

**COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

5.

MA 3564/2023 in OA 1088/2019

Hav Pooran Mal (Retd) Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Ms. Archana Ramesh, Advocate
For Respondents : Mr. Shyam Narayan, Advocate
Maj A.R. Subramaniam, OIC Legal Cell

CORAM

**HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)**

**ORDER
05.07.2024**

The proceedings in MA 3564/2023 were listed for 04.07.2024, but were however, deleted from the cause list for the day 04.07.2024, in view of our express orders dated 29.05.2024 of this Bench and thus have been taken up today.

2. The present application MA 3564/2023 filed by the applicant seeks implementation of the order dated 09.05.2023 in OA 1088/2019. The said application was filed on 25.08.2023. On the date 01.09.2023 in the present application, notice of the MA 3564/2024 was issued, which was accepted on behalf of the respondents who sought a weeks' time to make submissions. Vide order dated 12.09.2023, the respondents prayed for grant of four weeks time to comply with the order of by this Tribunal. Vide order dated 03.11.2023, the applicant was directed to report to

the Base Hospital Delhi for conducting of the Post Discharge Claim Medical Board. On 18.12.2023, it is indicated that though the applicant appeared before the Base Hospital, his medical examination was not conducted and the respondents were directed to ensure the conducting of the Medical Board examination of the applicant to submit the report for the date 29.01.2024 and to conduct the medical examination on the date 16.01.2024. The proceedings dated 04.03.2024, indicate that the respondents did not conduct the medical examination of the applicant on 16.01.2024, despite direction dated 18.12.2023 and a communication was produced that the Medical Board could not be conducted because relevant documents were not produced before the conduct of the Medical Board proceedings by the officials of the Records of Rajput Regiment. Direction was thus issued vide order dated 04.03.2024 to the respondents to produce all the records as detailed in the communication made by the President of the Base Hospital on 19.12.2023 and 27.01.2024 for the date 26.03.2024. On 26.03.2024, the respondents submitted a copy of a document dated 23.03.2024 along with admission slip dated 18.03.2024 for admission of the applicant for compliance of the directions dated 09.05.2023 in OA 1088/2019. The applicant was stated to be admitted at the Base Hospital on the date 26.03.2024. The report of the medical examination conducted in terms of the order dated 09.05.2023 in

OA 1088/2019 was directed to be placed before the Tribunal on the dated 18.04.2024. On 18.04.2024, it was submitted on behalf of the respondents that the medical examination of the applicant has since been conducted and the report of the medical examination was directed to be placed on record by the respondents which was not so placed for the date 18.04.2024 and time was sought for the submission of the same. The matter was directed to be re-notified for 10.05.2024. On 10.05.2024, the proceedings indicate to the effect that vide letter dated 03.05.2024 of the Commandant of the Medical Board vide Para 2 thereof it was stated to the effect:-

“2. Post discharge Claim Med Bd docus were returned by O/o DGAGMS/MA(pen) dated 08 Apr 2024 as indl went on discharge after completion of opinion by spl.”

The opinion of the specialist was directed to be produced for the next date of hearing and the matter was thus directed to be re-notified for the date 29.05.2024. On 29.05.2024, there was no representation on behalf of the applicant and on behalf of the respondents in terms of proceedings dated 10.05.2024 was submitted a Specialist Opinion of the medical examination of the applicant conducted on 22.03.2024 which was taken on record. On behalf of the respondents, it was submitted that the applicant had not appeared for the medical examination in terms of letter dated 03.05.2024 that had been served on the applicant. The

document submitted on record as the Specialist Opinion dated 22.03.2024 stated to the effect:-

“Percentage of Impairment:

Nil ”

stating therein that the corresponding Para of GMO 2023, para 33 had been put into operation and had been acted upon. It was expressly observed vide order dated 29.05.2024 of this Bench to the effect:-

“The applicant in the instant case was invalided out of military service on 30.04.2018, and apparently it is the provisions of the GMO(MP), 2008 that apply to the applicant and not those of GMO-2023. Furthermore, placed on record is letter dated 19.12.2023 sent on behalf of the Commandant copy of which has been again sent to the applicant for information stating therein to the effect:-

“2. On scrutiny of the med docus recd vide your records letter quoted all med documents are returned herewith due to fwg obsns-

(a) AFMSF-16(Ver-2019) old ver has been revised wef 21 Sep 2023. Post Discharge Claim will be processed as per new format. New AFMSF-16(Ver-2023) is available on DGMS website.”

