to service(Y/N)	Aggravated by service(Y/N)	Not connected with service(Y/N)	Reason/Cause/Specific condition and period in service
1. FRACTURE ACROMION (RT)	--	--	---	To be decided by pension sanctioning authority

2. MINIMAL CONGNITIVE IMPAIRMENT (AMNESTIC TYPE)	NO	NO	YES	Chronic degenerative disease of CNS not related to service vide Para 20 GMO 2008
3. FRACTURE DISTAL ¼ ULNA(LT)	NO	NO	YES	Onset during Leave vide IAFY 2006 dt 13 May 2016
Note. A disability "Not Connected with service" would be neither Attributable nor Aggravated by service. (This is in accordance with instructions contained in "Guide to Medical Officers(Mil Pension)-2002)				

8. The respondents reiterate that there is no infirmity in the RMB having opined the two disabilities of Fracture Acromion Right and Minimal Congnitive Impairment(Amneastic Type) as being neither attributable to nor aggravated by military service and further submits that vide the impugned letter no. MR-05805F/MPRS(O)/ 484/2016 /AG /PS-4(IMP-I) dated 05.09.2017 even in relation to the disability of FRACTURE ACROMION (RT) which had been opined that the disability did not fulfill the eligibility condition for grant of disability pension(apparently as it been assessed the percentage of disablement of 15-19%) for life. Inter alia, the respondents place reliance on Regulation-81 of the Pension Regulations for the Army, 2008(Part-I) to contend to the effect that for the grant of disability pension, the two criteria are required to be fulfilled simultaneously are:-

**“(a) Disability must either be attributable to or aggravated by service; AND
(b) Degree of disablement should be assessed at 20% or more.”**

and in as much as the said criteria had not been fulfilled in the instant case, the applicant was not entitled to the grant of disability element of pension.

9. The respondents further place reliance on the verdict of the Hon'ble Supreme Court in *UOI Vs Damodaran AV*, SLP(C) no. 23727/2008 contend to the effect that the views of the Medical authorities have to be given due weight, value and credence and likewise placed reliance on the verdict of the Hon'ble High Court of Kerala in WA No. 1071/1997(OP No. 18002 of 1993) in *UOI Vs. Sreekumar P* and on the verdict of the Hon'ble Supreme Court in *Controller of Defence Accounts(Pension) & Ors. Vs. Balachandra Nair*, AIR 2005 SC 4391, to contend to similar effect.

ANALYSIS

10. As regards the injury of Fracture Acromion (Rt) assessed with a percentage of disablement @15-19% for life, in as much as the disability has been assessed with a percentage of assessment less than @20%, it does not fulfill the eligibility condition required by requisite for applicability of Regulation-81 of the Pension Regulations

for the Army,2008(Part-I) and thus in terms of the verdict of the Hon'ble Supreme Court in *UOI & Ors. Vs. Wing Commandar S.P. Rathore* in Civil appeal no. 10870/2018, the applicant is not entitled to the grant of disability pension in relation thereto.

11. As regards, the disability of Minimal Cognitive Impairment (Amnestic Type) as per Summary and Opinion dated 29.08.2016, in the RMB proceedings dated 10.09.2016, it is reflected therein to the effect:-

“(c) Relevant History - This 57 years old serving AM (Officer, a smoker(:10-12 cig/day), non drinker sustained an accidental fall on 21/7 /16 while climbing down the staircase when her saree got stuck in her shoe. She had past h/o sustaining, a fall in Dec 2015 when she had an accidental slip and fall at home and sustained fracture left ulna. She also gave a history of being symptomatic with forgetfulness for last 05 years. She had noticed slowing while walking for last 05 years in the form that she preferred to walk slow but she could walk fast and run if required Forgetfulness was progressive and involved recent memory. She had to use a diary for last two years to keep a track of her day to day job and other things. No h/o involvement of any other cognitive domain except for forgetfulness. She could manage her accounts well and plan things well. No h/o any urinary symptoms. No ho weakness or reduced sensation in any limb. No h/o headache, loss of consciousness, seizures. No h/o gait instability. She was evaluated initially at MH Meerut where her MRI Brain revealed evidence of hydrocephalus. She was then referred to AH (R and R). She was evaluated.

