

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

**OA 1627/2017 with MA 1220/2017**

Ex Hav Yogender Singh

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. V. S Kadian, Advocate  
For Respondents : Dr. Vijendra Singh Mahndiyan, Advocate

**CORAM :**

**HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)**  
**HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)**

**ORDER**

**OA 1626/2017**

The applicant vide the present OA instituted on 18.09.2017 seeks the following prayers:-

- “(a) Quash and set aside the impugned letter No. RNE/Lib/13611903P dated 08.08.2017. And/or.*  
*(b) Direct respondents to grant service pension to the applicant w.e.f. date of his dishcharge.*  
*(c) Direct respondents to conduct Re-Survey Medical Board of the applicant for the purpose of assessing his disability and grant of disability pension accordingly with the benefit of broad banding.*  
*(d) Direct respondents to pay the due arrears of pension and retiral benefits with all consequential benefits with interest @12% p.a.*  
*(e) Any other relief which the Hon'ble Tribuna may deem fit and proper in the fact and circumstances of the case.”*

2. During the course of submissions made on behalf of the applicant on 03.04.2024, learned counsel for the applicant confined the prayer made through the present OA to seek the conducting of a Re-Survey Medical Board alone.

3. The applicant Ex Hav Yogender Singh (No. 13611903P) was enrolled in the Army (Parachute Regiment) on 19.04.1978 as a soldier (General Duty) and was transferred to the RAJRIF Regiment on 22.04.1979. ON 28.05.1986, he was promoted to the rank of Havildar on his own turn with seniority with effect from 17.03.1986. The applicant was tried by a Summary Court Martial for an offence under Army Act under Section 38(i) and was reduced to the rank of Rifleman and dismissed from service with rigorous imprisonment for four months in civil prison with effect from 24.09.1986. Prior to dismissal he had rendered 15 years, 08 months and 07 days of service excluding 02 years, 08 months and 28 days of non-qualifying service.

4. Civil Writ Petition 4609/1996 was filed by the applicant and pursuant to order dated 13.01.1997 of the Hon'ble High Court of Delhi whereby the Chief of Army Staff was directed to dispose of the applicant's statutory appeal with a reasoned order within six weeks from receipt of this order, and further ten weeks was granted vide order dated 28.04.1997. Vide order dated 27.06.1997, the Chief of Army Staff

ordered that the dismissal of the applicant from service be remitted merely to help him rehabilitate himself in civil life and thus ordered that the applicant be deemed to be discharged from service from the date of signing of that order. However, in view of the findings of the guilt arrived at by the Summary Court Martial on charges against the applicant of deserting from service punishable under Section 38(I) of the Army Act, 1950 which had not been interfered with, it was ordered that the applicant would forfeit all his prior service towards pension and accordingly would not be eligible for grant of pensionary benefits.

5. Vide order dated 18.05.2004 in WP(C) 5080/2003 filed by the applicant, in as much as the discharge certificate issued by the Indian Army qua the applicant showed the applicant to have a non ex-serviceman status, coupled with the factum that vide order dated 27.06.1997, the intention of the Chief of the Army Staff was that to rehabilitate the applicant, with the penalty of the dismissal having been converted into discharge with it not having been stated in the order dated 27.06.1997 of the Chief of Army Staff that the said discharge would be a discharge without a status of ex-serviceman, it was directed vide order dated 18.05.2004 by the Hon'ble Division Bench of the High Court of Delhi in WP(C)5080/2003 that in terms of the order passed by the Chief of Army Staff (apparently a reference to the order dated 27.06.1997), the

respondents were directed to amend the discharge certificate and issue a fresh certificate without using the word "Non" with ex-serviceman within a period of two weeks.

