

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI
08.**

T. A. No. 20 of 2011
Suit No. 2196/6/1996

M.J. Joseph**Petitioner**

Versus

Union of India & Ors.**Respondents**

For petitioner: Mr. P.P. Tiwari, Advocate.

For respondents: Ms. Sangeeta Tomar, Advocate.

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.

HON'BLE LT. GEN. M.L. NAIDU, MEMBER.

ORDER
24.04.2012

M.L. Naidu, Member

1. This suit was filed by the petitioner/plaintiff before the Court of Senior Civil Judge, Delhi as Suit No. 640 of 1996 on 11.09.1996 and it was transferred to this Tribunal as TA No. 20 of 2011 on 09.05.2011.

2. The brief facts of the case are that plaintiff was enrolled in the Army as Sepoy in the Corps of ASC on 30.09.1973. Subsequently, he became Havildar w.e.f 01.06.1991. In 1994, plaintiff was screened for extension of two years as per the policy. During that time, it was found that he was a Low Medical Category (LMC) because of Malunited Fracture Colles (RT). Hence, a discharge order was issued on 26.08.1994 directing that the plaintiff will be discharged w.e.f. 30.09.1995. On 28.01.1995, plaintiff was upgraded to Category AYE for Malunited Fracture Colles (RT) at the same time he was downgraded to Category CEE (T) for six months for operated Hernia, as such discharge order dated 26.08.1994 was cancelled vide ASC Record Signal

dated 14.01.1995. He was also detailed to attend the ADJ Course for promotion to Nb Sub. Before going for the said course, he was checked by the Regimental Medical Officer who found him medically fit for the course.

3. On 22.09.1995, his unit i.e. 39 Coy ASC (Sup) received a signal from the ASC Record Office, Gaya that the plaintiff is not cleared for further extension and, therefore, will retire on 30.09.1995. He was made to go before a Release Medical Board on 30.09.1995 and was locally discharged.

4. Learned counsel for the plaintiff stated that plaintiff was locally discharged but was not given any discharge papers. He received his discharge papers i.e. Discharge Book which was dispatched on 26.05.2008 that too after he had agitated for the same and finally it was received by the petitioner on 29.09.2010. Similarly, his PPO was delayed inordinately. Learned counsel for the plaintiff argued that only after due agitation and having filed this suit, the plaintiff has been given his dues despite performing 22 years of service. However the AGIF dues are still pending.

5. Learned counsel for the plaintiff further argued that plaintiff was due for review of his medical category in July, 1995. The signal issued by the ASC Record dated 14.01.1995 alludes to the same. However, the plaintiff was not put through any medical board before 30.09.1995. He drew our attention to the statement made by DW-1 Major Rajiv Kumar.

6. Learned counsel for the respondents stated that the plaintiff was screened in 1994 i.e. two years before his extension period was to commence. He was LMC, that is how he was not screened for extension. Subsequently, he got upgraded as AYE on 20.01.1995 and he was detailed to undergo the ADJ course and the same direction was sent via Signal dated 14.02.1995 cancelling his discharge order which was issued on 26.08.1994

and it was also directed that his category for "Optd Hernia" because of which he was downgraded CEE(T) for six months should be intimated to the Record immediately after his review in July, 1995.

7. Learned counsel for the respondents could not produce any evidence to show that plaintiff was put through a review medical board between July and September, 1995 which only alluded a entry in Part II Records of the petitioner to say that he was put through Review Medical Board in August, 1995. However, there are no records of the Medical Board proceedings with both the parties.

8. Learned counsel for the respondents stated that as per entry in the record of service of plaintiff, a medical board was held in August, 1995 and he was upgraded to Medical Category BEE (T) for six months. Therefore, he was again not eligible for extension which was to commence w.e.f. 01.10.1995. As such, the signal dated 22.09.1995 was issued by the Record ASC for plaintiff to be discharged w.e.f. 30.09.1995. Learned counsel for the respondents further argued that plaintiff was declared medical category BEE (P) on 30.09.1995 that means on that day he was not eligible for extension of service.

9. Having heard both the counsels at length and having examined the documents placed before us as also the service documents in original, we are of the opinion that there has no been no evidence to show that the plaintiff was sent before Review Medical Board between the period July to Sep. 1995. We have seen the Release Medical Board record held on 30.09.1995 in which plaintiff was downgraded to Category BEE (P) and his disease was attributed to military service with 20% disability. Apparently without having been put through the Review Medical Board, it is not correct to have decided that he

was unfit because of Hernia which was operated upon is not a permanent nature of disease.

10. In view of above, we direct that respondents to provide copy of the medical board proceedings held on 30.09.1995 to the plaintiff which gives out the attributability of the disease as also the degree of disability so that the plaintiff can make a separate claim for disability element from the respondents.

11. Since Review Medical Board was not held which was the responsibility of the respondents and having decided to discharge the plaintiff just on the basis of Release Medical Board, we hold that the plaintiff was not given adequate opportunity to be examined by a competent Review Medical Board. The charter of the Release Medical Board is different than that of the Review Medical Board. In this case, the Release Medical Board was conducted post haste i.e. on 30.09.1995.

12. In view of the foregoing, we direct that plaintiff be notionally reinstated in service for the tenure of extension of service and he will be entitled for all consequential benefits. The suit is accordingly decreed. No order as to costs.

**A.K. MATHUR
(Chairperson)**

**M.L. NAIDU
(Member)**

**New Delhi
April 24, 2012
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