

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

120.

OA 953/2021

Lt Col (S) Rosy Babu (Retd)	Applicant
Versus		
Union of India & Ors.	Respondents

For Applicant	:	Mr. Shakti Chand Jaidwal, Advocate
For Respondents	:	Ms. Jyotsna Kaushik, Advocate

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

ORDER
05.01.2024

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant seeks reference of this matter before the Re-assessment Medical Board (RAMB) for conducting the Post Discharge Claim Medical Board on account of certain ailment contracted by her within seven years from the date of her discharge. The claim is based on the policy as contained in Appendix to Ministry of Defence letter No.1(3)/2002/D(Pen/Pol) dated 18.01.2009 available at Page No.40 of the paper book and the provisions for post discharge claims as contained in Para 8.

2. Facts in nutshell indicate that the applicant was working in the Indian Army having being commissioned on 28.12.1984 in the Military Nursing Service and

retired on 30.04.2018 after attaining the age of superannuation. At the time of discharge, the applicant was in SHAPE-1 but sometime in December 2017, she started certain medical issues which ultimately were detected as Primary Hypertension and Diabetes Mellitus after her retirement. Therefore, based on the policy and clause 8 thereof, she sought for post discharge re-assessment by the Medical Board. The same having being rejected vide impugned order dated 09.11.2020, this OA has been filed.

3. Learned counsel for the applicant invited our attention to the provisions of the policy dated 18.01.2009 and the stipulation contained in Clause 8 with regard to post discharge claim 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.

(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."

4. It is argued by learned counsel for the applicant that as the disease was not present at the time of the applicant's retirement and the same was manifested within seven years

thereafter the claim of the applicant is covered within the provisions of Clause 8(a) and the same has been rejected by the impugned order in an arbitral and illegal manner.

5. Respondents have filed a detailed counter affidavit and it is their contention that at the time of retirement as there was no disease or ailment, the claim is unsustainable and they further submit that the applicant has produced documents with regard to the treatment undertaken in a private hospital after 14.12.2017 to say that she is undergoing treatment in a private hospital for Primary Hypertension and Diabetes Mellitus. However, as the applicant was never downgraded in her entire service and was discharged/retired in SHAPE-1, it is said that no case is made out for conducting an RSMB.

6. Having heard learned counsel for the parties, we are of the considered view that the contentions advanced by the respondents cannot be accepted. The very purpose of the policy dated 18.01.2009 which is nothing but the entitlement rules for casualty pensionary awards to armed forces personnel, specific provisions have been made under clause 8 of the Appendix to raise post discharge claims and it is clearly stipulated in Clause (a) of the aforesaid provisions that the cases in which the disease was not present at the time

of the member's retirement/discharge from service but arose within seven years thereafter, may be recognized as attributable to service if it can be established by a competent medical authority that the disability is a delayed manifestation of a pathological process set in motion by service conditions present prior to discharge.

7. In our considered view, the provisions of Clause 8(a) are specific in its terms and it has been specifically incorporated for the purpose of doing justice for such retired employees who at the time of discharge from service may be in SHAPE-1 but manifestation of the ailment occurs on account of pathological process which is set into motion even prior to discharge but its manifestation and detection happens within a period of seven years from the date of the discharge.

8. Taking note of the purport and intent behind which the policy has been framed and keeping in view the views expressed by a Co-ordinate Bench of this Tribunal in its order passed on 05.05.2017 in OA 596/2016, Lt Col Rohit Agarwal Vs. Union of India and Ors., and in OA 1735/2017, Lt. Col.(TS)AS Malik(Retd.) Vs. Union of India and Ors., decided on 11.10.2017 and findings recorded therein, we allow this OA and direct the respondents to refer the case of

the applicant for consideration before the appropriate Medical Board, namely, the Re-survey Medical Board and the RSMB be conducted within a period of two months from the date of receipt of a copy of this order and based on the report appropriate action as may be permissible under the rule be taken.

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

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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