

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

116.

OA 1715/2019

Ex Hav (Hony Nb Sub) Rajbir Singh Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Ved Prakash, Advocate
For Respondents : Mr. Arvind Patel, Advocate

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

ORDER
08.01.2024

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this application and the reliefs claimed in Para 8 read 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.
2. The applicant was enrolled in the Indian Army on 17th December, 1989 and he was discharged from service in SHAPE-1 on 31st December, 2015 after serving for more than 26 years. It is the case of the applicant that while in active service he suffered an injury, namely, Elbow Bone Fracture on 7th December, 2015 was taken to Military

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Hospital Kota for treatment and the X-Ray revealed that the applicant's right hand elbow bone was fractured. Hence, he was referred to Base Hospital Delhi Cantonment on 9th December, 2015 for opinion of the specialist. After treatment at Base Hospital Delhi Cantonment, he was granted six weeks sick leave from 22nd December, 2015 to 1st February, 2016 with an advice to report to the Base Hospital Delhi Cantonment on expiry of six leave for review and deciding his medical category as well as percentage of disability.

3. Since the applicant had completed his terms of engagement on 31st December, 2015, while he was on sick leave, he was locally discharged from the Unit of posting on 31st December, 2015 where in pursuance to the call for discharge given, the applicant reported to the Unit on 26-27 December, 2015.

4. The applicant informed the Officer-in-charge that he is on sick leave till 1st February, 2016 and he had been directed to report to the Base Hospital Delhi Cantonment on expiry of sick leave for reviewing and deciding his medical category as well as percentage of disablement but an application for local discharge was given to the applicant by his Office-in-Charge and accordingly, he was discharged.

from service on 31st December, 2015 in SHAPE-1. The applicant sought some documents regarding RMB through an RTI application dated 8th May, 2019 which was replied to the applicant by AOC Record vide letter No. 27146/RTI/NE/6930400 dated 25th May, 2019 showing to the effect that he has been discharged in SHAPE -1.

5. The applicant sent Legal Notice-cum-Representation/Appeal dated 10th July, 2019 for conduct of RSMB/RAMB for assessing the disability but the same was rejected on the ground that before his discharge neither he was referred to the Base Hospital Delhi Cantonment for medical Re-assessment nor the Re-survey Medical Board was conducted before his discharge.

6. Learned counsel for the applicant invited our attention to the documents filed along with a counter affidavit, namely, the report of the accident and the medical report with regard to X-ray that took place on 7th December, 2015 (Annexure R1). The applicant was examined by the Medical Board on 31st December, 2015 and in this medical report in Para 3 with regard to the short statement and circumstances of the injury suffered reads as under:-

*"Short statement of the circumstances of the case- My unit
se ATM mein paisa nikalne ke lye ayata paisa nikalke*

*wapise jate samay break laganese chakka jam hogyi agge
palti laagaya palti hone ke bad chot laggayi”*

Thereafter in Para 4 column (i) with regard to the query, as to whether, the applicant was performing official task or duty. It is said that ‘Yes’ he was on bonafide Military duty.

7. Learned counsel further invited our attention to the Medical Report at page 58 and argued that the injury and the disability which occurred to the applicant is shown as occurred in peace/field/operational area while on duty, *inter alia*, contending that the applicant had sustained the injury while on duty and the respondents before his discharge should have conducted Re-survey/RSMB and not having done so the respondents committed an error that treating him in SHAPE-1 and simply discharging him in SHAPE-1 without conducting any Re-survey/ RSMB. Seeking conduct of Re-survey/RMSB on these grounds this application has been filed.

8. Learned counsel for the respondents filed a detailed counter affidavit and the only objection raised by the Respondents is that while working in the unit, the applicant visited the ATM to take out money from the Bank and such an injury sustained while returning for duty after withdrawing the money from the ATM and this was not connected with his duty. The same cannot be held

attributable to military service and there is no necessity for conducting Re-survey/RSMB.

9. Learned counsel for the applicants has also referred communication made by the Chief Record Officer, AOC, Records, 56 APO dated 25th May, 2019 seeking Re-survey/RSMB of the applicant and the communication made to the Base Hospital regarding treatment to be given to the applicant.

10. Having heard learned counsel for the parties and on a perusal of the records it is clear that the Medical Board held at Base Hospital, Delhi Cantonment immediately after the accident on 8th December, 2015 has clearly held in the accident occurred while on a bonafide Military duty and the accident is held to be attributable to military service, the same is based on the statement made in Para 3 reproduced hereinabove of the medical report dated 8th December, 2015. Once the Medical Board is of the opinion that the accident is attributable to military service only on the ground that the applicant suffered injury while returning after withdrawing money from the ATM cannot be ground for denying the benefit to the applicant. The applicant had visited the ATM for withdrawal of money while he was on duty after due permission of the Competent

Authority and while retuning back to the unit, it is seen that he had suffered the injury which has been held as attributable to Military Service by the Competent Authority. That apart, it is our observation that the applicant has been locally discharged from service without the mandatory conduct of a Release Medical Examination as per the Para 1 of Army Order 3/89 which reads as follows :

"1. All ranks are required to be medically examined by a medical officer prior to release, retirement, discharge, completion of tenure or service limit or release/discharge at their own request vide Paras 391(a) and 418(e) of RMSAF, 1983. Such medical examination will be conducted by authorized medical attendant (RMO/Staff Surgeon) and the report will be recorded on the form AFMSF- 18 in quadruplicate. The OC unit will ensure that the individual is medically examined by the medical officer or brought before a medical board prior to release. If an individual is proceeding on LPR this may be conducted before he proceeds on such leave. The individuals who are in SHAPE-1/Category 'A' will be required to undergo only a Release Medical Examination whereas those who are in low medical category will undergo a Release Medical Board.

which in itself in a violation of the policy guidelines laid down by the respondents themselves. Thus, in the instant case there is no medical document produced before us by the respondents to establish beyond doubt that the applicant was

without any disability at the time of his discharge from service.

11. That being so we see no reason to disallow the claim of the applicant to conduct a Release Medical Board or Resurvey Medical Board. Accordingly, we allow this application and respondents are therefore directed to conduct the Re-survey/RMSB of the applicant within three months from receipt of this order and take consequential action. Needless to mention if aggrieved by the decision of the RMB/RSMB, the applicant will have the liberty to re-agitate his grievances in accordance with law.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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