

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

OA 1056/2018 with MA 936/2018

Ex JWO Naval Kishor

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant	:	Mr. V S Kadian, Advocate
For Respondents	:	Mr. S R Swain, Advocate

CORAM :

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

ORDER

MA 936/2018

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 1690 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of UoI & Ors Vs Tarsem Singh 2009(1)AISLJ 371 and in Ex Sep Chain Singh Vs Union of India & Ors (Civil Appeal No. 30073/2017 and the reasons mentioned, the MA 936/2018 is allowed and the delay of 1690 days in filing the OA 1056/2018 is thus condoned. The MA is disposed of accordingly.

OA 1056/2018

The applicant vide the present OA 1056/2018 makes the following prayers:

“(a) To Quash and set aside the impugned Letter No. Air HQ/99798/1/750976/DAV/DP/CC dated 23.04.2018. And/or

(b) Direct the respondents to conduct re-survey/re-assessment Medical Board of the applicant and accordingly grant him disability element by treating the same as attributable to or aggravated by military service with the benefits of broadbanding. And/or

(c) Direct the respondents to pay the due arrears of disability pension with interest @12% p.a. from the date of his discharge. And or

(d) Any other relief which the Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case alongwith cost of the application in favour of the applicant and against the respondents.”

2. The applicant was enrolled in the Indian Air Force on 07.09.1993 after having undergone an initial medical examination and having been declared fit in medical category “AYE” vide AFMSF-2A dated 04.05.1993. Vide AFMSF-15 dated 30.07.2009, the applicant was placed in Low Medical Category A4G4(T-24) for the ID-IDK(Rt) and the said disease had its onset on 02.08.2000 while the applicant was serving at AF Station, Bhuj. The disability of the applicant was considered as attributable to service vide IAFF(P)-23(Injury Report) dated 02.08.2000

and thereafter the applicant was reviewed regularly and was placed in Low Medical Category A4G4(P) vide AFMSF-15 dated 19.07.2010. As per averments made by the respondents in their counter affidavit during the subsequent review the Orthopedic Surgeon opined that the applicant is to be upgraded to medical category A1. The Medical Board recommended that the applicant be gradually upgraded to medical category A4G1 and thus recommended the medical category of the applicant as A4G2(T24) vide AFMSF-16 dated 27.06.2012. Thereafter, the applicant was upgraded to medical category A4G1 vide AFMSF-15 on the opinion of the Orthopaedic surgeon dated 27.11.2012.

3. The applicant submits that the injury IDK(RT) KNEE was sustained by him on 02.08.2000 whilst going on duty by a motor cycle when he met with an accident due to a slippery road in Bhuj and the disability suffered by the applicant was considered as attributable to military service by the Competent Authority of the respondents which is not refuted by the respondents. The applicant submits that he having been placed in Low Medical Category of A4G4(P) remained in permanent low medical category A4G4(P) assessed @30% in the next review Medical Board on 19.07.2010 and also in the Medical Board conducted on 12.07.2011. The applicant submits that even at the time of the Review Medical Board held on 19.07.2010, he suffered unbearable pain and continued to remain in permanent low medical category A4G4(P)

with the percentage of disablement assessed @30%. The applicant submits that the medical authorities in the next review dated 27.06.2012 took the decision in much hurry without taking into consideration the injury report and the MRI and he was upgraded to SHAPE-I. The applicant submits that he had not even recovered from the injury and his pain was still very severe. The applicant in the meantime however was discharged from service w.e.f. 30.09.2013 in Medical Category A4G1. The applicant submits that he got no relief from the pain and he reported to a private hospital of Dr. Piyush Mitthal and got an MRI done on 14.01.2018 and the symptoms were the same as in the MRI done on 20.07.2009 which had shown Grade-II Horizontal tear of Medial meniscus involving posterior horn of body and an old partial tear of ACL. The applicant submits that having been placed in Low Medical Category A4G4 on 20.07.2009 and on 25.01.2020 in LMC Category A4G4(T-24) as well as on 12.07.2011, the medical authorities erroneously upgraded him to SHAPE-1 on 27.06.2012. The applicant submits that though he had not recovered from the injury and the pain was still very severe, he sent a legal notice-cum-representation dated 31.03.2018 for conduct of Re-survey/Re-assessment Medical Board for assessment of his disability from which he was still suffering and for the grant of disability pension which was rejected by the respondents vide letter No. Air

HQ/99798/1/750976/DAV/DPCC dated 23.04.2018 wherein it was stated to the effect that the Release Medical Examination had not found any disability at the time of discharge of the applicant from service and the applicant had been discharged from service on fulfilling the conditions of his enrolment under the Medical Category of A4G1. The applicant submits that the disability of the applicant is required to be re-surveyed/re-assessed by the Medical Board and he is entitled to the grant of the disability element of pension in as much as he suffered from no disability when he joined the Indian Air Force and in as much as the disability he suffered from had been considered by the respondents themselves as being attributable to military service vide IAFF(P)-23 Injury Report dated 02.08.2000, as also averred in Para 3(b) of the counter affidavit dated 06.12.2018 of the respondents.

