

**COURT No.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

46.

RA 34/2022 WITH MA 4050/2023 in OA 83/2020

Col K J Singh (Retd)	Applicant
Versus		
Union of India and Ors.	Respondents

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

CORAM

**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN P.M. HARIZ, MEMBER (A)**

**O R D E R
05.12.2023**

MA 4050/2023

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.

RA 34/2022

3. This RA has been filed under Section 18 of the Armed Forces Tribunal (Procedure) Rules, 2008 read in conjunction with Section 14 (4F) of the Armed Forces Tribunal Act, 2007, by the applicant in OA 83/2020, seeking a review of the order dated 20.09.2022.

4. OA 83/2020 was filed by the applicant with a prayer claiming disability element of pension with effect from the date of his retirement, for the disability in "IHD, Abnormal Strain Test" which was assessed at 20% for two years and was held as aggravated by military service. The Tribunal held that since the RMB had held the disability as aggravated by military service and assessed the disability at 20% for two years, and the fact that there was no endorsement that the disability was permanent, the applicant's medical condition at the end of two years was required to be assessed. Thus, it directed that the applicant should undergo a Re-assessment Medical Board. Accordingly, the respondents were directed that a Re-assessment Medical Board of the applicant be conducted within a period of twelve weeks of the order.

5. The counsel for the applicant stated that a review of the Order dated 20.09.2022 was being sought since there was an error apparent on the face of the order, in that the Tribunal had held at Para 6 of the order, that there was no endorsement that the applicant's disability was permanent and, therefore, the applicant was directed to undergo a Re-assessment Medical Board. The counsel drew our attention to the RMB Proceedings at Annexure A-2 of the OA and emphasised that the disability of the applicant was

indeed of a permanent nature as endorsed at Pages 1 and 5 of the RMB proceedings (Page 26 & 30 of the OA) and countersigned by the Comdt MH Dehradun. Elaborating on this, the counsel stated that these endorsements stated that the applicant was being released in medical category P2 permanent. Further drawing our attention to the opinion of the Medical Specialist attached with the RMB proceedings (Page 31 of the OA/Page 19 of the RA), the counsel emphatically stated that even the Medical Specialist had endorsed the category of the applicant as 'Cat P2 (Permt)' and that the applicant was recommended to be released in low medical category P2 (Permt). He further added that at Para 1(c)(i), Part III of the RMB, it was endorsed that the disability had been caused due to the stress and strain of military service.

6. The counsel then drew our attention to MoD letter dated 07.01.2001 and stated that it was applicable to all those who were in service on or after 01.01.1996. He then vehemently asserted that the applicant's case was squarely covered by the provisions of this letter since the applicant was a post 01.01.1996 retiree (retired on 31.10.1996). Further elaborating on the provisions of this letter, the counsel explained that as per the letter there will be no periodic reviews by Re-survey Medical Boards for

reassessment of disabilities and that since the applicant's disability was of a permanent nature, he was not required to undergo any periodic review. The counsel further stated that the Tribunal had thus erred in assuming that there was no endorsement that the applicant's disability was of a permanent nature, even though it was so endorsed in the RMB proceedings. The counsel then asserted that the Tribunal had further erred in directing that the applicant undergo a Re-survey Medical Board. Consequently, the Tribunal had erred in not granting disability element of pension in accordance with MoD letter dated 07.02.2001. The counsel concluded that therefore, due to these errors apparent on the face of the record, the order dated 20.09.2022 be reviewed and modified with directions to the respondents to grant disability element of 20%, rounded off to 50% from the date of retirement.

7. The counsel for the respondents stated that though the RMB had held the disability as aggravated by military service and assessed the disability at 20% for two years, the competent authority had rejected that disability claim as it held the disability as neither attributable nor aggravated by military service. He further added that the applicant had subsequently made a representation in April 2019 seeking disability element and that the

representation was rejected by the competent authority vide their letter dated 14.10.2019 on the grounds that it was time barred. The counsel further added that in compliance of the Tribunal order dated 20.09.2022, the case for Resurvey Medical Board was processed for necessary sanction. That sanction was accorded by DGMS-5A vide their letter dated 22.11.2022 and the applicant was intimated to submit requisite information to facilitate the Re-survey Medical Board. However, since the applicant had not provided the necessary information, the medical board could not be held. The counsel concluded that there was no error apparent in the order dated 20.09.2022 and therefore the RA be dismissed.