4. The same is also not in consonance with the factum that the GMO-2023 only has prospective application from when it becomes applicable for all medical boards of serving personnel conducted after 21.09.2023.”

3. On behalf of the applicant now today has been submitted a copy of letter dated 07.06.2024 issued by the Senior Record Officer for the OIC Records to the Base Hospital Delhi Cantt. stating therein to the effect:-

“2. The following medical documents in respect of above named individual has already been fwd vide this officer letter no. 2997971/DP/PG dt 12 Feb 2024 for carrying out Post Discharge Claim (PDC) Medical Board at your end:-

- | | | |
|-----|---|-----|
| (a) | AFMSF-16 (Ver-2006) dt 25 Nov 2017 - | One |
| (b) | AFMSF-15 (Ver-2006) dt 23 Jul 2015 along with Spl Opinion - | One |
| (c) | AFMSF-11 dt 15 Feb 2018 - | One |
| (d) | AFMSF-15 (Ver-2006) dt 26 Nov 2015 along with Spl Opinion - | One |
| (e) | CTC copy of Sheet Roll/Service Record - | One |
| (f) | Sanction of DGAFMS for conduct of PDC Medical Board - | One |
| (g) | CTC of appln from veteran for PDC Medical Record - | One |
| (h) | PCDA (P) Allahabad PPO dated 14 Feb 2023- | One |
| (j) | All Medical Documents - | One |

3. The Hon'ble AFT (PB), New Delhi vide their order under reference has observed that GMO-2023 is not applicable to the applicant being discharged prior to its issuance. However, GMO (MP)-2008 is applicable to the applicant. Therefore 04x sets of AFMSF-16 (ver 2019) in Original are re-submitted herewith for your further necessary action. You are requested to issue call up notice to the above named individual under intimated to this office and Legal Cell AFT (PB), HQ Delhi Area at an early date. The next date of hearing is fixed on 04 Jul 2024 further. The place, date and time of above board may please be intimated to the individual for carry out the subject board.

4. An early action is requested being TIME BOUND COURT CASE. ”

4. On behalf of the respondents however, has been submitted a copy of the document dated 04.07.2024 which is a call up letter to the applicant for admitting to BHDC for further disposal of his PDC Medical Board. No date of admission is mentioned, though in reply to specific court query on behalf of the respondents, it is submitted by the OIC Records to the effect that the applicant has only to report to the Base Hospital for his medical examination. The respondents however, submitted further a document dated 10.07.2024 of the President of the Medical Board for the

Commandant addressed to the HQ Delhi Area (AFT), wherein it has been stated in relation to the case of the applicant for the Post Discharge Medical Board to the effect:-

“2. Appeals & Review Medical Boards pertinent to veterans would be conducted based upon the GMO relevant at the time of the Release Medical Board.

3. The veteran did not undergo RMB for disability prior to 21 Sep 2023 hence GMO 2023 is applicable for said board.

4. This is for you info and necessary action pl.”

A copy of a document dated 19.10.2023 has also been submitted by the respondents along with letter dated 10.06.2024 wherein vide para 3 thereof it has been stated to the effect:-

“3. It is once again reiterated that GMO 2023 is applicable prospectively for all the medical boards of serving personnel (offrs, JCOs & Ors) conducted after 21 Sep 2023 as GMO 2008 was in vogue prior to date of promulgation of GMO 2023. Appeals and Review Medical Boards pertinent to veterans would be conducted based upon the GMO relevant at the time of Release Medical Board.”

stating, thus that the GMO 2023 is applicable prospectively for all the medical boards of serving personnel (officers, JCO's, OR's) conducted after 21.09.2023 as a GMO 2008 was in vogue prior to the date of promulgation of GMO 2023 and that Appeals and Review Medical Boards pertinent to veterans would be conducted based upon the GMO relevant at the time of the release medical Board.

