

FORM NO. 21  
(SEE RULE 102(1))  
ARMED FORCES TRIBUNAL ,KOLKATA BENCH

OA No.74/2018 with MA 53/2018 and 56/2019.

THE 21<sup>ST</sup> DAY OF MARCH, 2024.

No.164989A Ex SPC Debi Prasad Satpathy.

... Applicant.

-Vs-

Union of India and others. .... Respondents.

Advocates present:

For the applicant,

Mr Bisikesan Pradhan.

For the respondents,

Mr Ajay Chaubey, Sr.PC.

CORAM:

HON'BLE MR. JUSTICE DHARAM CHAND CHAUDHARY, MEMBER(JUDICIAL).

HON'BLE LT GEN SHASHANK SHEKHAR MISHRA, MEMBER (ADMINISTRATIVE).

O R D E R(ORAL)

JUSTICE DHARAM CHAND CHAUDHARY, MEMBER(JUDICIAL).

Heard.

(2) In this application filed under Section 14 of the Armed Forces Tribunal Act, 2007 the impugned orders dated 02.04.2013(Annexure A/4), 26.07.2013(Annexure A/6) and 09.01.2014(Annexure A/8) thereby rejecting the claim of the applicant for the grant of disability pension have been sought to be quashed being illegal and

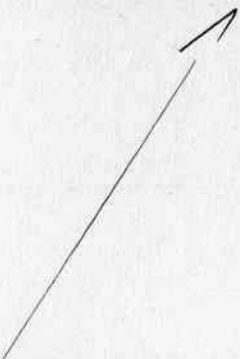
arbitrary with a further prayer to direct the respondent No.3 to constitute resurvey medical board to assess the disability "AVN(Avascular Necrosis) Rt. Hip" diagnosed after discharge of the applicant from service and also to grant disability pension to him by issuing corrigendum PPO. Any other or further order as deemed fit and proper in the given facts and circumstances of the case has also been sought to be passed in favour of the applicant.

(3) The facts in a nutshell are that the applicant was enrolled in the Indian Navy as MER(Matric entry recruit) on 29.07.1986. One day in the year 1998 at about 5 PM when returning from duty on his scooter from INS Rana in Visakhapatnam where he was posted he met with an accident and sustained injury in his right leg and hip. The injury was not grave at that time but while undergoing leadership training during the period 23.11.1998 to 19.12.1998 the injury turned so severe that he had to take pain killers to numb the pain to complete the programme. It is due to this injury that he could not take part in any sport or physical activities. On the other hand he was discharged from service on 31.07.2001 on the expiry of his term of engagement in medical category S1A1. Although according to the applicant release medical board was not held yet, Annexure R/2 to the counter-affidavit is the proceedings(Page 46 of the paper book) of the RMB, which reveal that the applicant was found fit for release from the Navy in medical category S1A1.

(4) The complaint made is that after the discharge of the applicant from service his medical problem got so aggravated that he had to undergo treatment at the National Institute of Rehabilitation Training & Research at Cuttack in Odisha. The prescription

slip(OPD) dated 23.09.2002 along with other records is Annexure A/1(colly). He was issued disability certificate(Annexure A/2) by its medical board certifying the disability "AVN(Avascular Necrosis) Rt. Hip" to an extent of 40%. He could not resettle in any govt. or private organisation due to the medical problem he suffered while in service. It is in the first week of January 2013 that he came in contact with the Kalinga Ex-servicemen League and came to know that all ex-servicemen are entitled to disability pension in case any disability arises within 10 years of the date of their discharge from service.

(5) Applicant as such made a representation dated 11.01.2013 (Annexure A/3). In response thereto he was conveyed vide letter dated 02.04.2013 (Annexure A/4) that after 7 years of his discharge from service there is no provision under the Rules qua resurvey medical examination. Therefore he made another representation(Annexure A/5) on 13.06.2013 which was also rejected and the decision so taken conveyed to him vide letter dated 26.07.2013(Annexure A/6) with the observation that he was discharged from service without any medical category and in case any dispute arose within 10 years of his discharge his claim for disability pension could have been considered after getting resurvey medical board conducted and the disability he incurred upon held to be the result of delayed manifestation of a pathological process set in motion while in service. This has led to make yet another representation on 15.11.2013(Annexure A/7). The same was also rejected and the reasons conveyed to him vide impugned letter dated 09.01.2013 (Annexure A/8) stating therein that there is no provision to waive off the stipulated period of 10 years post discharge



from service and as such his request for grant of medical pension could not be acceded to.

(6) However, applicant has assailed the impugned communication(Annexure A/4), Annexure A/6 and Annexure A/8 on the grounds inter alia that the same are contrary to the provisions contained in the entitlement rules, and result of non-application of mind. His claim is stated to have been rejected in an arbitrary and whimsical manner and as such the impugned orders have been sought to be quashed and set aside and a direction passed against the respondents to conduct resurvey medical board of the applicant and also to grant him disability pension together with rounding-off benefit.

(7) The applicant was engaged in the Navy and a medical problem arose within 10 years of his discharge and the same is the result of delayed manifestation of vascular necrosis in the right hip and held to be aggravated by military service and that the disability element could have been granted to him opined by the resurvey medical board are not disputed by the respondents. However, the stand taken is that the applicant did not approach within 10 years of his discharge from service and that the medical problem arose after his discharge from service and resurvey medical board could have been constituted for reassessment thereof in terms of Rule 10 of the Entitlement Rules(ER) for Casualty Pensionary Awards to the Armed Forces Personnel, 1982. As the applicant made the first representation in the month of January, 2013, i.e. beyond the statutory period of 10 years, he is stated to be not entitled to the relief sought in this application and as such the same has been sought to be dismissed.