*(d) Exam: Ave built and nourished, P = 80/min, regular BP = 110/70 mmHg, Afebrile, RR = 16/min, No pallor, edema, Lymphadenopathy
CVS/Respi/P/A-NAD*

Neurological Exam: MMSE 23/30, (Recall-0, orientation to time-3), Cognitive testing- Frontal lobe Sequencing, set shifting. fluency, verbal similarities Norml), Parietal lobe- Normal, Temporal lobe- Deficit in early learning ability. Occipetal lobe- normal. Speech- normal, Pupils Normal size reacting to light No nystagmus/RAPD. Fundus Normal. No cranial nerve deficit. Motor Bulk-Normal, Tone Normal, Deep Tendon Jerks - Normal. Sensory Exam- Normal cerebellar or meningeal signs. No extrapyramidal signs.

(e) Investigations:

Hematological and Biochemical Profile:

Hb - 11.6g/dL, TLC - 6540/cmm, P61L20M9E8, Plt - 1.95lac/cmm, Na -133, K-4.2meq /dL, Bil- 0.4 mg/dL, AST/ALT-79/41 U/L, BUN - 4mg / dL, Cr - 0.75 mg/dL. Sugar F-76, PP - 88mg / dL

CSF-Cells-02, Proteins- 29.7mg/dL Glucose- 56mg/dL. No org detected on staining, Fungal stain- Negative.

Thyroid profile- normal. Vitamin B 12-434 pg/mL.

MRI Brajn suggestive of communicating hydrocephalus with cortical atrophy.

Her images were discussed in neuroradiology meet and a cof tap test was carried out. Opening pressure was Normal. No improvement in MMSE or in 25 ft walk time at 06, 24, 72 h.

She was diagnosed as Mild cognitive impairment(Amnestic type) and started on Donepezil and given B12. She was sent on sick leave.

Now reported for review. Symptomatically, she is better. Has improvement in MMSE score. Present MMSE- 26/30 (Recall- 0, orientation9). She needs to be observed in LMC.

DIAGNOSIS- Mild Cognitive Impairment (Amnestic type)"

12. Vide the Clinical Assessment in Part-II by the Senior Advisor(Ortho), AHR&R dated 01.09.2010 it was stated to the effect:-

“

CLINICAL ASSESMENT

13. History

(j) Location of onset: Peace, due to fall while going to office

(k) Date & Time of onset: 20/7 / 16 in the morning

(l) Relevant history: patient is admitted in AHR&R for suspected hydrocephalus, and being seen by neurologist. Patient gives history of recurrent falls and during one such fall in her office on 20/7 / 16 sustained injury to right shoulder region. Now Reported for review after expiry of sick leave. During the sick leave she had a fall on the right shoulder again. Presently complains of pain Rt shoulder on movements.

14. Physical Examination Findings: Rt shoulder: No swelling, mild local tenderness over shoulder region. Movements at right shoulder terminally painful and restricted. No distal neurovascular deficit.

15. Investigation reports: X Ray Rt shoulder and CT scan Rt Shoulder shows fracture of acromion process of scapula displaced, shoulder joint reduced.

16. Diagnosis: Fracture Acromion right”

13. The statement of the applicant dated 03.09.2016 that was recorded during the course of RMB proceedings is to the effect:-

“STATEMENT OF MR-05805F COL SUJATA SIROHI, COL MED, 9 INF DIV

1. I, MR-05805F Col Sujata Sirohi, Col Med am posted to HQ 6, Inf Div (Med Branch) and am retiring from service on attaining the age of superannuation, on 30 Sep 2016 (AN) On 20 Jul 2016 at 1130h, while coming to the office, I was climbing the office staircase when I stumbled on the broken portion of the stairs and I fell down on my right shoulder and also hit my head on the floor. As a result, there was pain in my right shoulder I reported to MH Meerut and

subsequently I was transferred to AH (R&R) Delhi Cantt on 23 Jul 2016 for further management I was diagnosed 'FRACTURE ACROMION 'RIGHT' and MINIMAL GONGNITIVE IMPAIRMENT (AMNESTIC TYPE). I was sent on sick leave for 4 weeks wel 01 Aug 2016 to 28 Aug 2016.

2. On termination of sick leave I reported to AH(R&R) on 28 Aug 2016(AN) and was subsequently transferred to MH Meerut on 03 Sep 2016 in med cat A2(P) and P2(P) for diagnosis 'FRACTURE ACROMION AND MINIMAL COGNITIVE IMPAIRMENT (AMNESTIC TYPE)' for holding Medical Board."

