

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

OA No. 925/2018

Ex Sep Ashok Kumar Gurjar

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Virender Singh Kadian, Advocate

For Respondents : Mr. Anil Gautam, Sr. CGSC

CORAM :

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

ORDER

O.A. 925/2018

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

“

a) Quash and set aside the impugned letter No. 3180919/DP/RA/JR dated 30.01.2018

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- b) Direct the respondents to grant disability element of pension to the applicant @50% by granting benefits of broad banding wef 03.05.2005**
- c) Direct respondents to pay the due arrears of disability element of pension with interest @12% p.a. from the date 03.05.2005**
- d) Any other relief which the Ho'ble Tribunal may deem fit and proper in the facts and circumstances of this case along with cost of the applicant in favour of the applicant. ”**

BRIEF FACTS

2. The applicant was enrolled in the Indian Army on 09.06.1987 and was discharged from service on 28.02.1994 under Army Rule 13 (3) item III (v). The applicant suffered from the disability namely “Post Traumatic Syndrome”, which was assessed, by the release medical board dated 15.12.1993, @20% for two years and considered it to be attributable to military service.

3. The claim for the grant of the disability pension was considered and the competent authority granted disability element of pension, apart from service pension, @ 20% for two

years wef 01.03.1994 to 07.01.1996 vide PPO No. D/001442/94(Army) dated 29.09.1994. Thereafter, the applicant undergone the Re-survey medical board dated 19.09.1995 which assessed the disability of the applicant @20% for two years wef 08.01.1996 to 18.09.1997. subsequently, another RSMB was conducted dated 26.05.1997 which assessed the disability of the applicant @20% for ten years. Thereafter, the applicant undergone RSMB for the third time on 03.05.2000 which assessed the disability of the applicant @20% for five years wef 26.05.2000 to 02.05.2005. The respondents herein conducted another RSMB dated 06.09.2003 which assessed the disability of the applicant @11-14% for life wef 03.05.2005. The applicant, therefore, was granted disability element of pension @20% only upto 02.05.2005 based on the assessments of the RSMB.

4. The claim for the grant of disability element of pension was considered by the competent authority and upheld the decision of the RSMB dated 06.09.2003 and rejected the claim of the applicant for the grant of disability element vide Records JAT letter No. 3180919/DP/RA/JR dated 10.11.2003 with an advice to the applicant to prefer an appeal against the said

rejection, aggrieved of which, the applicant has filed the instant O.A. and thus, in the interest of justice, we take up the same for consideration.

CONTENTIONS OF THE PARTIES

5. The learned counsel for the applicant submitted that there was no note of the existence of any conditions which could have suggested existence of the said disability at the time of recruitment.

6. The learned counsel for the applicant submitted that the applicant suffered from the disability namely "Post Traumatic Syndrome" while performance of military duty, which was assessed, by the medical board @ 20% for two years wef 01.03.1994 to 07.01.1996 vide PPO No. D/001442/94(Army) dated 29.09.1994. Thereafter, the applicant underwent the Re-survey medical board dated 19.09.1995 which assessed the disability of the applicant @20% for two years wef 08.01.1996 to 18.09.1997. Subsequently, another RSMB was conducted dated 26.05.1997 which assessed the disability of the applicant @20% for ten years. Thereafter, the applicant underwent RSMB for the third time on

03.05.2000 which assessed the disability of the applicant @20% for five years wef 26.05.2000 to 02.05.2005. The respondents thereafter conducted another RSMB dated 06.09.2003 which assessed the disability of the applicant @11-14% for life wef 03.05.2005.

7. The learned counsel of the applicant submitted that the applicant sustained the said injury on patrol duty in OP Rakshak as per the injury report dated 08.05.1992 and Court of Inquiry dated 11.07.1992, thus, the Medical board considered the said disability as attributable to military service as evident from the medical board proceedings.

8. The learned counsel for the applicant submitted that the medical board has erred in reducing the percentage of assessment of the disability from 20% to 11-14 %.