It has been submitted on behalf of the respondents in relation to the letter dated 07.06.2024 that has been submitted on behalf of

the applicant that the said letter has been issued by the OIC records without knowledge of the contents of the letter dated 10.06.2024 and that the GMO 2023 would be applicable to the case of the applicant in the instant case. It is essential to observe that vide letter dated 10.06.2024 it has vide Para 3 thereof as already reproduced hereinabove, been stated that the veteran did not undergo RMB for the disability prior to the date 21.09.2023 and hence the GMO-2023 is applicable for the said Board.

5. The proceedings dated 09.05.2023 in OA 1088/2019 vide which OA 1088/2019 was disposed of indicates categorically to the effect that the applicant was invalidated out of the military service from 30.04.2018, with the disability of PIVD (Prolapsed Intervertebral Disc), for which he has received the disability element of pension @30% duly rounded of to 50% from the date of discharge as also indicated from the counter affidavit dated 01.02.2021 filed on behalf of the respondents. The records of OA 1088/2019 are the Medical Board proceedings conducted *qua* the applicant dated 25.06.2015. Apparently, thus the observation in the letter dated 10.06.2024, whereby a submission is now made on behalf of the respondents that the veteran did not undergo RMB for the disability prior to the date 21.09.2023 is erroneous as per the records.

6. Further, vide order dated 09.05.2023 the respondents were directed to conduct the Post Discharge Re-Survey Medical Board for the stated disability of the applicant of Cervical Spondylitis which the applicant stated that he had been suffering from the same even prior to his discharge which had not been taken into account by the respondents and which prayer had been allowed vide order dated 09.05.2023 in OA 1088/2019. In view of the para 8 (a) of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008, which provides to the effect:-

“8. Post Discharge Claims:

(a) Cases in which a disease was not present at the time of 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”,

taking into account the arising of the disability within a period of seven years after the discharge. The said order is dated 09.05.2023. It is also essential to observe that vide communication dated 29.04.2024 bearing no. 16036/RAMB/IMB/DGAFMS/MA(Pen)/GMO has been clarified by the Ministry of Defence to the effect:-

“CLARIFICATION ON APPLICABILITY OF GMO 2023 & ER 2023

1. Refer this office letter No. 16036/RAMB/IMB/DGAFMS/MA(Pen)/GMO dt 19 Oct 23 and Ministry of Defence, Dept of Ex-servicemen Welfare note

No 16(3)/2023/D(Pen/Pol)/VoI-II dt 21 Sep 2023 (copy encl).

2. *The amendment in Para 3 of our letter under red is fwd herewith for your further necessary action:*

For: It is once again reiterated that GMO 2023 is applicable prospectively for all the medical boards of serving personnel (offrs, JCOs & Ors) conducted after 21 Sep 2023 as GMO 2008 was in vogue prior to date of promulgation of GMO 2023. Appeals and Review Medical Boards pertinent to veterans would be conducted based upon the GMO relevant at the time of Release Medical Board.

Read: It is once again reiterated that GMO 2023 is applicable prospectively for all the medical boards of serving personnel (offrs, JCOs & Ors) conducted on and after 21 Sep 2023 as GMO 2008 was in vogue prior to date of promulgation of GMO 2023. Appeals and Review Medical Boards pertinent to veterans would be conducted based upon the GMO relevant at the time of Release Medical Board.”

7. In view thereof the submission that has been made today on behalf of the respondents that the post discharge medical board examination *qua* the applicant would be conducted in terms of the GMO 2023 is wholly fallacious and cannot be accepted. The said aspect of the applicability of the GMO Military Pension, 2008, in the facts of the instant case has been expressly observed vide order dated 29.05.2024 in MA 3564/2023 and as has been observed hereinabove. In view thereof the respondents are directed to ensure the compliance of the directions dated 09.05.2023 in OA 1088/2019 for conducting the Post Discharge Re-survey Medical Board *qua* the applicant for his

stated disability of Cervical Spondylitis within a period of 15 days in accordance with GMO Military Pension, 2008, failing which coercive action would have to be taken against the persons responsible for non-compliance of the said directions.

9. The applicant is directed to present himself for Re-Survey Medical Board before president of Base Hospital on 09.07.2024.

10. The matter be re-notified for hearing on **31.07.2024**.

The copy of this order be given '*DASTI*', as prayed.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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