

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

**OA 908 / 2019 with MA 1553 / 2019**

**Ex Hav Jyothish Kumar**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant : Mr. Ved Prakash, Advocate**  
**For Respondents : Mr. Shyam Narayan, Advocate**

**CORAM :**

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

**ORDER**

**MA 1553 / 2019**

*As per*  
This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of **249** days in filing the present OA. In view of the verdicts 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)*, the MA 1553/2019 is allowed despite opposition on behalf of the respondents and the delay of **249** days in filing the OA 908/2019 is thus condoned. The MA is disposed of accordingly.

**OA 908 / 2019**

The applicant 'No. 2599660-M Ex Hav Jyothish Kumar' vide the present OA makes the following prayers:-

*"(a) Quash the Impugned Order No. 2599660/CC-LN/PG (Legal Cell) dated 05.02.2019.*

*(b) Direct the respondents to conduct Re-survey/Re-assessment Medical Board of the applicant for Rt Thigh Battle Casualty.*

*(c) 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."*

2. The applicant was enrolled in the Madras Regiment of the Indian Army on 27.12.1995 with terms of engagement of 17 years colour service and 2 years reserve service. After completion of training he was posted to 8 MADRAS with effect from 18.01.1997 and subsequently served at various places during his service as per the deployment of the Battalion. The applicant was posted with 25 Rashtriya Rifles with effect from 03.05.1998 while serving with the unit he sustained GUN SHOT WOUND RIGHT THIGH (OPTD) on 09.07.1999 and was placed in low medical category CEE (Temporary) for six months with effect from 22.11.1999. Subsequently, the applicant was upgraded to Medical Category Shape-I with effect from 25.06.2001 and thus became eligible / fit for all infantry duties like all other soldiers.

3. On 07.11.2013 at around 1700 hours the applicant was detailed as working party commander near the students living area, NCO Academy,

Binnaguri, where he was on attachment duty and whilst working there he sustained an injury in his left leg and was evacuated to 164 Military Hospital and subsequently referred to 158 Base Hospital, Bagdora. The applicant was placed in Low Medical Category A3 (T-24) with effect from 08.01.2014 and diagnosed "PERITALAR DISLOCATION ANKLE (OPTD)" and on a Re-categorization medical board held on 12.12.2014 at 164 Military Hospital, he was further downgraded to Low Medical Category A2 (Permanent) with effect from 10.12.2014.

4. As suitable sheltered appointed was available and the individual was willing to continue in service, he was retained in service for so long as he could be held against authorization of establishment or till completion of his terms of engagement/service tenure whichever is earlier under the provision of AO 46/80 with effect from 10 Dec 2014. Due to his permanent Low medical Category, his sheltered appointment was withdrawn on 31 Mar 2018 and he was brought before a Release Medical Board and discharged from service on medical ground with effect from 31 March 2018 under Army Rule 13(3) III (iii) (a) (i) before completion of terms of engagement after rendering 22 years, three months and five days of service. The duly Constituted Medical Board held on 12 Dec 2017 at Command Hospital, Northern Command, assessed his disability at 40% for the disease "PERITALAR DISLOCATION (LT) ANKLE (OPTD) "for life regarded as attributable to Military Service. Accordingly he was granted

disability pension vide PCDA (P). Allahabad Pension Payment order No 159201800519 for life.

5. The applicant represented to Chief of Army Staff vide his legal Notice dated 14.12.2018 to grant War Injury Pension with effect from the date of discharge or to conduct a Review/Reassessment/Appeal Medical Board, which legal notice had been issued by the applicant for the conduct of the Re-assessment Medical Board in relation to the injury named GUN SHOT WOUND RIGHT THIGH (OPTD) which the applicant had sustained on 09.07.1999 and which injury was admittedly opined to be a Battle Casualty vide the Medical Board Proceedings dated 22.11.1999, in as much as the applicant submitted vide the said legal notice that though he had been placed in Shape-I on 25.06.2001 after being given a sheltered appointment the problem in his right thigh after the gunshot wound in the right thigh sustained by him on 09.07.1999 continue and continues which is resulting in difficulties in his day-to-day work.

6. The applicant vide this legal notice also submitted that he had been initially placed in a low medical category for the gunshot wound injury in his right thigh during the encounter with anti-national elements which had been held to be a battle casualty and that the records indicated clearly that he had also been persistently reporting about the injured right thigh problem to the medical authorities even after he was classified in Shape-I, till the date of his discharge.

7. The respondents vide the impugned letter dated 05.02.2019 no. 2599660/CC-LN/PG (Legal Cell) informed the applicant to the effect:-

*"2. It is intimated that, your client No 2599660M Ex Hav & MACP Nb Sub Jyothish Kumar PK enrolled in The Madras Regiment on 27 Dec 1995 and discharged from service on 31 Mar 2018 under Army Rule 13 3 (iii) a (i) due to non availability of shelter appointment being placed in Low Medical Category for the diagnosis "Peritalar Dislocation (Lt) Ankle (Optd)". He had been placed in Low Medical Category CEE (T) effect from 22 Nov 1999 for "Gun Shot Wound (Rt) Thigh (Optd)" and upgraded to SHAPE - 1 with effect from 25 Jun 2001. Hence he is not eligible for re-assessment medical board at this belated stage."*

stating thus that he was not eligible for a re-assessment medical board at such belated stage.

8. Through the counter affidavit dated 19.11.2019 that has been filed by the respondents, the respondents have reiterated that the said legal notice had been filed after approximately 17 years and 05 months after upgradation of his medical category to Shape-I and that the applicant like other soldiers had been granted promotion to the rank of Havildar in the year 2009 without any problem and that during this period, he had not complained about his problem in his right thigh nor reported sick nor were there any medical records for the same. The respondents have thus submitted that as per the Integrated Headquarters of Ministry of Defense (Army) letter no. B/40122/MA (P)/ AG/PS-5 dated 20.07.2006, there is no provision for the post discharge claim of defense personnel whose disability is in Shape-I at the time of discharge from service.