9. The learned counsel for the applicant placed reliance on the verdict of the Hon'ble Supreme Court in **Rajbir Singh Vs. Union of India & Ors. (2015 (2) SCALE 371)**. Reliance is also placed on the verdict of the Hon'ble Supreme Court in **Dharamvir Singh Vs. Union of India & Ors. (Civil Appeal No. 4949 of 2013)** wherein it was observed in para 28, which reads as under :-

"28. A conjoint reading of various provisions, reproduced above, makes it clear that:

(i) Disability pension to be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service in nonbattle casualty and is assessed at 20% or over. The question whether a disability is attributable or aggravated by military service to be determined under "Entitlement Rules for Casualty Pensionary Awards, 1982" of AppendixII (Regulation 173).

(ii) A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service. [Rule 5 r/w Rule 14(b)].

(iii) Onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally. (Rule 9).

(iv) If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service. [Rule 14(c)].

(v) If no note of any disability or disease was made at the time of individual's acceptance for military service, a

disease which has led to an individual's discharge or death will be deemed to have arisen in service. [14(b)].

(vi) If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons. [14(b)]; and

(vii) It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the "Guide to Medical (Military Pension), 2002 - "Entitlement : General Principles", including paragraph 7,8 and 9 as referred to above."

to contend to the effect, that if there is no note or record at the time of entrance, in the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service.

10. Per Contra, the learned counsel for the respondents submitted that the applicant suffered with the said disability which was assessed by the Release Medical Board, dated 15.12.1993, @20% for two years and considered it as attributable to service. However, on subsequent review, the

RSMB dated 06.09.2003 assessed the disability of the applicant @11014% for life.

11. The learned counsel for the respondents relied upon Rule 173 of the Pension Regulation for Army, 1961 (Part-I) which stipulates that, the primary condition for the grant of disability pension is granted when the personnel is invalided out from service on account of the disability being attributable to or aggravated by military service and is assessed at 20% or more. The learned counsel submitted that since the disability does not fulfil one of the twin conditions stipulated in the rules, hence the disability 'Post Traumatic Syndrome' was rightly assessed as NANA.

ANALYSIS

12. On the careful perusal of the material available on record and also the submissions made on behalf of the parties, we are of the view that it is not in dispute that the competent authority granted disability element of pension, apart from service pension, @ 20% for two years wef 01.03.1994 to

07.01.1996. It is pertinent to mention that another RSMB was conducted on 26.05.1997 which assessed the disability of the applicant @20% for ten years. Thereafter, the applicant underwent RSMB for the third time on 03.05.2000 which assessed the disability of the applicant @20% for five years wef 26.05.2000 to 02.05.2005. The respondents thereafter conducted another RSMB on 06.09.2003 which assessed the disability of the applicant @11-14% for life wef 03.05.2005. The applicant, therefore, was in receipt of disability element of pension @20% only upto 02.05.2005 based on the assessments of the RSMB.

13. The minimum qualifying criteria for the grant of disability pension is 20% in terms of Para 173 of the Pension Regulation for the Army, 1961. In the instant case, it is not in dispute that the RSMB dated 06.09.2003 assessed the disability at 11-14% (less than 20%) for life, and considered it to be attributable to military service.

14. It is pertinent to mention herein that the although the disability of the applicant was considered to be attributable to

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military service, but RSMB dated 06.09.2003 assessed the disability of the applicant @11-14% for life.

15. In the instant case the condition of the applicant had improved, as is evident from the medical board proceeding dated 06.09.2003, which led to reduction in percentage of assessment for the said disability. Para 6 (a) of the Re-Survey Medical Board dated 06.09.2003 reads as under:-

*“6. variation in disability (ies) since previous board
(a) has the condition of the pensionable disability (ies)
since the last board improved or deteriorated. –
IMPROVED”*

Therefore, it is safe to say that since the disability of the applicant had improved, the RSMB dated 06.09.2003 has rightly assessed the disability of the applicant and reduced it to 11-14% for life. Thus, we are not inclined to grant disability element of pension in favour of the applicant since Rule 173 of the Pension Regulation for Army, 1961 (Part-I) stipulates that, the primary condition for the grant of disability pension is when the personnel is invalided out from service on account of the disability being attributable to or aggravated by military service

and is assessed at 20% or more. In the instant case, since the disability of the applicant was reassessed by the RSMB conducted on 06.09.2003 @11-14% which is below 20%, the applicant herein does not fulfil the conditions required for the grant of disability element of pension.

CONCLUSION

16. We, thus, do not find any merit in the case, therefore we hold that OA 925/2018 is thus dismissed.

Pronounced in the open Court on this day of 16 May, 2024.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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