8. We have heard both parties at length. The law with regard to review application has now been well settled in the case of **Sasi (Dead) Through Legal Representatives Vs. Aravindakshan Nair and Others** [(2017) 4 SCC 692] and in Paras 6, 7, 8 and 9, the principle of review has been laid down which read as under:-

6. *The grounds enumerated therein are specific. The principles for interference in exercise of review jurisdiction are well settled. The Court passing the order is entitled to review the order, if any of the grounds specified in the aforesaid provisions are satisfied.*

7. *In Thungabhadra Industries Ltd. V. State of A. P., the court while dealing with the scope of review had opined. (AIR p. 1377, para 11)*

"11. What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an "error apparent on the face of the record". The fact that on the earlier occasion the Court held on an identical state

of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an "error apparent on the face of the record". For there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterized as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error".

8. In *Parsion Devi v. Sumitri Devi*, the Court after referring to *Thungabhadra Industries Ltd. Meera Bhanja v. Nirmala Kumari Choudhary* and *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma* held thus; (*Parsion Devi* case, SCC p. 719. Para 9)

"9. Under order 47 Rule 1 CPC, a judgment may be open to review *inter alia* if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered, has a limited purposed and cannot be allowed to be "an appeal in disguise".

9. The aforesaid authorities clearly spell out the nature, scope and ambit of power to be exercised. The error has to self-evident and is not to be found out by a process of reasoning. We have adverted to the aforesaid aspects only to highlight the nature of review proceedings.

9. Recently, the Hon'ble Supreme Court in the case of **Sanjay Kumar Agarwal Vs. State Tax Officer** (1), 2023 SCC OnLine SC 140610 observed that –

"10. It is also well settled that a party is not entitled to seek a review of a judgment delivered by this Court merely for the purpose of a rehearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so."

10. Analysing the scope of review in this case, the Hon'ble Supreme Court referred to the judgements in (a) Parsion Devi Vs. Sumitri Devi, [(1997) 8 SCC 715], (b) Shanti Conductors (P) Ltd. Vs. Assam SEB, [(2020) 2 SCC 677], (c) Ram Sahu Vs. Vinod Kumar Rawat, [(2021) 13 SCC 1], (d) Beghar Foundation Vs. K.S. Puttaswamy [(2021) 3 SCC 1] and summed up the scope of review in the following words:

16. *The gist of the afore-stated decisions is that:—*

(i) A judgment is open to review inter alia if there is a mistake or an error apparent on the face of the record.

(ii) A judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.

(iii) An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of record justifying the court to exercise its power of review.

(iv) In exercise of the jurisdiction under Order 47 Rule 1 CPC, it is not permissible for an erroneous decision to be "reheard and corrected."

(v) A Review Petition has a limited purpose and cannot be allowed to be "an appeal in disguise."

(vi) Under the guise of review, the petitioner cannot be permitted to reargue and reargue the questions which have already been addressed and decided.

(vii) An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.

(viii) Even the change in law or subsequent decision/judgment of a co-ordinate or larger Bench by itself cannot be regarded as a ground for review.

11. The only issue which merits consideration is whether there are any error apparent on the face of the records, which necessitates the recall of this Tribunal's order dated 20.09.2022. We, therefore, find it necessary to examine the RMB Proceedings and the MoD letter dated 07.02.2001.

RMB

12. The endorsement on page 1 and 5 in the RMB read as under:-

Page-1

" You are released from service in Medical Category S1H1A1P2E1 (Permanent) on administrative grounds and not solely on medical grounds"

Page-5

"Fit to be Released/ ~~Invalided-out~~ in Low Medical Classification/ ~~Category~~ S1H1A1P2E1 for disability/ ~~disabilities~~ IHD ABNORMAL STRESS TEST 411, V-67"
Place MH DEHRA DUN

13. The above endorsement and medical classification stems from the policy on '*Health Care System in The Army – Instructions for Medical Examination and Classification of Serving Officer*'. Each Service has elaborate policy and instructions regarding healthcare, medical examination and classification based on the peculiarities of the Service. Since the applicant here is from the Army, we have examined the Health Care instructions issued by the Army from time to time. The objective of medical examination is to detect disease at an early stage when it may be latent (without producing any ill effect) and institute timely preventive and curative measures to

promote positive health. And the aim of medical classification is to indicate the functional capacity of the individual with a view to enable better cadre management, especially of LMC officers, as regards their treatment, employment, promotion and financial emoluments. Medical classification is based on the functional capacity of the individual as a whole for military duties with a view to ensuring that low medical category awarded to an officer for minor physical defects per se of a particular organ or system does not by itself, restrict his employment. Thus classification done under this system enables the administrative authorities concerned to assign appropriate appointments to officers depending on their employment capability.