4. The applicant placed reliance on Paras 6 and 7 of the letter of the MoD No.1(2)/97/D(Pen-C) dated 07.02.2001 which reads to the effect:

“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 requests for review, except in cases of disabilities which are not of a permanent nature. In

the event of substantial difference of opinion between the initial award given by the Medical Boards and MA(P), the case will be referred to a Review Medical Board. The opinion of the Review Medical Board, which will be constituted by DGAFMS as and when required 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 a permanent nature, the decision once arrived at will be final and for life unless the individual himself requests for a review. In cases of disabilities which are not of a permanent nature, there will be only one review of the percentage by a Reassessment Medical Board, to be carried out later, within a specified time frame. The percentage of disability assessed/recommended by the Reassessment 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 constituted by DGAFMS. The percentage of disability assessed by the Review Medical Board will be final."

5. The applicant also placed reliance on Para 86 of the Pension Regulation for the Army, 2008 to submit to the effect that persons who were found to be suffering from a disease which is attributable to service within a period of 7/10 years from retirement except pre-

mature retirees are eligible for re-survey medical board and the grant of disability element of pension. Para 86 of the Pension Regulation for the Army, 2008 reads to the effect:

“86. Service personnel who had retired/discharged (otherwise than at his own request or if any of the circumstances specified in Regulation 29 & Regulation 41) on a retiring/service pension/gratuity, but who within a period of 10 years from the date of retirement is found to be suffering from a disease which is accepted as attributable to his military service, be granted in addition to his retiring/service pension/gratuity, a disability element with effect from the date of Review Medical Board constituted by the Director General Armed Forces Medical Services.”

6. The applicant has further submitted to the effect that even in terms of the Entitlement Rules for the Casualty Pensionary Awards for the Armed Forces Personnel 2008, he is entitled to seek a Resurvey Medical Board. The applicant further submits to the effect that the Air Force Pension Regulations and the Naval Pension Regulations are *pari materia* to the Army Pension Regulations. Reliance was also placed on behalf of the applicant on the Pension Regulations for the Air Force 2008 and the order dated 27.10.2015 in *Hony Capt Jagat Singh Rawat Vs Union of India & Ors.* in OA 371/2015 and on the order dated 19.09.2017 in *Lt.Col. Sharad Dua (Retd) Vs Union of India & Ors.* in OA

1563/2017 to reiterate that even in terms of the Entitlement Rules for the Casualty Pensionary Awards to the Armed Forces Personnel 2008 itself the applicant is entitled to seek for the constitution of the Re-survey Medical Board.

7. According to the respondents, the applicant underwent the Release Medical Examination held at 8-Wing, AF on 13.12.2012 vide AFMSF-18 and was found fit to be released in Medical Category A4G1 and that no disability was claimed or detected and that said RMB was concurred by the Commanding Officer on 14.12.2012 and was approved by the Dy. PMO(S) HQ WAC, IAF dated 21.01.2013. The respondents submit that the applicant was discharged from service of the IAF on 30.09.2013 after rendering total of 20 years and 04 days of regular service in the Medical Category A4G1. The respondents submit that vide reply dated 23.04.2018 the applicant was informed that in as much as he was discharged without any disability, thus he is not entitled for the grant of any disability element of pension as per rules.

8. In terms of directions dated 21.08.2023 vide which the respondents were directed to produce the entire medical record alongwith the RMB held before the discharge of the applicant, the respondents have placed on record on 08.12.2023, copies of the Medical Release Examination conducted qua the applicant.

