

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

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OA 943/2019 with MA 1599/2019

Wg Cdr BS Bakshi (Retd.)

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Mr. S S Pandey, Advocate

For Respondents : Mr. Harish V Shankar, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)

HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
02.01.2024

Vide our detailed order of even date; we have allowed the OA 943/2019. Learned counsel for the respondents 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 respondents and on perusal of our 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, prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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Wg Cdr B S Bakshi(Retd)
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.... Applicant
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For Applicant : Ms Shruti Rawat, proxy for Mr.SS Pandey,
Advocate
For Respondents : Mr. Harish V Shankar, Advocate

CORAM

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

ORDER

The applicant through the present OA makes the following prayers:

- a) *"Call for the records as well as orders including the order dated 13.11.2017 & 18.03.2015 has been passed denying the disability pension to the applicant and thereafter quash the same.*
- b) *Direct respondents to pay disability pension to the applicant @20% as assessed by the RMB and later endorsed by the reassessment medical board to be enhanced to 50% after applying the principles of broad banding w.e.f. 14.02.1992 alongwith arrears with interest @12% per annum.*
- c) *Issue such other order/direction as may be deemed appropriate in the facts and circumstances of the case."*

2. The applicant was commissioned in the Indian Air Force on 22.06.1963 and was removed from the services of the Indian Air Force on 14.02.1992 vide letter No. Air HQ/23407/11213/PB/257(1085)/D(Air-III) dated 13.12.1992 under Section 19 of the Air Force Act, 1950 read with Regulation 16 of the Pension Regulation of the Air Force 1961(Part-I).

3. The applicant as Captain of the aircraft AN-32 landed at Jamnagar from a foreign trip alongwith two other aircraft. The Custom Authorities confiscated certain dutiable goods from the aircraft and the applicant was removed from service w.e.f. 14.02.1992 and was paid 90% of the pensionary benefits in terms of relevant regulations.

4. The applicant submits that he sustained an Anterior Wedge Compression Fracture C-5 Vertebra as a result of ejection from GNAT aircraft from a height of 25,000 ft on 23.12.1965 and subsequently was placed in Low Medical Category for a prolonged period. The applicant submits that he had been removed from service w.e.f. 14.02.1992 for no fault of his in as much as the only allegations were that someone had been able to bring undeclared household goods worth a few thousands in the aircraft captained by him for which the custom duty was not paid only on the sole ground that the aircraft was captained by him though others who were even responsible for getting prohibited items were given censure and the case was closed.

5. The applicant was subjected to Release Medical Board at the Air Force Station, New Delhi on 04.03.1992 which assessed the disability of the applicant @20% as being attributable to service based on the opinion of Lt. Col. JP Ganguli, Surgical Specialist, AHDC. Subsequently, however on 16.03.1992, the said medical disability was re-assessed and reduced to 11-14% though it was opined to be attributable to military service. The applicant submits that due to his being disheartened by the reduction of his pension by 10% vide order dated 29.09.1992 and as he was also denied Leave Encashment, he was so disheartened that he did not question the wrongful actions of causing grave injustice to him and submits that he is however, entitled to the disability element of pension and filed OA 287/2011 questioning the reduction of pension, denial of leave encashment seeking grant of the disability element of pension. The applicant submits that vide order dated 29.09.2011, as regards the challenge to the order dated 29.09.1992 vide which the applicant's pension was reduced by 10% and he was sanctioned only 90% of the pensionary benefits payable to him, the challenge thereto was held to be extremely belated and thus consequently should not be granted. As regards the prayer made by the applicant seeking leave encashment due to him, the same was directed to be paid to the applicant forthwith. As regards the grant of disability element of pension vide order dated 14.09.2011 in OA 287/2011, it was observed to the effect:

"The earlier Medical Board assessed his disability @20%, however, same Medical Board subsequently corrected it to 11-14% disability pension. Therefore, he is not entitled to, in case, he makes any fresh application for re-assessment of disability, it will be open for him to do so and the authorities may take appropriate action."

6. The applicant filed a Writ Petition 810 of 2012 against the disposal of the OA No.287/2011 in relation to non-enhancement of his pensionary benefits which was however, dismissed as being infructuous as the exact amount of pensionary benefits had already been recovered from him. The re-assessment of the applicant's disability was considered by the Re-Assessment Medical Board in terms of order dated 14.09.2011 in OA 287/2011 and the Re-Assessment Medical Board proceedings were approved on 12.09.2013 which assessed the disability of the applicant @20% for life from the date of the said medical board in relation to the disability of Anterior Wedge Compression Fracture C-5(Old V-67) which had also been opined on 04.04.2013 as being attributable to military service. The Re-assessment Medical Board in Part-I thereof also indicated in response to Question No.6 that the condition of the disability had deteriorated from the last Board as under:

"6. Variation in disability(ies) since previous board.

(a) Has the condition improved or deteriorated since the last board? **Deteriorated"**

The Summary of Opinion of the case given by the Brig A.K. Sharma, Consultant(Surgery & Neurosurgery) Army Hospital(R&R) Delhi Cantt. on 18.07.2013 forming part of the Re-assessment Medical Board was to the effect:

"Narrative:

He is an old case of Anterior Wedge Compression Fracture CV-5 for Review Medical Board.