## ***CONTENTIONS OF THE PARTIES***

9. On behalf of the applicant reliance was placed on the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel 1982. As per averments made in the OA, it was submitted on behalf of the applicant that in terms of the applicable rules to the applicant who was discharged on 31.03.2018, also in terms of Rule 8 (a) of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel 2008, the applicant is entitled to seek the conducting of the post discharge medical board for establishment of his medical disability which he submits is now manifesting itself pursuant to the disability from which he suffers since at the time when he sustained the gunshot injury in the right thigh.

10. Reliance was placed on behalf of the applicant on the medical case sheet of the year 2015 wherein there is mention to the effect:-

*"38 yr old serving NCO*

*A R/C/O (1) GSW (Rt) (Optd)*

*(2) Peritalar dislocation Lt ankle (Optd)*

*Presently complaints of pain & numbness over Rt thigh x 6 months*

*No H/o recent strain / trauma*

*O/E Vil als – WNL*

*S/E NAD*

*L/E – Rt thigh :- Well healed surgical scar*

*:- tenderness over scar. No swelling*

*:- Pain Rt thigh GSW (Old optd)*

*Request review by orthopedician for opinion"*

to contend to the effect that even after the applicant had suffered the disability of Peritalar dislocation Lt ankle (Optd) as is reflected in the medical case sheet of the year 2015, the applicant had complained of pain and numbness over his right thigh for a period of six months.

11. Reliance was also placed on behalf of the applicant on the Medical Case Sheet of the date 05.12.2017 of the Command Hospital (North Comd) wherein also there was a mention of the applicant sustaining undergoing a burning sensation at the injury site in relation to his injury on the right thigh. The said Medical Case Sheet reads as under:-

*"GSW Rt thigh (old)*

*c/o Burning sensation at injury site.*

*Rx. Tab Polybion with Zn 10D X 15 days*

*Tab Pregabalin 1 BD X 15 days"*

On behalf of the respondents, it was contended that the applicant never complained about his problem in his right thigh due to gunshot wound right thigh operated nor did he report sick and there were no medical records held for the same and that it was after discharge from service within one year that the applicant had started claiming that he was suffering from a problem in his right thigh which the respondents submit cannot be accepted and is not logical.

12. The respondents reiterate that in as much as the applicant had been upgraded to SHAPE-I with effect from 25.06.2001 and for the disability gunshot wound right thigh operated after which he served for a long period of 16 years and 09 months without any problems till the date of his discharge, the applicant is not eligible for the grant of Re-survey Medical Board under the provisions of the Integrated Headquarters of Ministry of Defense (Army) letter no. B/40122/MA (P)/ AG/PS-5 dated 20.07.2006

### **ANALYSIS**

13. It is essential to observe that in as much as the applicant was discharged from service on medical grounds with effect from 31.03.2018 under Army Rule 13 (3) III (iii) (a) (i) before completion of terms of engagement after rendering 22 years, 03 months and 05 days of service, the relevant rules applicable to the applicant are the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel 2008 which take effect from 01.01.2008. , Para 8 of the said rules relate to Post discharge claims which read as under:-

#### ***"8. Post discharge claims:***

*(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.*

*(b) In cases where an individual in receipt of a disability pension dies within a period of 7 years form the date of release/retirement, may be considered to have died of the disease for which he was granted disability pension if it can be so established by the*

*competent medical authority. If the medical certificate as to the cause of the death is not available, other factors and circumstantial evidence would be taken into account.*

It is apparent there from that in terms of Para 8 (a) of the said entitlement rules of the year 2008:-

- 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.

14. Apparently thus Para 8 (a) of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel 2008 itself stipulates that the disease may not have been present at the time of the member's retirement/discharge from service, but if it arose within a period of seven years thereafter, it 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.

15. In these circumstances, the contention raised on behalf of the respondents placing reliance on the Re-categorization Medical Board proceedings qua the

applicant to indicate that the applicant was upgraded to medical category SHAPE-I with effect from 25.06.2001 does not in any manner aid the respondents for it is unable to detract from the contents of Para 8 (a) of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel 2008 which itself provides for conducting of the medical examination to assess a post discharge claim of the disability being or not being due to the service conditions obtaining prior to discharge, if the prayer is made for conducting the same within a period of seven years from the date of retirement / discharge of the personnel of the Armed Forces. The reliance in these circumstances placed on behalf of the respondents on the Integrated Headquarters of Ministry of Defense (Army) letter no. B/40122/MA (P)/AG/PS-5 dated 20.07.2006 of the respondents is thus to no avail.

16. Thus in view of our observations hereinabove in relation to the applicability of Para 8 (a) of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel 2008 squarely to the facts and circumstances of the instant case, we hold that the applicant is entitled to seeking the conduct of the post discharge medical board in relation to his injury of **Gunshot wound Rt Thigh (Optd).**

### **CONCLUSION**

17. The OA 908/2019 is thus allowed and the Impugned Order No. 2599660/CC-LN/PG (Legal Cell) dated 05.02.2019 is set aside and the

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respondents are directed to conduct the post discharge medical board qua the applicant for the injury "GUN SHOT WOUND RIGHT THIGH (OPTD)", which post discharge medical board is directed to be constituted within a period of two months from the date of this order and the copy of the proceedings of the said post discharge claim be supplied to the applicant through counsel.

Pronounced in the Open Court on the 2<sup>nd</sup> day of January, 2024.

[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)

[JUSTICE ANU MALHOTRA]  
MEMBER (J)

/AP/