9. The respondents relied on the opinion of the Medical Board proceedings dated 30.11.2012 which reads to the effect:

"OPINION OF MEDICAL BOARD

750976- K SGT N KISHORE MF(F) 2210 SQN C/O 8 WING, AF

Diagnosis IDK(Right) Knee Old)

Onset/Place:02 Aug 2000/Bhuj

1. *36 years old serving air warrior is an old case of above mentioned disability in low medical category A4G2(T-24). Last medical board was held on 27 Jun 2012 he was due for next medical board on 12 Dec 12. During his current review he was opined by Major Pramod Mahender (Graded Specialist in Orthopaedics) at MH Jalandhar Cantt on 27 Nov. 2012 and recommended to be upgraded to medical category A1.*
2. *During his last review also he was recommended to be upgraded to Medical Category A1 but medical board recommended him to be upgraded gradually. In view of this medical board is in opinion that individual to be upgraded to Medical category A4G1, subject to approval by higher medical authorities."*

The opinion of the Classified Specialist Surgeon Military Hospital, Jalandhar Cantt dated 27.11.2012 is to the effect:

“Inv & results:- MRI-(R) Knee 20.07.2009

Previous treatment/Surgery & date-Partial ACL Tear,
Grade 2 medial meniscus injury

Present complaint: NIL complaint.

General exam: Pt better

Local exam: Rt Knee- No effusion
No swelling

Disability: No ACL Laxity/Mcmurray -ve
Valgus/vains-ve
No Neuro deficit

Recommended” Continue/upgrade/fresh wef

Fit to be released in A1.

”

The said documents indicate that the MRI of the Right Knee was done on 20.07.2009.

The medical examination report dated 13.12.2012 indicates the applicant was fit to be released from service in Medical Category A4G1.

The annual medical examination dated 22.04.2009 relied upon by the respondents states the final observation to the effect:

“

FINAL OBSERVATIONS & MEDICAL CATEGORY

Found fit in medical category A4G1 to perform full duties of his trade IMF(E). ”

The Medical Board proceedings dated 30.07.2009 vide para 22 thereof states to the effect:

“22. Instructions given to the individual by the President of the Board:

- You are placed in low medical category A4G4(T-24), subject to approval and perusal by higher medical authorities.
- You are to follow the instructions in col. no.(19) & (21)
- Advised: 1) Quadriceps and hamstring exercises
2) Review after 03 months in Ortho OPD.

”

The medical board proceedings dated 25.01.2010 indicate that the applicant was placed in LMC A4G4(T-24) as was also approved by the Approving Authority.

The Medical Examination Report Release/Discharge dated 13.12.2012 indicates that the applicant was fit to be released in Medical A4G1 with his date of retirement being 30.09.2013. Significantly, the opinion of the Medical Board dated 25.01.2010 states as under:

“OPINION OF MEDICAL BOARD

Disability” IDK(RT)(Old) Z09.0

1. This 33 years old air warrior is an old case of above mentioned disability in lower medical cat A4G4(T24) w.e.f. 30 Jul 09. Onset of disability :02 Aug.2000 at Delhi.
2. During present review Orthopaedic Surgeon recommended to be upgraded to medical category A2(T24) which is equivalent to Air Force medical category A4G2/G3 with the restrictions on employment as Excuse PT & BPET/
3. The individual complaint of pain(Rt) knee while running and he will not be able to do strenuous duties like PPG and other strenuous activity of service. He requires sheltered appointment like Ex PPG and strenuous activities.
4. The medical category recommended by the specialist is not commensurating with above restrictions and present condition of the individual as per Appendix ‘A’ to para 5.4 to para 5.4. of IAP-4303(3rd Edition)
5. Therefore, medical board recommends that the individual to be placed in lower medical category A4G4(T-24) subject to approval by higher medical authorities. ”

10. It is essential to observe that this opinion of the Medical Board dated 25.01.2010 stated that though the Reviewing Authorities had recommended the applicant to be upgraded to Medical category A2(T-24) which is equivalent to Air Force Medical category A4G2/G3 with the restrictions on employment as Excuse of PT& BPET as per the opinion of

the Medical Board, the medical category recommended by the specialist was not commensurate with the restriction and the then present condition of the applicant and the medical board recommended that the applicant be placed in lower medical category A4G4(T-24) subject to approval by the higher authorities.

11. The available medical records produced by the respondents thus do not explain the sudden placement of the applicant in upgraded medical category A4G1 on 30.11.2012 when his previous disability as per the medical board conducted prior to the same i.e. on 25.01.2010 indicated that the applicant was required to be placed in lower medical category A4G4(T-24). It was also opined thereby that the applicant would not be able to do strenuous duties like PPG and other strenuous activities of service and that his upgradation opined by the specialist to Medical Category A2(T-24) was not commensurate with the restriction to be imposed on him and the then condition of the individual, coupled with the factum that the applicant sustained injury on 02.08.2000 and continued to be with percentage of disablement due to said injury with its assessment of disablement @30% for life that he suddenly became fit from all disability is not at all explained through the records produced by the respondents.