6. The said ex-serviceman identity card was accordingly issued to the applicant admittedly. Thereafter, the applicant filed WP(C) 1162/1997 before the Hon'ble High Court of Delhi seeking the following prayers:-

*(i) Issue writ of Certiorari and other appropriate writ, order or direction against the respondents as this Hon'ble Court may deem fit and proper for quashing and set-aside the proceedings/sentences of Summary Court Martial conducted by Col. Ravi Mohan Commanding Officer of 11 BN Rajputana Rifles on 23-24 September 1996 and further order of the Chief of the Army Staff dated 27 June 1997 passed in violation of rules 22, 33, 34,, 95, 130, 77 and 180, of Army Rule 1954. Para 377(a), 378(b) (c) and 381 of Regulations for the Army (revised edition) 1987, rule 36(P) Manual of Documentation JCOs/OR 1969 and Section 39, 73, 106, and Note 3 to 162 of Army Act, 1950 published under Manual of Military Law Vol. II.*

*(ii) Issue of writ of Mandamus to re-instate the petitioner and grant all service benefits for which the petitioner is entitled as per Army Act, Rule, as a person subject to Army Act including retirement-benefits.*

*(iii) Award the costs of the petition in favour of the petitioner;*

*(iv) Pass such other or further order(s) as this Hon'ble Court may deems fit and proper under the facts and circumstances of case.*

7. Vide order dated 04.09.2009 of the Hon'ble High Court of Delhi in view of the Armed Forces Tribunal Act, 2007 having come into force, in terms of the provision of Section 34 of the said enactment, the said WP(C) 1162/1997 was transferred to this Tribunal. The said writ petition was registered as TA 119/2009 before this Tribunal which petition filed by the applicant was dismissed by this Tribunal vide order dated 28.10.2009 in TA 119/2009 whereby it was observed to the effect :-

*11. Here the petitioner was convicted for the offence u/s 38 of the Army Act which itself is a serious misconduct and under such circumstances the petitioner shall not be entitled or have right to get pension as envisaged in the aforesaid rules. For the foregoing reasons, we are of the opinion that the Army personnel who has willfully absented for two years and 275 days and that fact is well established has no right to receive monetary/retiral benefits during the period in question.*

*12. In view of that we do not find any merit in the petition. The impugned order passed by the CM and COAS are legally sustainable and do not require any interference. Petition is, therefore, dismissed.*

8. This order dated 28.10.2009 in TA 119/2009 bearing previous WP(C) 1162/1997 before the Hon'ble High Court of Delhi has not been challenged by the applicant and has attained finality.

9. On behalf of the applicant thus the prayers made through the present OA were confined to seeking the conducting of the Re-Survey Medical Board which the applicant submits ought to be conducted in as

much as he submits that during his service tenure he was suffering from a back pain and was entitled for the assessment of his disability for the grant of the benefit of the disability pension after assessment of a Re-survey Medical Board.

10. The applicant has further submitted that at the time of dismissal from service, he was put in medical category AYE and it was stated vide the impugned letter dated 08.08.2017 by the Senior Record Officer of the records of the Rajputana Rifles that as the applicant was in medical category AYE at the time of dismissal from service, there was no question of conducting Re-survey Medical Board.

11. The applicant submits that the order dated 28.10.2009 in TA 119/2009 of this Tribunal in Para 2 thereof makes mention of the applicant's submissions to the effect :-

*"2. In order to appreciate the rival contentions of the parties, it is necessary to make a brief narration of facts. The petitioner was serving at the material time with the Rajputana Rifles Regt. Centre, Delhi Cantt. He was posted to 11 Raj Rifles and accordingly Movement Order no. Admn/27/T/Out dated 06.09.1993 was issued to the petitioner whereby he was granted balance of annual leave from 7<sup>th</sup> September, 1993 to 5<sup>th</sup> December 1993 after which he was to report for duty at 11 Raj Rifles. The petitioner did not join duty at 11 Raj Rifles on expiry of such leave on 5<sup>th</sup> December, 1993. Instead from the first day of expiry of leave the petitioner requested for extension of leave or alternately premature*

