

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

A.

OA 19/2024 WITH MA 1738/2024

Lt Gen Rajiv Mohan Gupta (Retd) Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. S S Pandey, Advocate
For Respondents : Mr. Rajeev Kumar, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER
28.08.2024

We have heard the learned counsels for both parties and perused the RMB records of the applicant granting @20% disability at the time of retirement from the Indian Army.

2. During the course of arguments it was stated by learned counsel for the applicant that the onset of disability of PIVD/Prolapsed Intervertebral Disc L4-5 (RT) qua the applicant was in May 2016 while he was holding the rank of Brigadier and posted in Army Hospital (R& R), New Delhi for which he was placed in low medical category P3 (T-12) w.e.f. 05.12.2016 and later awarded medical category P2 (Permanent) w.e.f. 27.02.2017.

3. It is, however, observed by us from the records that the applicant was promoted to the rank of Maj Gen on 01.07.2018

and Lt Gen on 08.07.2021 for which he ought to have been upgraded to promotable medical category. However, it is also observed that almost at the same time the RMB dated 11.06.2021 graded the applicant SHAPE – 2X with a conceded disability of 20% for life. We are unable to comprehend this anomaly as we have encountered several cases in this AFT wherein the respondents have denied promotion to employees on the ground of being low medical category whereas in the instant case, we find a departure from their stated position of medical fitness for promotion to the next higher rank. We have perused the order dated 08.07.2021 of this Tribunal in the case of Maj Gen Rajiv Mohan Gupta Vs. Union of India & Ors. in OA 961/2021 wherein the medical category of the applicant per se has not been the legal question under consideration. Therefore, in the interest of justice, it is essential for us to peruse the entire medical records of the applicant from 2016 to 2022.

4. That apart, while taking note of the submissions made on behalf of the applicant that the disability is aggravated due to service due to applicant being a pathologist and micro-biologist which involved prolonged working in sitting and bending position, it is also essential for us to examine his charter of duties in assignments held by the applicant past his promotion

to the rank of Lt Gen until when the applicant is presumed to be in 'Fit Medical Category'.

5. Thirdly, noting the factum the applicant was Maj Gen in Medical Services of Western Command, ChandiMandir when the RMB was held in Command Hospital, Western Command in May 2021, the respondents are directed to place on record the Command & Control and the ACR channel of CH (NC) for the given period.

6. The respondents are directed to place on record the answers to above queries and the requisite documents as stated above though an additional affidavit within six weeks.

7. Put up again on **18.10.2024** as PART HEARD.

8. A copy of this order be given **'DASTI'** to both the parties.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN C.R. MOHANTY]
MEMBER (A)