AC

COURT NO. 3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA 143/2019 with MA 556/2019

Ex LAC Arshad Azad ...**Applicant**

Versus

Union of India & Others .... **Respondents**

For Applicant : Mr. Ajit Kakkar, Advocate

For Respondents : Mr. Prabodh Kumar, Sr. CGSC

CORAM:
HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

O R D E R

MA 556/2019

Keeping in view the averments made in the miscellaneous application and finding the same to be bona fide, in the light of the decision in ***Union of India and others Vs. Tarsem Singh***[(2008) 8 SCC 648], the MA is allowed condoning the delay of 3785 days in filing the OA. The MA stands disposed of.

OA 143/2019

2. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter

referred to as 'AFT Act'), the applicant has filed this OA seeking grant of Invalid Pension with further broadbanding for 20% to 50%.

BRIEF FACTS

3. The applicant was enrolled in the Indian Air Force on 12.01.2004 and was discharged from service due to the disability **'Re-current Dislocation (Lt) Shoulder'** on 14.11.2006 after having served around 02 years and 307 days of regular service.

4. As per the IMB vide AFMSF-16 dated 09.10.2006, the applicant was found in Low Medical Category (LMC) A4G4 (T-24) for the disability of **'Re-current Dislocation (Lt) Shoulder'** which was assessed at @20% for life and the IMB considered the disability of the applicant as neither attributable to nor aggravated by service.

5. On adjudication, AOC AFRO upheld the recommendations of RMB and rejected the disability pension claim vide letter dated 06.11.2006 with an advice to the applicant that he may prefer an appeal to the Appellate

Committee within six months from the date of receipt of letter.

6. The Applicant's First Appeal was well as Second Appeal was rejected on 30.08.2007 and on 18.08.2008 respectively.

7. Aggrieved by the decision of the respondents, the applicant has filed the instant OA.

CONTENTIONS OF THE PARTIES

8. The learned counsel for the applicant submitted that the applicant was enrolled in the Indian Air Force on 12.01.2004 and was invalided out from service on 14.11.2006 due to disability of **'Re-current Dislocation (Lt) Shoulder'.**

9. It is argued that no note of any disability was recorded in the service documents of the applicant at the time of entry into the service and competent authority denied him pensionary benefit despite the fact that he was invalided out within three years of service in category AS due to **'Re-current Dislocation (Lt) Shoulder'.**

10. *Per contra,* the learned counsel for the respondents submitted that the applicant sustained injury to his (Lt) Shoulder when he fell down from staircase at his home at Trivendrum on 23.01.2006 while on annual leave. He was hospatilized at MH Trivendrum from 26.01.2006 to 01.02.2006.

11. Learned counsel further submitted that the applicant was placed in Low Medical Category A4G4 (T-24) for the disability of "Recurrent Dislocation (Lt) Shoulder vide AFMSF-15 dated 06.0-3.2006. During next review MH Chennai, surgical specialist advised for surgery however, he showed unwillingness for surgery and was transferred to MH Secunderabad for opinion of orthopedic surgeon, after that the senior adviser orthopedics in his opinion dated 19.08.2006 recommended him to be invalided out of service in LMC ApGp.

12. The IMB conducted on 09.10.2006 considered his disability **'Re-current Dislocation (Lt) Shoulder'** as neither attributable to nor aggravated by service though the percentage of disablement was assessed as 20% for life.

13. On adjudication, AOC AFRO has also upheld the recommendations of RMB and rejected the disability pension claim vide letter No. RO/3305/3/Med dated 06.11.2006.

Analysis

14. After perusal of the record produced before us and the arguments advanced by either side, we are of the opinion that the applicant is not entitled to invalid pension, as his disability was pre-existing.

15. As per the Invalid Medical Board, titled **"Summary and Opinion by Col M E Luther, Senior Advisior in Surgery and Orthopaedics"** dated 19.08.2006 reproduced as under :-

> ***"Summary and opinion on the case by Col M E Luther Sr. Adv (Surgery and Orthopaedics) of M H Secunderabad dated 19.08.2006.***
>
> ***This 23 years old patient with 3 years of service is an old case of Recurrent dislocation of (L) Shoulder for Re-cat.***
>
> ***Onset as per patient 5 years ago, prior to enrolment; & treated in Civil. The second episode took place a month later and again treated by closed reduction. Last episode in Jan 2006 due to an accidental fall and treated in Medical College Trivandrum as well was as +ve flared up at CH AF & placed in Cat. A4G4 (Temp.) for 6 months.***

Now pt has reported for Re-Cat.

