

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

78.

OA 905/2018

Ex Sub Ravinder Singh Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. V S Kadian, Advocate
For Respondents : Ms. Barkha Babber, Advocate

CORAM

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

ORDER
18.04.2024

OA 905/2018

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

“(a) quash and set aside the impugned letter No. P/JC-372046/DP-4/NER dated 08.03.2018. And/or

(b) direct respondents to conduct Re-Survey/Re-assessment Medical Board and to assess percentage of the disability of the applicant and accordingly be granted disability element of pension with the benefits of broad banding as applicable. 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. The applicant was enrolled in the Indian Army on 23.03.1987 and was discharged on 31.03.2017. During the service, in the year 2011, the applicant sustained an injury and admitted in Military Hospital and was diagnosed with the disease, namely, **‘VARICOSE VEINS RT LOWER LIMB’** and was operated for the same. The applicant was then downgraded to Low Medical Category S1H1A1P3E1 on 13.10.2011 and remained under medication and treatment for the said disability. The medical category of the applicant was upgraded by the Re-categorisation Board on 02.08.2012 to S1H1A1P2E1. Thereafter, the disability of the applicant was again re-categorised by the Medical Board on 23.01.2013 and his medical category was upgraded to SHAPE-1 and he remained in the same medical category till his retirement, i.e., 31.03.2017. According to the applicant, in August 2016, the applicant suffered severe pain and was admitted to 92 Base Hospital for the aforementioned disease. After investigation and examination, the applicant was transferred to Army Hospital (R&R) with a remark “recurrence of symptoms of dull aching pain (Rt) low limb” and after thorough examination and treatment, he was

granted four weeks sick leave with the remarks that Varicosities present in right leg had managed conservatively with compression bandage and analgesics, recovery uneventful, requires convalescence at home. On re-joining from sick leave at Army Hospital, the applicant was discharged with the remarks that no varicosities seen and no ulcer/pigmentation and was recommended to be FIT for discharge to perform military duties excusing his PPG/BPET for three months. Although, the applicant was found suffering from the disease since 2011, was downgraded to low medical category and the disease again recurred due to military service, facing the disease of the permanent nature and after discharge from service, the applicant approached and requested various Army Authorities to conduct his Re-Survey Medical Board and assess his disability correctly, however, he was given mere assurance and nothing was done. Faced with this situation, the applicant then served a Legal Notice-cum-Representation dated 13.08.2017 for conduct of Re-Survey Medical Board. However, the same got rejected by The Records Signals vide their impugned letter No.P/JC-372046/DP-4/NER dated 08.03.2018 stating that there is no provision to carry out Re-Medical Board/Review

Medical Board for cases, where an individual was discharged from service in the medical category SHAPE-1. Aggrieved by the said rejection, the applicant has approached this Tribunal.

3. The learned counsel for the applicant submitted that the deteriorating health condition of the applicant and facing difficulty in his day to day job and unable to serve in the Army with full efficiency due to the disability VARICOSE VEINS RT LOWER LIMB, the Release Medical Board upgraded his medical category to SHAPE-1 and ignored these facts at the time of his discharge from service. The learned counsel referred to Paras 6 and 7 of Govt. of India, MoD letter No. 1(2)/97/D(Pen-C) dated 07.02.2001 for conduct of Re-Survey Medical Board of the applicant and to assess his current disability percentage and grant him disability element of pension. Further, the learned counsel referred to Para 86 of the Pension Regulations for the Army, 2008, to state that a person who found to be suffering from a disease which is attributable to military service within a period of ten years from retirement except pre-mature retiree are eligible for re-survey medical board and grant of disability element of pension. As per Entitlement Rules also the disability which manifest after retirement, personnel can ask for Re-

survey/Re-assessment Medical Board. In support of his contentions, the learned counsel placed reliance on the orders of this Tribunal.

4. *Per contra*, the learned counsel for the respondents justified the action of the respondents and submitted that the applicant was under treatment for 'VARICOSE VEINS RT LOWER LIMB' and was placed in different medical categories from time to time and finally, the medical authority, after due examination, found the applicant fit to be released in medical category, SHAPE-1. The learned counsel further submitted that as per Para 53 (a) of the Pension Regulations for the Army 2008 (Part-1), an individual released/retired/discharged on completion of term 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. Therefore, in the present case, the applicant was discharged from service in the medical

category of SHAPE-1 and due to policy constraints his Review Medical Board has not been carried out.

5. We have heard the learned counsel for the parties at length and gone through the records produced before us.

6. The applicant has made a simple prayer for conduct of the RSMB for re-assessment of the disability, i.e., VARICOSE VEINS RT LOWER LIMB, which he claims to be suffering from. Along with the present OA, the applicant has annexed certain medical documents at Annexure A-3 (Colly), which show that the applicant was under regular treatment for VARICOSE VEINS RT LOWER LIMB.

7. The applicant was discharged from service on 31.03.2017 and he sent the legal notice requesting for conduct of the RSMB on 13.08.2017, thus the applicant is within the limitation period of seven years within which the RSMB can be conducted in view of Para 8 (a) of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008, which reads as under :

“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."

Therefore, we are of the considered view that the applicant is entitled to be examined by the medical board through the conduct of the RSMB to re-assess his disability of VARICOSE VEINS RT LOWER LIMB.

8. In view of the above, the OA 905/2018 is allowed and we direct the respondents to conduct the Re-Survey Medical Board of the applicant within a period of two months from the date of the receipt of a copy of this order so as to re-assess the disability and the percentage of the disability, i.e., VARICOSE VEINS RT LOWER LIMB and the decision of the Re-Survey Medical Board be communicated to the applicant accordingly.

9. No order as to costs.


[JUSTICE RAJENDRA MENON]
CHAIRPERSON


[REAR ADMIRAL SHIREN VIG]
MEMBER (A)

1. Vide our orders of even date, we have allowed the OA. 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.

2. 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


[REAR ADMIRAL DHIREN VIGN]
MEMBER (A)

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