He sustained a fall following an ejection from a Gnat aircraft on 23.12.1965. Following the fall he complained of severe neck pain but there was no pain or numbness in the limbs. He was evaluated clinically and radiologically and he needed cervical immobilization in a POP jacket. Later he was observed in low medical category and was released from service in medical category A2G2(permanent) in 1992."

The assessment of disablement put forth in the said Re-assessment Medical Board proceedings dated 02.08.2013 as approved on 20.09.2013 is as under:

“7. (a) Assessment of disablement.

Disabilities	Whole disablement		Part(disablement) due to non- service factors	Worsening due to natural progress of the disability	Net assessment properly referable to service	Duration of assessment
	Separate assessment	Combined assessment				
ANTERIOR WEDGE COMPRESSION FRACTURE c-5	20%(Twenty percent) continues to have stiffness & pain in neck. No neurological deficit	-	-	1-5%	20%(twenty percent) from the date of this medical board. Assessment at the time of RMB(last medical board was permanent. Hence, Interim period is not applicable.	For life

”

7. It is thus un-refutedly brought from the records that the disability that the applicant suffered from was attributable to military service and that w.e.f. from the date of the Re-assessment Medical Board dated 02.08.2013 and approved on 12.09.2013 he was assessed to be suffering with a disablement @20% for life which Re-assessment Medical Board categorically stated that the previous Medical Board dated 04.03.1992 had assessed the disability as permanent.

8. The only reason as to why the respondents have not granted the disability element of pension is as per Para 2.3 of the Counter Affidavit of the respondents which states to the effect:

“2.3. That as per MoD/D(Pen/Policy), there is no provision for the grant of disability element of pension to personnel who are removed/dismissed from Air Force services. In view of the above, the officer is not entitled to grant of disability

pension. A copy of the Pension Regulations and clarification from the PCDA is Annexure R-2.”

Reliance was placed on behalf of the applicant on Para 16(a), of the Chapter II- Commissioned Officers Pension Regulation Air Force Part-I, 1961 which reads to the effect:

“16.(a) When an officer who has to his credit the minimum period of qualifying service required to earn a pension, is cashiered or dismissed or removed from the service, his pension may, at the discretion of the President, be either forfeited or be granted at a rate not exceeding that for which he would have otherwise qualified, had he retired on the same date.

(b) When an officer who has to his credit the minimum period of qualifying service required to earn a pension is called upon to retire or to resign, or in the event of his refusing to do so is retired from or gazetted out of the service, he may at the discretion of the President be granted a pension at a rate not exceeding that for which he would have otherwise qualified, had he retired on the same date in the normal manner.”

9. There is no provision that the respondents have put forth through which the Pension Regulation for the Air Force 1961 Part-I to contend that the disability pension cannot be granted to the applicant whose disability was admittedly attributable to service in the Indian Air Force and the percentage of disablement as has been assessed @20% w.e.f. from the date of the Re-assessment Medical Board i.e. 02.08.2013. That the

applicant in the instant case despite having been removed from service on 14.02.1992 due to his having been the captain of the aircraft in which other persons brought undeclared household goods was simplicitor removed from service without being censured or terminated who have been granted pensionary benefits to the extent of 90% is thus clearly entitled to the grant of the disability element of pension for the disability which was clearly attributable to service in terms of the verdict of the Hon'ble Supreme Court in *Bhola Singh Vs Union of India & Ors* in CA No.4486/2002.

10. The OA 943/2019 is thus allowed to the extent that the applicant is held entitled to the grant of the disability element of pension assessed @20% for life by the Re-assessment Medical Board dated 02.08.2013 and approved on 12.09.2013

CONCLUSION

11. Under the circumstances, the OA 943 /2019 is partly allowed and the applicant is to be held entitled to the grant of the disability element of pension *qua* the disability of Anterior Wedge Compression Fracture C-5 assessed @ 20% for life which is directed to be broad banded to 50% for life in terms of the verdict of the Hon'ble Supreme Court in *Union of India vs Ram Avtar* decided on 10.12.2014 in Civil Appeal No. 418 of 2012 with effect from the date of his discharge from the Indian Air Force and the

respondents are directed to issue the corrigendum PPO with directions to the respondents to pay the arrears within a period of three months from the date of receipt of a copy of this order, *failing which*, the respondents would be liable to pay interest @6% p.a. on the arrears due from the date of receipt of the copy of this order .

12. However, in as much as the OA was instituted on 17.05.2019, the arrears in as much as the grant of the disability element of pension in relation to the verdict of the Hon'ble Supreme Court in *Union of India & Ors Tarsem Singh* 2009(1)AISLJ 371 shall commence to run from the period of three years prior to the institution of the instant OA.

Pronounced in the open Court on this 2 day of January, 2024.

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

(JUSTICE ANU MALHOTRA)
MEMBER (J)

/Chanana/