

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

34.

MA 1994/2024 in OA 1823/2020

Ex Sgt Mukesh Kumar Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Baljeet Singh, Advocate
For Respondents : Ms. Barkha Babbar, Advocate with
Sgt Pankaj Sharma, DAV

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE LT GEN C. P MOHANTY, MEMBER (A)

ORDER
30.09.2024

MA 1994/2024 had been filed on behalf of the applicant
on 06.05.2024 with the following prayers :-

"A. To conduct the Post Discharge Medical Board in respect of the applicant and assess the percentage of disabilities ID Primary Hypertension and Anxiety Disorder as per the Entitlement Rules 2008.

B. To pass such direction as deemed fit by the Hon'ble Tribunal in the facts and circumstances of the case."

2. Vide order dated 15.09.2023 in OA 1823/2020 it had
been directed to the effect :-

"Thus, in view of the provisions of Para-8(a) of the Entitlement rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008, the OA is disposed off with directions to the respondents to conduct the Post Discharge Medical Board for assessment of the disabilities that the applicant claims that he suffers from, within a period of three months of the receipt of copy of this order. The impugned letter no. Air

HQ/99801/5/764186/DAV(Med) dated 19.08.2020 is also set aside.”

3. The respondents on 10.05.2024 sought time to make submissions to ascertain the status of the Post Discharge Medical examination to be conducted in terms of the order dated 15.09.2023 in OA 1823/2020 and the matter was thus notified for hearing to the date 31.05.2024. On 31.05.2024, the respondents submitted copy of a document dated 08.02.2024 to submit to the effect that the Post Discharge Medical Board was conducted on 12.04.2024 and thus would be governed by the GMO, 2023. The attention of the respondents vide order dated 31.05.2024 was drawn to the letter dated 29.04.2024 of the Brig AFMS Pension bearing no. 16036 RAMB/RMB/DGAFMS/MA/Pension GMO and the said letter reads to the effect :-

“Clarification on Applicability of GMO 2023 & ER 2023

1.Ref this office letter No. 16036/RAMB/IMB/DGAFMS/MA(Pens) GMO dt. 19 Oct 2023 and Ministry of Defence, Dept of Ex-Servicemen Welfare note no. 16(3)/2023/D(Pen/P01)/Vol-ii dt 21 Sep 2023 (Copy enclosed.)

2. The amendment in Para 3 of our letter under ref 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 (Offr, 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 one 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 bases upon the GMO relevant at the time of Release Medical Board.”

4. Despite the same on 06.08.2024, the respondents have placed on record a copy of the letter no. 16050/DGAFMS/MA(P)/MK dated 03.07.2024 which reads to the effect :-

“ CLARIFICATION ON APPLICABILITY OF GMO 2023 POST DISCHARGE CLAIM (PDC) MEDICAL BOARD ON COURT ORDER 764186-R EX-SGT MUKESH KUMAR, PMF (E)

1. Ref your letter No Air HQ/99801/5/DAV (Med) dt 27 Jun 24.

2. It is reiterated that GMO 2023 is applicable to all cases of death/disability recorded on or after 21 Sep 2023 as per our letter No. 16036/RAMB/IMB/DGAFMS/MA (Pens) dt 29 Apr 24.

3. In the instant case veteran was discharged from service in SHAPE-I and hence did not undergo any Release Medical Board for the impairments addressed in the Post Discharge Claim (PDC) Medical Board. The first instance of recording of impairments was at the time of conduct of PDC Medical Board which was carried out on 03 May 24 which is after the promulgation of GMO 2023 on 21 Sep

23. Accordingly GMO 2023 is applicable in the instant case.

4. This is for your info and necessary action.”

5. Taking into account the factum that the order dated 15.09.2023 in OA 1823/2020 related to the disability that the applicant professed had occurred within a period of seven years from the date of his discharge, with his discharge having been on 07.07.2016, it is apparent that it is the GMO (Military Pensions) 2008 that shall apply to the instant case and not the GMO (Military Pensions), 2023 which takes effect after 21.09.2023.

6. The directions dated 15.09.2023 in OA 1823/2020 with compliance thereof, for conducting the Post Discharge Medical Claim brought in terms of the GMO(Military Pensions) 2008 be complied with by the respondents without default within a period of four weeks from today and the compliance report be placed on the record by the respondents.

7. The matter be re-notified for hearing on 11.11.2024.

8. Copy of this order be given *DASTI* as prayed.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(LT GEN C. P MOHANTY)
MEMBER (A)