

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

50.

OA 2312/2023 WITH MA 1399/2024
AND MA 3287/2023

Ex WO Mahender Kumar Gautam Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Raj Kumar, Advocate
For Respondents : Mr. Anil Gautam, Sr. CGSC

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
30.09.2024

MA 1399/2024

Counter affidavit has been filed. There being some delay in filing the same, this application has been filed seeking condonation of delay. Delay condoned. Counter affidavit is taken on record.

2. The MA stands disposed of.

MA 3287/2023

3. 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 in filing the OA.

OA 2312/2023

4. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this application and the relief claimed in Para 8 reads as under:

“(a) Direct the respondents to conduct Re-survey/Review Medical Board of the applicant.

“(b) Any other relief which the Hon’ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost of the application in favour of the applicant and against the respondents.”

5. From the records and based on the pleadings it can be seen that the applicant was enrolled in the Indian Air Force on 16.09.1983 and discharged on 31.03.2022 in accordance to the terms and conditions of his engagement, i.e., on completing the age of superannuation and rendering total 38 years, 06 months and 15 days of regular service. The Release Medical Examination (RME) was held at Air Force Station, Agra vide AFMSF-18 on 12.05.2021 and the applicant was found not to be suffering from any ailment in the Certificate for Commutation of Pension. However, it is the case of the applicant that he has contacted certain ailments within a period of seven years now from the date of his release and as he is entitled to have his case re-assessed by the Re-survey

Medical Board (RSMB) as the ailment after service has surfaced within a period of seven years from the date of his discharge, therefore, he is entitled to the RSMB.

6. Respondents have only indicated that as the applicant was not having any ailment at the time of discharge and he was not in the low medical category for the purpose of detecting ailment, if any, which was contracted after service, no RSMB can be held.

7. In our considered view, this is not correct. As for the policy applicable, if any ailment has suffered during the period of seven years after the discharge, the applicant is entitled for a RSMB and consequential benefits if any based on the report of the Medical Examination.

8. Taking note of the aforesaid, respondents are directed to conduct the RSMB of the applicant within a period of three months from the date of receipt of a copy of this order and ensure that the result of the RSMB is communicated to him within the aforesaid period and in case the applicant is entitled to anything as per the rules, the same can be claimed by him.

9. In view of the aforesaid, the OA stands disposed of.

10. A copy of this order be provided ***DASTI*** to learned counsel for the parties.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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OA 2312/2023