14. Medical classification/reclassification of serving officers is made by a duly constituted Medical Board after assessing his/her fitness under five factors indicated by the code letters SHAPE which represent the following functions *S – Psychological; H – Hearing; A – Appendages; P – Physical Capacity; E – Eye Sight*. The functional capacity for military duties under each factor is then denoted by numerals 1 to 5 against each code letter indicating declining functional efficiency. General evaluation of these numerals will denote the following ; *1A – Fit for all duties anywhere; 1B – Fit for all*

duties anywhere; under medical observation and has no employability restrictions; 2 - Fit for all duties but some may have limitations regarding duties which involve severe physical and mental stress and require perfect acuity of vision and hearing; 3 - Except 'S' factor, fit for routine or sedentary duties but have limitations of employability, both, job wise and terrain wise as spelt out in Employment Management Index; 4 - Temporarily unfit for military duties on account of hospitalisation/ sick Leave; and 5 - Permanently unfit for military duties.

15. Thus the endorsements in the RMB of the applicant which states *"You are released from service in Medical Category S1H1A1P2E1 (Permanent) on administrative grounds and not solely on medical grounds"* and *"Fit to be Released/ ~~Invalided-out~~ in Low Medical Classification/ Category S1H1A1P2E1 for disability/ disabilities IHD ABNORMAL STRESS TEST 411, V-67"* pertains to the medical category and classification as assigned to serving officers whilst in service. It is thus NOT the final opinion of the Release Medical Board regarding attributability, aggravation, percentage assessment of the disability and the assessment of disability which qualifies for consideration as disability element. In this case, the RMB has categorically stated that the disability granted is for a

period of two years, which surmises that it is not of a permanent nature.

MoD Letter dated 07.02.2001

16. It is necessary to examine the provisions of MoD letter dated 07.02.2001. This letter is reproduced below:

No 1(2)/97/D(Pen-C)
Government of India/Bharat Sarkar
Ministry of Defence/Raksha Mantralaya
New Delhi dated the 7th February, 2001

To,

The Chief of the Army Staff
The Chief of the Naval Staff
The Chief of the Air Staff

SUBJECT : MODALITIES FOR IMPLEMENTATION OF THE RECOMMENDATIONS OF THE FIFTH CENTRAL PAY COMMISSION CONTAINED IN PARAS 164.10 AND 164.22 OF THE REPORT REGARDING THE FINDINGS OF THE MEDICAL BOARDS

Sir,

The undersigned is directed to stat that in pursuance of the Government's decisions on the recommendations of the Fifth Central Pay Commission, as contained in Paras 164.10 and 164.22 of the Report, sanction of the President is hereby accorded to the modification to the extent specified in the latter, in the rules, and regulations concerning the findings of Medical Board, attributability/aggravation and adjudication of cases for disability pension.
Injury cases

2. Attributability Decision regarding attributability would be taken by the authority next higher to the Commanding Officer which in no case shall be lower than a brigade/sub-area commander or equivalent.

3. Assessment The assessment with regard to the percentage of disability as recommended by the Invaliding Medical Board/Release Medical Board as approved by the next higher Medical Authority, would be treated as final unless the individual himself requests for a review.

4. Approving Authority for Medical Boards Medical Boards proceedings in respect of the personnel of the three Services will be approved by the next higher Medical Authority than the one which constituted the board as heretofore. In case where, disability is abnormally high or low, approving authority will refer the processing back to the Medical Boards for re-consideration. If required he may physically examine/ get the individual re-examine to ascertain the correct position.

Disease Cases

5. Attributability/Aggravation Attributability/Aggravation in respect of cases pertaining to Invalidment owing to various diseases/retirement with various diseases shall continue to be adjudicated by MA(P) in respect of Personnel Below Officer Rank (PBOR) and by MOD in case of Commissioned Officer as heretofore.

6. Assessment The assessment with regard to percentage of disability as recommended by the Invaliding Medical Board/Release Medical Board and as adjudicated by MA(P) in respect of PBOR and MOD in case of Commissioned Officers would be treated as final and for life unless the individual himself request for review, except in cases and disabilities which are not of a permanent nature. In the event of substantial difference of opinion between the initial award given by Medical Boards and MA(P), the case will be refer to Review Medical Board. The opinion of the Review Medical Board which will be constituted by DGAFMS as and when require shall be final.

7. Re-assessment of Disability There will be no periodical reviews by the Resurvey Medical Boards for re-assessment of disabilities. In cases of disabilities adjudicated as being of permanent nature, the decision once arrive will be final and for life unless the individual himself request for a review. In cases of disabilities which are not of permanent nature, there will be one review of the percentage by a Re-assessment of Medical Board to be carried out latter, within a specified time frame. The percentage of disability assessed / recommended by the re-assessment Medical Board will be final and for life unless the individual himself asks for a review. The review will be carried out by Review Medical Board constituted by DGAFMS. The percentage of disability assessed by the Review Medical Board will be final.

