

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

74.

**O.A. No. 18 of 2018**

**In the matter of :**

**Wg Cdr Kailash Kumar Yadav (Retd) ... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant : Shri Ajit Kakkar, Advocate**

**For Respondents : Shri Vijendra Singh Mahndiyan,  
Advocate**

**CORAM :**

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

**O R D E R**

**14.03.2024**

1. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 read as under :

***"(a) To direct the respondents to place all medical records including medical board conducted by the respondents.***

***(b) To quash the RMB proceedings and in view of the above facts and circumstances include Bronchial***

***Asthma and Allergic Rhinitis towards the disability pension of the applicant.***

- (c) To direct the respondents to conduct the Review Medical Board or Re-survey Medical Board to ascertain the present medical position of the applicant and assess the disabilities of the applicant.***
- (d) To direct the respondents to grant disability pension as per the RMB/RSMB from the date of retirement i.e. 01.05.2011.***
- (e) To direct the respondents to grant broad banding with 12% interest on the arrears of disability pension and other benefits.***
- (f) To grant such other relief appropriate to the facts and circumstances of the case as deemed fit and proper."***

2. The applicant was enrolled in the Indian Air Force on 19.06.1980 and was commissioned as an officer on 17.06.1995. The applicant took premature retirement and was thus released from service on 30.11.2011. During the service, the applicant was diagnosed with 'Bronchial Asthma'

in 1985 and was placed in Low Medical Category CEE (T-24) which was later changed to CEE (P) w.e.f. 22.08.1986. It is the case of the applicant that the initial medical board held on 29.10.1991 conceded his disability of Bronchial Asthma as 'aggravated by service' due to climatic changes and was placed in permanent medical category BEE. Thereafter, the medical board held on 02.08.1996 again opined the said disease as 'Aggravated by service due to exposure to uncongenial climatic conditions while in service'. However, the next two medical boards held on 05.01.1998 and 06.06.2000 opined the disability as neither attributable to nor aggravated by service but placed the applicant in permanent low medical category A4G3(P). However, he was advised to avoid exposure to cold and dust on 05.01.1998 which was changed to 'fit for all ground duties' in the medical board of 06.06.2000. According to the applicant, the medical boards held till 1996 noted the disability as Bronchial Asthma and then changed to Bronchial Allergy in the medical board held in August, 1996 but the same continued to be declared as 'aggravated by service'. However, the medical board held in January, 1998 changed his

disability to 'Allergic Rhinitis' and declared it as NANA and he was placed in low medical category A4G2 (T-24) without citing any reasons for the same and without considering the fact that the applicant has been in permanent low medical category for almost 12 years, which is arbitrary and unfair. The next medical board of June, 2000 changed the medical category to A4G3 Permanent. However, the Release Medical Board (RMB) held on 07.04.2011 found no disability detected/claimed and declared the applicant 'Fit for release in medical category A4G1. According to the applicant, even after the release from the service, he suffered from the said illness and was under treatment and the applicant has placed on record the medical sheet of the Air Force Medical Establishment, Department of ENT stating that the applicant is still suffering from Bronchial Asthma and Allergic Rhinitis. Therefore, the applicant sent an application dated 15.11.2016 for conduct of the Review Medical Board, however, the same was rejected vide respondents' letter dated 08.05.2017. Aggrieved by this, the applicant has filed the instant OA with the prayers as reproduced hereinabove in Para 1 of this order. However, during the course of

hearing today, the learned counsel for the applicant confined his prayer with regard to conduct of an RSMB only to ascertain the present medical condition.

3. *Per contra*, the learned counsel for the respondents justified the action of the respondents and submitted that the applicant took premature retirement and was released from service on 30.11.2011; that before the release of the applicant from service, he was produced before the Release Medical Board held in April, 2011 and was found fit for release from the service with no disability detected.

4. We have heard the learned counsel for the parties at length and gone through the records produced before us.

5. On behalf of the applicant, an innocuous prayer has been made for conduct of the RAMB/RSMB to ascertain the present medical position and assess his disabilities i.e. Old Bronchial Asthma with Allergic Rhinitis, which he claims to be suffering from even after retirement. Along with the present OA, the applicant has annexed various medical case sheets of Air Force Central Medical Establishment, Department of ENT dated 20.12.2016, 23.09.2016, 26.11.2010 and 11.11.2010, which show that the applicant

has been under treatment for the diseases which was shown as Asthmatic Bronchitis and Allergic Rhinosinusitis.

6. The applicant was released from service on 30.04.2011 and he sent the application/appeal challenging the RMB and requesting for conduct of the Review Medical Board on 15.11.2016 which was rejected. The OA was also filed on 25.12.2017. Thus the applicant is within the limitation period of seven years within which the Review/Re-survey Medical Board can be conducted in view of Para 8 (a) of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008, which reads 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."**

Therefore, we are of the considered view that it would be in the fitness of things if the disability of the applicant is re-

assessed by conducting RSMB so that proper identification of the disability and percentage of disablement may be fixed.

7. In view of the above, O.A. No. 18 of 2018 is allowed to the extent that the respondents are directed to conduct the RSMB of the applicant within a period of two months from the date of this order so as to re-assess the disability and the percentage of the disablement and the decision of the RSMB be communicated to the applicant accordingly.

8. There is no order as to costs.

**[JUSTICE RAJENDRA MENON]**  
**CHAIRPERSON**

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

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