14. It is apparent through the Summary and opinion dated 29.08.2016 qua the applicant that the applicant sustained an accidental fall on 21.07.2016 whilst climbing down the staircase and her saree was stuck in the shoe and as per the clinical assessment Part-II recorded by the Senior Advisor(ORTHO), she was admitted to AH R&R and was suspected with hydrocephalus and on being seen by neurologist, the applicant had given history of recurrent falls and during one such fall in her office on 20.07.2016, she sustained an injury to right shoulder region. As per the statement dated 03.09.2016 of the applicant on 20.07.2016 whilst coming to the office she was climbing to the office staircase and stumbled on the broken portion of the stairs and fell down on her right shoulder and also hit her head on the floor and as a result thereof, there was pain in her right shoulder and reported to MH, Meerut and subsequently transferred to AHR&R, Delhi Cantt, on 23.07.2016 for further management and was

diagnosed with 'FRACTURE ACROMION RIGHT' and 'MINIMAL CONGNITIVE IMPAIRMENT(AMNESTIC TYPE) and was sent on sick leave for four weeks w.e.f. 01.08.2016 to 28.08.2016. The applicant has stated that on termination of her sick leave, she reported to AH(R&R) on 28.08.2016(AN) and was subsequently transferred to MH Meerut on 03.09.2016 in med cat A2(P) and P2(P) for diagnosis for 'FRACTURE ACROMION RIGHT' and 'MINIMAL CONGNITIVE IMPAIRMENT(AMNESTIC TYPE) ' for holding Medical Board. On behalf of the applicant has been submitted the copy of the letter no. 6107/1/M-1 dated 03.08.2017 received by her from the Headquarters, 9 Infantry Division to indicate to the effect:-

"3. The offr had undergone following med bds at MH Meerut :-

(a) 1st RMB held on 04 Jun 16 for Diag: FRACTURE DISTAL 1/4" ULNA (LT)

(b) Medical bd held on 03 Sep 16 for Diag:

(i) FRACTURE ACROMION (RT)

(ii) MINIMAL CONGNITIVE IMPAIRMENT (AMNESTIC TYPE)

(c) 2nd RMB held on 28 Sep 16 for Diag:

(i) FRACTURE ACROMION (RT)

(ii) MINIMAL CONGNITIVE IMPAIRMENT (AMNESTIC TYPE)

4. As the offr was admitted in MH Meerut and tfr to AH (R&R) Delhi, erroneously the Injury report was not initiated hence Court of Inquiry could not to be held.

5. The offr was discharged from AH (R&R) on 02 Sep 16 and tfr to MH Meerut for holding med bd, which was held on 03 Sep 16 and subsequently RMB was held on 28 Sep 16 and offr superannuated on 30 Sep 16 (AN).

6. As per the provisions of letter under ref para 1(c) the offr has to undergo fresh med bd for Post Discharge Claim (PDC), hence you are requested to apply to the hospital conducting the med bd for PDC i.e. Base Hosp, Delhi Cantt."

In as much as, the injury report has not been initiated erroneously according to the respondents themselves as communicated to the applicant vide letter dated 03.08.2017, the statement dated 03.09.2016 of the applicant on 20.07.2016 whilst coming to the office she was climbing to the office staircase and stumbled on the broken portion of the stairs and fell down on her right shoulder and also hit her head on the floor would have to be accepted and thus the injury sustained by the applicant on her head would have to be held to be attributable to military service. However, the Summary and Opinion dated 29.08.2016 indicates that MRI of her brain when she was evaluated initially at MH Meerut showed evidence of hydrocephalus. The cause of Hydrocephalus is excess fluid in the brain as reflected by the website of NHS- <https://www.nhs.uk/conditions/hydrocephalus/causes>, and the same is often caused by an illness or injury that affects the brain. As per the website of the AANS said that hydrocephalus can result into unsteady walk or gait, sudden falls which is indicated to be present in the relevant history of the applicant in Part-2 of the Summary and Opinion dated 29.08.2016, even if the injury was in the

course of service, the disability of MINIMAL CONGNITIVE IMPAIRMENT (AMNESTIC TYPE) as reflected through the Summary & Opinion dated 29.08.2016 is indicated to have had its onset on 20.07.2016 but the same states that the applicant had given a history of being symptomatic with forgetfulness for last five years.

15. It is apparent thus that the onset of MINIMAL CONGNITIVE IMPAIRMENT (AMNESTIC TYPE) in the instant case was not related to the fall of the applicant on 20.07.2016 and was apparently in existence from five years before as per the statement of the applicant herself. Thus, the disability of MINIMAL CONGNITIVE IMPAIRMENT (AMNESTIC TYPE) in the instant case cannot be held to be attributable to military service nor can it be held to be aggravated thereby.

16. The OA 893/2018 is thus dismissed.

Pronounced in the open Court on the 6 day of February, 2024.

~~[REAR ADMIRAL DHIREN VIG]~~
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/TS/