C/o pain in the (L) shoulder at all times; marked stiffness in the morning hours with apprehension at use the limb. He is an Eng/Fit and unable to do any useful work. He was advised surgery for which he is unwilling & is poorly motivated for service."

16. As per the Senior Advisor opinion, the information provided by the patient's indicates that this disability was pre-existing, however, it was suppressed by the applicant at the time of enrollment.

17. The **Unwillingness Certificate** signed by the applicant is as under :-

"Unwillingness Certificate

I 779446-T LAC Arshad Azad Eng/Fit of 414 AF Stn state that I am a case of Recurrent Dislocation Shoulder (Lt) since Jan 2006. During my present review I was advised surgery by Orthopaedic Surgeon at MH Secunderabad for which I am permanently unwilling. The consequences of which are explained to me and I understood them fully."

18. It is pertinent to note that in the instant case, the disability of the applicant was pre-existing before his entering into the service as per the Summary and Opinion by classified Specialist. The primary medical examination

conducted at the time of enrollment of PBORs is not a rigorous medical examination procedure as followed during IMB, and that any disability which can escape the initial medical examination cannot be used as a tool to claim invalid pension at a later, to showcase any relation of invalidation or any link whatsoever to the military service. It is pertinent to record that just because of the error on the part of the Recruiting Medical Officer during the Initial Medical Examination of the applicant at the time of enrollment, which declare the applicant fit for joining, does not ipso facto make an individual entitled for Invalid Pension.

19. The provision for invalid pension under the Pension Regulations is a beneficial provision for the service personnel of the Armed Forces, yet the same cannot be used as a tool to claim the benefits which do not accrue to the claimant.

20. We find resonance in the observations made by Hon'ble Supreme Court in ***Secretary, Ministry of Defence and others*** Vs ***A. V. Damodaran (dead) through LRs and others*** [(2009) 9 SCC 140], which clearly brings out the

following principles with regard to primacy of medical opinion have been laid down :-

> ***8. "When an individual is found suffering from any disease or has sustained injury, he is examined by the medical experts who would not only examine him but also ascertain the nature of disease/injury and also record a decision as to whether the said personnel is to be placed in a medial category which is lower than 'AYE' (fit category) and whether temporarily or permanently. They also give a medical assessment and advice as to whether the individual is to be brought before the release/invalidating medical board. The said release/invalidating medical board generally consists of three doctors and they, keeping in view the clinical profile, the date and place of onset of invaliding disease/disability and service conditions, draws a conclusion as to whether the disease/injury has a causal connection with military service or not. On the basis of the same, they recommend (a) attributability, or (b) aggravation, or (c) whether connection with service. The second aspect which is also examined is the extent to which the functional capacity of the individual is impaired. The same is adjudged and an assessment is made of the percentage of the disability suffered by the said personnel which is recorded so that the case of the personnel could be considered for grant of disability element of pension. Another aspect which is taken notice of at this stage is the duration for which the disability is likely to continue. The same is assessed/recommended in the form of AFMSF-16. The Invalidating Medical Board forms its opinion/recommendations on the basis of the medical report, injury report, court of enquiry proceedings, if any, charter of duties relating to peace or field area and, of course,***

> ***the physical examination of the individual. 9. The aforesaid provisions came to be interpreted by the various decisions rendered by this Court in which it has been consistently held that the opinion given by the doctors or the medical board shall be given weightage and primacy in the manner for ascertainment as to whether or not the injuries/illness sustained was due to or was aggravated by the military service which contributed to invalidation from the military service."***

21. In this case, the Medical Board did not find the disability aggravated or attributable to service. With the issue of primacy of medical opinion no longer res integra as held by Hon'ble Supreme Court in ***Ex CFN Narsingh Yadav*** vs. ***UOI & Ors.*** (Civil Appeal No. 7672 of 2019), we must reiterate that we are not medical specialists to scrutinize the opinion of medical Boards, and it would not only be beyond our jurisdiction but also hazardous if this Court were to examine the accuracy of such expert opinion, based on competing medical opinions. The scope of judicial review does not entail the Court embarking upon such misadventures. As far as judicial review of decisions based on medical expert opinion is concerned, there is no doubt that wide latitude is provided to the executive in such matters and the Court does not have

the expertise to appreciate and decide on merits of medical issued on the basis of divergent medical opinion.

22. In view of the aforesaid analysis, we are of the opinion that the aforesaid case lacks merit and hence, is liable to be dismissed.

23. Consequently, the present OA 143/2019 is dismissed.

24. No order as to costs.

Pronounced in the open Court on this 16th day of September, 2025.

(JUSTICE NANDITA DUBEY)
MEMBER (J)

(RASIKA CHAUBE)
MEMBER (A)

/Yogita/