*retirement, due to his daughter's illness. The petitioner thereafter fell seriously ill which incapacitated him due to prolapsed disc PIVDL Lumbo Sacral Spine AP LAT. The petitioner's application for premature retirement, duly recommended by his CO, was forwarded to HQ 15 Corps. Accordingly he was informed by HQ 15 Corps vide their letter telegram no.50 dated 25.01.1994 that his premature retirement from service was sanctioned and he should report Unit forthwith as he was already overstaying leave. When the Respondent No.4 was contacted, he instead of issuing directions for the sanction of pensionary benefits informed the petitioner that the CO was not empowered to sanction premature retirement vide letter no. 13611903/YAS/117/A dated 17.02.1994. Accordingly on 10<sup>th</sup> August, 1994 the petitioner came to rejoin his service at Raj Rif Centre, New Delhi but was not permitted to join and so he went back. The petitioner also contends that the respondents have also not prepared the desertion/apprehension roll of the petitioner. It is further submitted that the petitioner voluntarily rejoined duty with the help of the Civil Police, Gurgaon on 7<sup>th</sup> September, 1996 as he was bed ridden in those days. He was brought by the Police to the Raj Rifle centre, New Delhi. No medical assistance was given to the petitioner at that time. He was seriously suffering from the backache. He was transferred under Military Escort to 11 Raj Rifle by train after dinner.”*

to submit to the effect that the same incorporates the submission of the applicant that the petitioner voluntarily rejoined the duty with the help of the Civil Police, Gurgaon on 07.09.1996 as he was bed ridden in those days and was brought by the Police to the Raj Rifle Centre, New Delhi

and no medical assistance was given to him at that time and he was seriously suffering from a backache and was transferred under Military Escort to 11 Raj Rifle by train after dinner.

12. The applicant submits that vide the legal notice cum representation dated 11.07.2017 to the Chief Records Officer of the Records of the Rajputana Rifles vide para 10 thereof he submitted that he was tried by the SCM without conducting the medical examination/Board and that he had been even suffering from a low backache/PIVD which was the reason why he was brought bed ridden as per the records, by the Civil Police for rejoining and submitted that as per the provisions, the Medical Board ought to have been conducted as he was suffering from the disability which continues to be in existence and he cannot move without an attendant due to very same disease. The applicant also sought the conducting of his Re-survey Medical Board in terms of MoD letter No. 1(2)/97/D(Pen-C) dated 07.02.2001.

13. The respondents have opposed the prayer made by the applicant seeking the grant of the Re-survey Medical Board submitting to the effect that though the applicant has ultimately chosen to seek on 03.04.2024 only the prayer for the conducting for Re-survey Medical Board, that has to relate to the prayer made by the applicant to ascertain the claimed

disability and grant of disability pension with the benefit of broad banding as prayed vide clause (c) of the OA already detailed hereinabove.

14. The respondents thus submit that the applicant apart from having been dismissed from service which dismissal was undoubtedly converted into a discharge, in view of the orders of the Chief of the Army Staff dated 27.06.1997, nevertheless the factum that the applicant was discharged from service with effect from 27.06.1997 pursuant to conversion of his dismissal from service into discharge from service, he having been discharged in medical category AYE which he chose not to challenge and assail, the applicant can now not seek the conducting of a Re-survey Medical Board in the instant case. The respondents have relied upon Para 11 of the counter affidavit filed by them dated 11.10.2018 in the instant OA which reads to the effect :-

*11. As regards the case for conduct of Re-Survey Medical Board of the applicant is concerned, it is clarified that he was downgraded to Medical category CEE (T) with effect from 24 Feb 1990 at 162 Military Hospital for diagnosis "CHILBLAIN FEET (BOTH)" while he was posted with 15 RAJ RIF. On a review of his medical condition he was upgraded to medical category BEE (T) with effect from 01 Sep 1990 and later on with effect from 01 March 1991 he was upgraded to medical category "AYE". As the applicant was dismissed from service in medical category "AYE", question for conduct of re-survey medical board of the applicant does not arise in the*

*instant case. Therefore, the claim made by the applicant is baseless.*

15. As per the said averments made in the counter affidavit of the respondents filed on 16.10.2018, the applicant had been upgraded to medical category AYE with effect from 01.03.1991.