12. Apart from the same, it is essential to advert to Para 8(a) of the Entitlement Rules for the Casualty Pensionary Awards 2008 which read to the effect:

“(a) Cases in which a disease was not present at the time of the member’s retirement/discharge from service but arose within 7 years thereafter, may be recognized as attributable to service if it can be established by the competent medical authority that the disability is a delayed manifestation of a pathological process set in motion by service conditions obtaining prior to discharge,”

13. Even if the contention of the respondents to the effect that the applicant was discharged in SHAPE 1 is accepted, it is essential to advert to the provisions of the Pension Regulations for the Air Force 1961 (Part 1), Para 158 of the said Regulations which reads to the effect:

Manifestation of disability after an individual is discharged from service.

“158. An individual who is discharged from service, otherwise that at his own request, with a pension or gratuity, Pension Regulations ualrwise that at his own request, with a pension or gratuity, but who, within a period of seven years from the date of discharge, if found to be suffering from a disease which is accepted as attributable to his air force service, may, at the discretion of the competent authority, be granted in addition to his pension/gratuity, a disability element at the rate of

appropriate to the accepted degree of disablement and the substantive rank last held, with effect from such date as may be decided upon in the circumstances of the case.”

14. Para 158 of the of the Pension Regulations for the Air Force 1961(Part-1) and in terms of Para 8(a) of the Entitlement Rules for Casualty Pensionary Awards, 2008 itself bring forth that the applicant even suffered from the injury of the applicant which had its manifestation later on within a period of 10 years from his discharge even if it is a delayed manifestation, with the validity process having been set in motion during service prior to the discharge, the applicant is entitled to the conduct of the Post-Discharge Medical Board for the re-examination of his medical disability. The applicant has placed on record annexure A-7 and A-8 of documents of medical examination conducted on 14.01.2018 and 20.07.2009 to indicate that the applicant on 20.07.2009 and on 14.01.2018 continued to suffer from GRADE II HORIZONTAL TEAR OF MEDIAL MENISCUS INVOLVING ITS BODY & POSTERIOR HORN WITH OLD PARTIAL TEAR OF ACL grade II. Though we do not consider it appropriate to give any finding in relation to the extent of any disability presently, nevertheless as observed hereinabove in terms of Para 158 of the Pension Regulations for the

Air Force 1961)Part-1) and Para 8(a) of the Entitlement Rules for the Casualty Pensionary Awards, 2008 , the applicant is held entitled for the conducting Re-survey Medical Board qua the disability that he suffered from ID-IDK Rt(Old) which he sustained on 02.08.2000.

15. It is essential to observe that, according to the records of the respondents, the applicant suffered from no disability at the time of his discharge and was released as found fit to be released in medical category A4G1 with the observation "No Disability claimed/detected" , the submission of the applicant that he continued to suffer from the disability of ID-IDK Rt coupled with the factum that the present OA has been instituted on 25.05.2018 within a period of 07 years from the date of discharge of the applicant from military service in as much as he was admittedly discharged on 30.09.2013, the requisite parameters for conducting the post discharge claim in terms of Para 158 of the Pension Regulations for the Air Force 1961 (Part-I) and Para 8(a) of the Entitlement Rules for the Casualty Pensionary Awards for the Armed Forces Personnel, 2008 are wholly met.

We are fortified in our view in view of the order dated 03.05.2023 in OA 1227/2020 in case of EX MWO(HFL) Satyabir Singh Yadav Vs Union of India & Ors.

16. In the instant case, the applicant is thus held entitled to the grant of the conducting of the post discharge medical board in relation to his stated disability of ID IDK Rt (Old) qua which the respondents in terms of Para 158 of the Pension Regulations for the Air Force 1961 (Part-I) and Para 8(a) of the Entitlement Rules for the Casualty Pensionary Awards for the Armed Forces Personnel, 2008 are liable to conduct to ascertain the extent of his medical conditions.

17. The OA thus stands disposed of with directions to the respondents to conduct the Re-Examination Medical Board for the assessment of disabilities of the applicant, if any, and to ascertain the duration thereof which Re-Examination Medical Board is directed to be conducted by the respondents within three months of the receipt of this copy of this order.

The applicant would be entitled to seek redressal, if any, in accordance with law after a copy of the Re-Survey Medical Board report is supplied to the applicant by the respondents.

18. The OA stands disposed off.

Pronounced in the open Court on this 22 day of April, 2024.

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

/chanana/

[JUSTICE ANU MALHOTRA)
MEMBER (J)