(8) Rejoinder has also been filed denying the contentions to the contrary in the reply filed to the OA being wrong and reiterating the entire case as set out in the OA.

(9) On the completion of records we have heard learned counsel on both sides and also gone through the records.

(10) The short question which needs adjudication in this case is as to whether the claim laid by the applicant for the grant of disability pension is well within the period prescribed under the rules or not. The answer to this poser in all fairness and also in the ends of justice would be in negative. The conclusions so drawn by us need elaboration of the rules in support thereof. We would like to reproduce here Rule 10 of the Entitlement Rules(ER) for Casualty Pensionary Awards to Armed Forces Personnel, 1982:

“Cases in which a disease did not actually lead to the member’s discharge from service but arose within 10 years thereafter may be recognised as attributable to the service if it can be established medically is a delayed manifestation of a pathological process set in motion by service condition obtaining prior to discharge of individual would have been invalidated out of service on this account.”

(11) The provisions contained in Rule 10 supra make it crystal clear that in a case where a soldier has not been discharged from service on medical ground and rather it is within 10 years of his discharge if found to be suffering from any disease may be recognised as attributable to service if in the medical opinion it is established that such disease is the result of delayed manifestation of a pathological process set in



motion by the service condition prior to his discharge. In any such eventuality the soldier has to be treated as having been invalidated out of service on this count and as such is entitled to the grant of disability pension.

(12) In the case in hand the applicant was discharged from service on 31.07.2001. In case after his discharge in September-October 2002 he found himself to be suffering from any disease the appropriate course available to him was to have reported about such disease to the concerned Army authority so that his claim could have been processed and in case entitled to any benefit as per rules the same granted to him.

(13) Interestingly enough, he allegedly felt some pain in his right hip in the month of September 2002. He went to National Institute of Rehabilitation Training & Research at Cuttack in Odisha. He was given treatment there. The medical record is Annexure A/1 colly. Later on the Cuttack District Medical Board has assessed the disability "AVN(Avascular Necrosis) Rt. Hip" he incurred upon to the extent of 40%. The disability certificate dated 07.01.2008 is Annexure A/2.

(14) The proper course available to the applicant was to have made a request for constitution of resurvey medical board and to get the disability he incurred upon having nexus with the services rendered by him in the Army assessed. The applicant even after obtaining the disability certificate(Annexure A/2) in the month of January 2008 did not submit the same to the competent authority within the stipulated period for doing needful. Although an effort has been made to fill up the lacunae left in his

case, he has come forward with the version that it is in the month of January 2013 when came in contact with Kalinga Ex-servicemen League he was told that he might get the disability pension. However, the statutory period of 10 years cannot be stretched further as there is no provision in the Rules. Otherwise also ignorance of law cannot be allowed to be pleaded by a person in his defence. The averment that it is in the month of January 2013 that he came to know about his entitlement to the disability pension from the Kalinga Ex-servicemen League is a bald assertion, not supported by other and further proof. The same as such without any substance cannot be believed to be Gospel Truth.

(15) Rather, we find the present a case where the applicant was not vigilant to his rights and rather negligent throughout. Therefore, he cannot wriggle out of a situation that arose due to his own act and conduct on such flimsy grounds raised in the OA. On the other hand, the provisions under Rule 10 supra are categorical that only in a case where a soldier suffers from some disease within 10 years of his discharge from service and on examination of such disease "AVN(Avascular Necrosis) Rt. Hip" held to be the result of delayed manifestation and the disability incurred upon aggravated by military service is only entitled to the grant of disability pension.

(16) True it is that it is a disease having arisen within 10 years of discharge of a soldier from service the paramount consideration under Rule 10 and there is nothing that the applicant cannot approach for the grant of disability pension beyond the period of 10 years. However, in the case in hand no tangible evidence is forthcoming to suggest that the applicant suffered from the disease "AVN(Avascular Necrosis) Rt.

Hip” within 10 years of his discharge from service for want of his examination by resurvey medical board and its opinion as contemplated under the Rule *ibid*. Otherwise also he should have approached the competent authority in the Army immediately after having come to know about his medical problem in the year 2002. There was no occasion for him to have kept mum for a considerable period of 11 years after having come to know about the so-called disability he sustained. Otherwise also there should not have been unreasonable delay in reporting the matter to the Army authorities.

(17) This Court as such is not in agreement with the submissions to the contrary made by learned counsel for the applicant. The delay in reporting the matter to the authorities is attributable to the applicant and therefore has barred his claim for the grant of disability pension. The applicant as such is not entitled to the relief sought in this application.

(18) Be it stated here that learned Sr.PC has also raised the question of limitation as, according to him, the OA has been filed on 04.06.2018, whereas the applicant has been discharged from service on 31.07.2001. Also that, even from the date when he allegedly suffered from the disease i.e. September 2002 the application has been filed after 16 years. However, we are not impressed much with the submissions so made as the present being a case which pertains to the grant of disability pension the cause of action is a recurring one hence there is no question of the OA filed beyond the period of limitation. At the most the relief could have been restricted to 3 years had he been otherwise held entitled to the grant of the same. The plea of limitation as such seems



to have been raised by learned Sr.PC merely for rejection. Therefore, we allow the application(MA No.53/2018) filed with a prayer to condone the delay.

(19) Another application(MA No.56/2019) filed by the respondents with a prayer to condone the delay occurred in filing reply to the OA is also allowed for the reasons stated therein.

(20) For the reasons herein above the original application however fails and the same is accordingly dismissed. No order so as to costs.

LT GEN SHASHANK SHEKHAR MISHRA

HON'BLE MEMBER(A)

JUSTICE DHARAM CHAND CHAUDHARY

HON'BLE MEMBER(J)

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