

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

40.(Supplementary)

OA 176/2018

Col Narendra Pal Singh (Retd) Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. I. S. Singh, Advocate
For Respondents : Ms. Jyotsana Kaushik, Advocate

CORAM

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

ORDER
27.09.2024

Vide our orders of even date, we have dismissed the application. Faced with the situation, learned counsel for the applicant makes an oral prayer for grant of leave to appeal under Section 31 of the Armed Forces Tribunal Act, 2007 to the Hon'ble Supreme Court. We find no question of law much less any question of law of general public importance involved in the matter to grant leave to appeal. Hence, the prayer for grant of leave to appeal is declined.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN P. M. HARIZ]
MEMBER (A)

different armoured formations; that he was involved in repair, maintenance and overhauling of various types of vehicles and equipments of the Army, mainly armoured fighting vehicles in addition to challenging and strenuous physical demands of service and the different geographical conditions of postings, due to which the applicant had exposure to respiratory disease. It is submitted on behalf of the applicant that before his retirement, he used to have persistent dry cough at frequent intervals and used to take medical treatment from local medical officer considering the same to be a normal cough and cold and allergy and that at the time of RMB, without taking any diagnostic test, he was released in SHAPE-1 medical category.

3. It is submitted on behalf of the applicant that the applicant was re-enrolled in the Army from 2008 to 2012 during which time, he was deputed with Station HQ Babina Cantt and HQ Tech Group EME, Delhi Cantt where he continued to suffer from persistent cough and prolonged fever, and thus on 17.07.2011, he reported to Armed Forces Clinic (AFC), New Delhi and was referred to the Army Base Hospital, Delhi Cantt. On 03.08.2011, the applicant was

admitted in the Army Base Hospital Delhi Cantt and discharged on 13.08.2011 after having been diagnosed as a case of 'Pneumonia', which was later changed to 'Interstitial Lung Disease' during follow-up course. It is submitted that even after retirement from the re-employment on 01.03.2012, the applicant had to take treatment from the Base Hospital, Delhi Cantt and RR Army Hospital, Delhi. However, no categorisation medical board was conducted at the time of retirement.

4. In these circumstances, the applicant approached the respondents vide letter dated 25.09.2014 for conducting a Post-Discharge Medical Board, which was rejected vide letter dated 08.07.2015. The applicant's first appeal dated 26.05.2017 was also rejected by the respondents vide letter dated 07.06.2017. The second appeal preferred by the applicant dated 07.07.2017 was rejected by the respondents vide letter dated 18.07.2017 stating that there is no provision to appeal against rejection of the first appeal wrongly considering the appeal for grant of disability pension instead of conduct of Post Discharge Medical Board. Hence, the applicant filed the present OA seeking direction to the

respondents to conduct a Re-survey Medical Board to assess the disability of the applicant.

5. Learned counsel for the applicant submitted that the applicant, at the time of joining the service, was declared fully fit medically and physically and no note was made in his medical record that the applicant was suffering from any disease at that time. Learned counsel contended that the applicant is entitled to conduct of Re-Survey Medical Board in terms of GoI, MoD letter No. 1(2)/97/D(Pen-C) dated 07.02.2001, wherein it was provided that a service personnel who suffer from any disease post-retirement/discharge from service may, within 10 years of retirement/discharge, claim for a Re-survey/Re-assessment Medical Board to ascertain their current disabilities and whether the same is a delayed manifestation of the pathological process set in motion by service conditions prior to retirement/discharge. Learned counsel further referred to Regulation 86 of the Pension Regulations for the Army, 1961 (Part-I) amendment 2008 and also Rule 10 of the Entitlement Rules for Casualty Pensionary Awards, 1982 to submit that the applicant is entitled for conduct of a RSMB/RAMB to assess the current

disability has resulted due to service conditions or not for grant of disability pension. Learned counsel, therefore, prayed that the respondents be directed to conduct a RSMB to assess the current disability of the applicant.

6. *Per contra*, the learned counsel for the respondents contended that the applicant is not entitled to the prayer made since the RMB, being an expert body, after due examination, found the applicant in good bodily health and found fit to be released in medical category of SHAPE-1, at the time of his retirement. Learned counsel submitted that while rejecting the second appeal of the applicant, the respondents stated that no provision exist to appeal against rejection of request of retired officer for holding Post-Discharge Medical Board. Learned counsel further contended that as per Para 3 of the PRA stipulates that the regulations in the PRA apply only to the personnel who are in the Army on 01.07.2008, hence Regulation 86 of the PRA, 2008, does not apply to the applicant, having retired on 31.03.2008 and even otherwise, the period of 10 years has already elapsed since the applicant's retirement. He, therefore, prayed that the OA may be dismissed.

7. We have heard the learned counsel for the parties and have gone through the records.

8. The applicant in this OA has made a prayer for conduct of the RSMB for re-assessment of the disability which he claims to be suffering from after retirement. However, on going through the record placed before us, we find that the applicant had filed the medical papers as Annexure-A3 to the OA, in relation to his admission on 03.08.2011 to the BH, Delhi Cantt and discharge on 13.08.2011, which mentions the diagnosis as : Pneumonia (Rt), however, there is no detail or any clinical examination reports on record to demonstrate as to what is the stage/ status, difficulties, condition at the time of admission, investigations, etc. given to the applicant. Although it is mentioned therein that all investigations and documents were there, however, the applicant chose not to file the same. Moreover, there is nothing on record which supports the statement of the applicant that in the follow-up, the disease of the applicant was diagnosed as 'Interstitial Lung Disease'.

9. Further, in the Part II - Medical Examination in the RMB proceedings, after giving physical and medical

parameters on investigation, the Medical Officer has stated that 'I have carefully examined No. IC-34280L Rank – Col (TS) Name – N P Singh Unit : 1 Adv Base Wksp EME C/o 99 APO and I am of the opinion that the individual in good bodily health and has the prospect an average duration of life commutation of pension in his case is, therefore, recommended acceptance. Fit for release in medical category: SHAPE-I, which opinion was concurred by the Commandant of his Unit.

10. In view of the above, considering the aforesaid facts and circumstances and the long passage of time passed, no useful purpose will be served now and thus we do not deem it appropriate to grant the prayer for conduct of RSMB and accordingly the OA stands dismissed.

Pronounced in the open Court on this 27th day of September, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN P.M. HARIZ]
MEMBER (A)

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