16. Apparently, that the applicant did not challenge this medical category of AYE in which he was put with effect from 01.03.1991 onwards coupled with the factum that he was deemed to have been discharged from service with effect from 24.09.1996, the contention of the respondents that the applicant cannot now seek to claim that he was in bed ridden condition at the time he was discharged when he was dismissed from service which dismissal was converted into deemed discharge,- has to be accepted.

17. A submission was made on behalf of the applicant that in terms of the Govt of India, MoD letter no. 1(2)/97/D(Pen-C) dated 07.02.2009 in terms of Para 7 thereof, the applicant is entitled to the conducting of a Resurvey Medical Board with reliance having been placed on para 7 thereof to the effect :-

***“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***

*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 latter, 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”,*

with it having been thus submitted on behalf of the applicant that the applicant is entitled to the conducting of the Re-assessment Medical Board was ascertained the percentage of his disability.

18. On behalf of the respondents it was submitted that Para 7 of the Govt of India, MoD letter no. 1(2)/97/D(Pen-C) dated 07.02.2009 does not take into account any fresh disabilities and relates to disabilities which were in existence at the time of discharge and it has thus been submitted on behalf of the respondents that the applicant having been discharged from the service on 27.06.1997 with the applicant having been in medical category AYE since 01.03.1991, the claim made by the applicant does not fall within the ambit of Para 7 of the Govt of India, MoD letter no. 1(2)/97/D(Pen-C) dated 07.02.2009. **The said submission of the respondents is apparently wholly correct for para 7 of the Govt**

of India, MoD letter no. 1(2)/97/D(Pen-C) dated 07.02.2009 relates to the aspect of Re-assessment of disabilities.

19. The respondents have further submitted to the effect that the contention of the applicant that in terms of para 7 Govt of India, MoD letter no. 1(2)/97/D(Pen-C) dated 07.02.2009, it is open to the applicant to seek an assessment of the disability, a further submission was made on behalf of the respondents that in terms of the Entitlement Rules for Casualty Pensionary Awards 1982, Rule 10 thereof, it has been stipulated to the effect :-

**“Post Discharge Claims**

***10. Cases in which a disease did not actually lead to the member's discharge from service but arose within ten years thereafter, may be recognized as attributable to service if it can be established medically that the disability is a delayed manifestation of a pathological process set in motion by service condition obtained prior to discharge and that if the disability had been manifest at the time of discharge with the individual would have been invalided out of service on this account.”***

to thus submit that the applicant in the instant case having been deemed to have been discharged on 27.06.1997, the claim made by the applicant on 11.07.2017 is much beyond the permissible limit of 10 years in terms of Rule 10 of the Entitlement Rules for Casualty Pensionary Awards, 1982 thereof which relates to Post Discharge Claims as referred.

20. The said submissions made by the respondents are wholly correct as borne out from the record. The applicant having been upgraded in medical category AYE on the date 01.03.1991, the claim of the applicant for the conducting of the Re-assessment Medical Board filed on 18.09.2017 cannot be granted in view of his having been deemed to have been discharged on 27.06.1997, in terms of Rule 10 of the Entitlement Rules for Casualty Pensionary Awards, 1982.

**CONCLUSION**

21. Thus, in view of the facts and circumstances of the instant case, the OA 1627/2017 is dismissed, accordingly.

Pronounced in the open Court on the <sup>18</sup> day of May, 2024.

**[REAR ADMIRAL ~~DHIREN VIG~~ VIG]**  
MEMBER (A)

**[JUSTICE ANU MALHOTRA]**  
MEMBER (J)

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