

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

75.

OA 625/2022 with MA 1945/2024 & 784/2022

Ex Nb Sub Ahire Chhotu Shamarav ..... Applicant  
Versus  
Union of India & Ors. .... Respondents

For Applicant : Mr. Ved Prakash &  
Mr. Devendra Kumar, Advocates  
For Respondents : Mr. V Pattabhi Ram, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON  
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER  
14.10.2024

MA 1945/2024

For the averments made in the application, delay in filing the counter affidavit is condoned. Counter affidavit is taken on record. MA stands disposed of.

MA 784/2022

2. This application has been filed seeking condonation of delay in filing OA 3210/2024. Keeping in view the averments made in the miscellaneous application and finding the same to be bona fide, in the light of the decision in Union of India and others Vs. Tarsem Singh [(2008) 8 SCC 648], the MA is allowed condoning the delay in filing the OA. The MA stands disposed of.

OA 625/2022

3. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this application and prayer at Para 8 reads as under:-

“(a) Direct the respondents to conduct Re-survey/Review Medical Board of the applicant.

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

4. As far as prayer 8(a) is concerned we find that the applicant was discharged from service on 31<sup>st</sup> January, 2018 in medical category SHAPE-1 after completing 22 years of service. Thereafter he sought for conduct of RSMB before the competent authority vide letter dated 11.09.2021 on the ground that he has been diagnosed with certain back pain which was caused due to an injury sustained while he was in service and now he is having diffuse Disc Bulges at L1-L2 and L3-L4 within 07 years of his discharge. Respondents have filed the counter affidavit and have resisted the claim on merit indicating that the applicant does not have any disability. Without entering into the controversy on merit based on the objections raised by the respondents the simple issue before this Tribunal as on date is with regard to prayer

8(a), that to whether, an RSMB can be conducted in the facts and circumstances of the case.

5. Considering the fact that the applicant is seeking for conduct of RSMB within a period of 07 years from the date of his discharge even after being discharged in Shape-1 and as per policy letter No. 1(3)/2002/D(Pen/Pol) dated 18.01.2009 Entitlement Rule 8(a) issued by Ministry of Defence, he is entitled for the same.

6. We, for the present, without entering into any controversy direct that on applicant filing of this order along with his application dated 11.09.2021 before the competent authority, the competent authority shall take steps for constituting the RSMB, get the applicant examined and forward the report to the applicant. The applicant is directed to ensure that he appear before the appropriate medical board on receipt of notice for conduct of RSMB. The entire process in pursuance to hereinabove be completed within three months.

7. OA stands disposed of.

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[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

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[REAR ADMIRAL DHIPEN VIG]  
MEMBER (A)