

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

OA 994/2018

HFO (Retd) Shiv Om ... **Applicant**
Versus
Union of India & Ors. ... **Respondents**

For Applicant : Mr. Praveen Kumar, Advocate
For Respondents : Mr. Shyam Narayan, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C. P. MOHANTY, MEMBER (A)

ORDER

The case has been filed by the applicant under Section 14 of Armed Forces Act praying for direction to conduct Re-assessment/Re-Survey Medical Board to assess degree of disabilities (i) Fracture Cervical Spine CV1, CV2, CV7 and (ii) Colles Fracture (Rt).

2. The applicant was enrolled in the Indian Air Force on 09.01.1971 and discharged from service on 31.07.2010. He was discharged under medical category A4G1 based on the findings of Release Medical Examination (RME) conducted

on 20.08.2019 as a SHAPE-1 case and therefore not entitled for any Disability Pension.

3. The applicant submitted a representation vide an application dated 24.04.2017 for Post Discharge Medical Board which was rejected by the respondents vide their letter No Air HQ/99798/3/292830/DAV(DP/RAMB) dated 06.04.2018 stating that there appears to be little merit in processing the case for a post discharge claim.

4. It is a case of the applicant that he was diagnosed with Fracture Cervical Spine C1, 2 & 7, in the year 1995 for which he was treated at Command Hospital, Pune, and that after being in low medical category for 10 years, he was suddenly upgraded to AYE medical category in Aug, 2006 without conducting MRI and conclusive investigations. Further, the Release Medical Examination also declared him fit to be released from service in Medical Category A4G1 (SHAPE-1) on 30.07.2010.

5. Ld. Counsel for the applicant submits that the applicant continues to suffer from both disabilities post his discharge which remains aggravated and that the same is proved by the MRI dated 11.08.2016 which shows that he is suffering from the said disabilities.

6. Relying upon the RMB proceedings of the applicant and the policy in vogue, Ld. Counsel for Respondents submitted that the applicant was released from service in Medical Classification A4G1 and there was no disability detected or claimed at the time of discharge of the applicant. Ld Counsel further emphasises that as per the opinion of Orthopaedic Specialist dated 27.07.2005, cervical spine examination revealed normal contour, no local tenderness, full range of movement and no neurological deficit.

7. We have heard the arguments of both the parties and perused the medical documents placed on record. Having examined the medical investigation and treatment undergone by the applicant while he was in service, and post discharge, we find that as per the reasoning given by the Respondents for rejection of the request of Post Discharge Medical Board, it has been specified to the effect:

"In the instant case, you had sustained the disabilities in a RTA on 21 Apr 1995 which was held attributable to service vide injury report dated 19 Jul 1995 and placed in LMC. During subsequent review, X ray Rt wrist dated 17 Jul 2001 revealed old healed fracture distal 1/3 radius. As per surgical specialist opinion dated 20 Jan 2001 you were recommended to be upgraded for Colles fracture Rt and has been asymptomatic for the same since then till the time of release from service. X ray cervical spine revealed degenerative changes. CT scan dated 14 Jul 2005 revealed evidence of Cervical

Spondylosis with Postero-Central Osteophytes in C6, C3 and C4 vertebrae; Central Herniation of C5-6 disc. As per opinion of Orthopaedic specialist dated 27 Jul 2005, cervical spine examination revealed normal contour, no local tenderness, full range of movement and no neurological deficit. Hence, you were upgraded for fracture cervical vertebrae 1, 2 and 7 in 2005. Although you were released from service in med cat A4G1 it is evident from documents that there was presence of cervical mild symptoms probably did not warrant placement of the air warrior in LMC for Cervical Spondylosis. Also, the vertebrae affected now as shown in the MRI report dated 11 Aug 2016 are different from the ones affected in the injury sustained by the individual in 1995. It is pertinent to mention that you did not claim any such disability in Part-I, AFSMF-18 of the Release Medical Examination dated 20 Aug 2009. Further, the ibid disability Cervical Spondylosis is generally accepted on the basis of aggravation and service aggravating factors cease to play a role after the individuals release from service. Also, age related degenerative nature of the disability needs to be kept in mind in the instant case. Hence, there appears to be little merit in processing the case for a post discharge claim."

8. An analysis of the aforesaid reply relying upon CT Scan dated 14.07.2005 reveals the presence of Cervical Spondylosis with Postero-Central Osteophytes in C6, C3 and C4 vertebrae, and central herniation of C5-6 disc. Correspondingly, the MRI Report dated 11.08.2016 proves that the diffuse disc bulges are seen at C4-5 & C6-7 levels along with postero-central protusion, thereby, establishing the relation with respect to same vertebrae including C4-5, C5-6 & C6-7. As far as the disability of Colles

Fracture (Rt) is concerned, we find that there is no medical document on record to show that the applicant is still suffering from the aforesaid disability.

9. It is pertinent to refer to Para 8 (a) of the Entitlements Rules for Casualty Pensionary awards 2008 as applicable to the applicant which is as under :-

"(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."

10. A detailed analysis of the aforesaid provision dealing with the post discharge claim lays down two essentials to be fulfilled for the grant of post discharge claim, of which first essential condition is that the disease was not present at the time of retirement/discharge of the claimant from service, but must have arisen within 7 years of the retirement/discharge from service, which is well established in the instant case by the fact that though the disability does not find itself in Release Medical Board Proceedings, it existed prior to that which is evident from the medical records placed by the applicant on record. Furthermore,

the disability is well recognized to be continuing, which is sufficiently proved subsequently by the prescription and MRI report placed on record.

11. The second essential for the post discharge claim that a disability can be recognized as attributable to service if it can be established that the disability is a delayed manifestation of a pathological process set in motion by the service conditions obtaining prior to discharge, for which it is specifically clear that we are not the expert bodies to assess the disability, and the question of the attributability arises only after the disability is detected, which is supported by the fact that the disability was first diagnosed within service itself and the delayed manifestation continued even after discharge which is well corroborated from the MRI Report available on the record.

12. Observing the aforesaid, and since the courts are not vested with the expertise to assess or review medical opinions, we are unable to conclusively establish whether the applicant's ailment for which he is undergoing treatment post his discharge arose during his military service. Thus, in all fairness we are inclined to seek the opinion of the competent medical authorities

with respect to disability of 'Cervical Spondylosis' within the policy guidelines laid down in Entitlement Rules-2008.

13. Therefore, we deem it appropriate to direct the respondents to conduct a Re-assessment Medical Board (RSMB) of the applicant for the aforementioned first disability 'Cervical Spondylosis' within two months of this order, with specific assessment with respect to attributability and aggravation.

14. With aforesaid directions, this OA 994/2018 is disposed off.

15. No order as to costs.

16. Pending miscellaneous application(s), if any, are disposed off.

Pronounced in the open Court on 19th day of April, 2024.

**(JUSTICE RAJENDRA MENON)
CHAIRPERSON**

**(LT GEN C.P. MOHANTY)
MEMBER (A)**

/akc/