

ARMED FORCES TRIBUNAL,
REGIONAL BENCH, GUWAHATI

1.

OA-28/2021

Ex-Sub WS Wangam Anal

..... Applicant
By legal practitioners for the applicant
AR Tahbildar

-Versus-

UOI & Others

..... Respondents
By legal practitioner for respondents
P Sharma

Date of hearing : 12.10.2023

Date of order : 12.10.2023

CORAM:

HON`BLE MR. JUSTICE SUDHIR MITTAL, MEMBER (J)
HON`BLE AIR MSHL BALAKRISHNAN SURESH, MEMBER (A)

ORDER

(Sudhir Mittal, J)

The applicant was serving in the Kumaon Regiment when he met with a road accident and sustained injuries resulting in permanent downgradation of his medical category. Finally, he was discharged on completion of term of engagement, but, in Low Medical Category. Thus, he claimed for grant of disability element apart from service element, but his claim was rejected. Consequently, the present OA has been filed.

2. The facts of the case are that the applicant was on part of annual leave from 09.01.2007 to 07.02.2007. Initially, he went to Dehradun to be with his family residing at the said station in separate family accommodation. Thereafter, he travelled to Manipur as he belongs to the said State. On 03.02.2007, he started his return journey and came to Dehradun. While in Dehradun, on 06.02.2007, the applicant was going on a motor cycle with a friend to withdraw some money whereafter, he was to be dropped off at the Bus Stop for onward journey to his duty station. This is when he met with an accident resulting in fracture of Shaft Femur, Radius Ulna and a closed head injury. He was admitted in Military Hospital, Dehradun on the same day and a Court of Inquiry was convened by the Sub-Area HQ on 07.02.2007. Injury report dated 30.03.2007 was consequently issued under the signature of the Sub-Area Commander, according to which the injury was attributable to military service. The medical category of the applicant was downgraded to A-3(permanent), but, the applicant continued in service for another 10 years. Finally he was discharged on 01.07.2017 on completion of the term of engagement, but in Low Medical Category A-2 (permanent). The Release Medical Board, however, opined that the extent of disability was 30% for life but was neither attributable to nor aggravated by military service. Consequently the claim for disability element was rejected by order dated 13.11.2017. The 1st appeal was rejected on 15.09.2020 and the 2nd appeal was filed on 11.12.2020, which according to the applicant was not decided till date of filing of the present OA.

3. A detailed reply has been filed on behalf of the respondents, according to which the claim for disability element was rightly rejected as the injury was neither attributable to nor aggravated by military service as opined by the competent Release Medical Board. The opinion of the Medical Board has to be respected and is final because the same is the opinion of expert in the field. The Courts do not have the expertise to review the same.

4. Learned counsel for the applicant has argued that Pension Regulations for the Army Part-I, 2008 are applicable in the instant case. Regulation 53(a) of the said Regulations provides that an individual discharged on completion

of term of engagement is entitled to grant of disability element provided the disability is attributable to or aggravated by military service and is 20% or more. In the instant case, the extent of disability is 30% for life and same has to be held to be attributable to military service in view of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008. Rule 9 thereof defines 'duty' and Sub-rule (d) thereof inter-alia states that a person returning to duty from leave station is covered by the definition of 'duty'. Rule 10(a)(i) provides that injury sustained while on duty shall be treated as attributable to military service. Under the circumstances, the opinion of the Release Medical Board is not legally sustainable.

5. In response, learned counsel for the respondents has argued in accordance with averments made in the written reply.

6. Regulation 81(b) of the 2008 Regulation referred to hereinabove stipulates that the attributability or aggravation is to be determined under the entitlement Rules referred to hereinbefore.

7. Rule 10(a)(i) of these Rules provides that injuries sustained while on 'duty' shall be treated as attributable to military service. 'Duty' is defined under Rule 9 of the Rules *ibid*. Sub-Rule (d) stipulates that a person returning from leave to duty station is to be treated as on 'duty'. Thus the inescapable conclusion is that the opinion of Release Medical Board is not sustainable in law. In fact, the said Medical Board should have kept in mind the aforesaid Rules and Regulations while giving its opinion. Having failed to do so, the present illegality is the result.

8. For the foregoing reasons, the application is allowed.

9. Respondents are directed to grant disability element to the applicant w.e.f. the date next following the date of discharge within 3 months from the date of receipt of a certified copy of this order by the learned counsel for the respondents/OIC legal Cell. Arrears shall also be paid within said time failing which, interest @ 6% per annum would be payable.

10. We are consciously not confining the relief to 3 years before the date of filing of the application because the applicant submitted his claim for disability element immediately after his discharge and followed up the rejection of the said claim with 1st appeal and 2nd appeal without any unnecessary delay.

11. Oral prayer for grant of leave to appeal is rejected.

(Air Mshl Balakrishnan Suresh)
MEMBER (A)

(Justice Sudhir Mittal)
MEMBER (J)

Kk/gm