8. There will be no changes in the procedure in handling appeal cases and post discharge claims.

9. The attributability/aggravation aspect for adjudication of Special Family Pension claim will be dealt with as follows:-

(a) Injury Cases : As per provisions contained in Para 2 above.

(b) Disease Cases : As per provisions contained in Para 5 above.

10. The provision contained in this letter will be applicable to service personnel who were in service on or after 01 Jan 96. The cases which have been finalised prior to issue of this letter will not be re-opened. As regards pre 01 Jan 96 disability pensioners, the assessment made by the Reassessment Medical Board held on or after the date of issue of this letter will be considered as final and for life unless the individual himself asks for a review. This review will be carried out by Review Medical Board constituted by DGAFMS. The percentage of disability assessed by the Review Medical Board will be final.

11. These rules will be read in conjunction with Pension Regulations of the three services. Entitlement rules to the Casualty Pensionary Award to the Armed Forced Personnel, 1982 and Guide to Military Officers (Military Pension) 1980, as amended from time to time.

12. Para 8.2 and 11.5 of this Ministry's letter of even number dated 31st Jan 2001 so far as these to reckoning disability actually assessed by the duly

approved Release Medical Board / Invaliding Medical Board for computing war injury element, stand modified as per the provision contained in this letter.

13. *This issue with the concurrence of the Finance Division of the Ministry vide their U.O. No. 137/DFA (Pen-O) dated 01.02.2001.*

Yours faithfully

Sd/-xxx

*(Sudhakar Shukla)
Director (Pension)*

17. MoD letter dated 07.02.2001 states the following:

- (a) Disability could be due to an injury or disease.
- (b) The authority for assessing the attributability and assessment of percentage of disability for injury cases is different to that of disease cases.
- (c) In the case of injury cases, attributability will be decided by a authority higher to the CO, which no case shall be lower than a Brig/Sub-area Cdr or equivalent. The assessment of percentage of disability as recommended by the invaliding/ release medical board and approved by the next higher medical authority will be treated as final unless the individual himself request for a review.
- (d) In the case of disease cases attributability/aggravation on invalidment owing to disease/retirement with disease will continue to be adjudicated by the Medical Advisor (Pensions) for PBORs and MoD in the case of officers. **As regards**

assessment, the percentage of disability as recommended by the invaliding/release medical board and adjudicated by MA(P) in the case of PBORs and MoD in the case of commissioned officers will be treated as final or for life unless an individual himself request for a review, except in cases and disability which are not of a permanent nature. In the event of substantial difference of opinion before the initial award given by the medical board and MA(P), the case will be referred to the review medical board which will be constituted by the DGAFMS. As a matter of record, adjudication of disability cases of JCOs/OR by the MA(P) has since been discontinued and their cases are also adjudicated by IHQ of MoD (Army).

18. Thus Para 7 of the letter dated 07.02.2001 needs to be read in the context of the above guidelines on the attributability, assessment and approving authority as laid out for injury and disease cases. Thus, in the cases which have been **"adjudicated"** as being permanent nature the decision once arrived will be final and for life, unless the individual request for a review and in the cases where the disability was not of permanent nature there will be one review by a re-assessment medical board to review the

percentage of disability. Thus in the case of the applicant, though the RMB had recommended 20 % disability for a period of two years and had held the disability as aggravated by military service, the competent authority had adjudicated and rejected the recommendation and had held the disability as neither attributable nor aggravated. This was intimated to the applicant vide letter dated 29.07.98 (Page 24 of OA). Vide this letter the applicant was also intimated that in case he was not satisfied with the decision, he could file an appeal within six months from the date of receipt of the letter. However, as seen from the impugned letter at Annexure A-1, the applicant made his representation in April 2019 which was then rejected, being grossly time barred.

19. Thus in this case, we do not find any error apparent on the face of the record which is self-evident, since the record clearly holds the disability as a temporary disability for a period of two years. The grounds canvassed by the applicant regarding the medical category indicated on the RMB which is a culmination of the in-service medical category and classification is clearly not an indicator of the permanence of the disability as opined by the RMB. The RMB in this case has assessed the disability at 20% for a period of two years. Moreover, from the arguments advanced by the

applicant, we do not find any circumstances of a substantial and compelling character, and thus the applicant cannot be permitted to re-agitate and reargue the questions which have already been addressed and decided.

20. In view of the above considerations, the RA is dismissed.

21. No order as to costs.

22. Pending miscellaneous application(s), if any, stands closed.

(RAJENDRA MENON)
CHAIRPERSON

(P.M. HARIZ)
MEMBER (A)

Neha