

COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

56.

OA 1363/2019 with MA 2107/2019

Ex Hav Banwari Lal Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Ved Prakash, Advocate
For Respondents : Mr. Arvind Patel, Advocate
Maj Satvik Grover, OIC, Legal Cell

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE MS RASIKA CHAUBE, MEMBER (A)

ORDER
03.01.2025

The applicant vide the present OA makes the following prayers:-

*“(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 as per averments in the counter affidavit dated 30.09.2019 filed by the respondents was enrolled in the Indian Army on 29.10.1997 and on having applied for premature discharge on extreme compassionate grounds was so discharged on 30.11.2013. According to the applicant, though he was discharged in SHAPE-1, he having participated in the operations in Kargil had been injured by a part of rock which broke due to firing of the enemy country as a consequence of which he was hospitalized and remained admitted for nearly about two

weeks. Inter alia, the applicant has submitted to the effect that he also participated in the operation dated 26.11.2008 in the Mumbai attack where his disability was further aggravated, and that as a consequence thereof he has a back pain but despite the same he was not downgraded in low medical category and was discharged in SHAPE-1 on 30.11.2013. The applicant has submitted that he has been under treatment for back pain and that an MRI was done on 12.08.2016 which revealed that he was suffering with Bulge Disc at L4-5, L5-S1 levels and there were further irregularities including nerve roots which were detected.

3. It has been further submitted by the applicant that vide an application dated 12.02.2019 sent through the form of a Legal Notice-cum-Representation/Appeal, the applicant made a request for conducting a Review/resurvey Medical Board for assessing his disability which the respondents rejected vide the impugned letter no. 3190859/DP/RA/JR dated 01.07.2019 stating to the effect:-

"2. It is intimated that you were enrolled in the Army on 29 Oct 1997 and discharged from service on 30 Nov 2013 under rule 13(3) III(iv) of Army Rule 1954 on compassionate grounds at your own request in medical category SHAPE-1. Since you were discharge at your own request, you are not eligible for a review medical bd in accordance with rule 86 of Pension Regulation for the Army Part-I, 2008."

4. Though the respondents vide their Counter affidavit dated 30.09.2019 i.e. vide Para-3 in the Brief Facts of the case have stated to the effect that the applicant has sought the Review/Resurvey Medical Board for assessing his so called disability after a lapse of 17 years, the

said 17 years apparently that the respondents seek to refer to, relate back to the period of admission of the applicant at the 308 Field Ambulance with effect from 07.06.2002 to 10.06.2002 for a Contusion Back.

5. In terms of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces personnel, 2008 which are applicable to the instant case in as much as the date of discharge of the applicant is 23.11.2013 vide Para-8(a) thereof, it has been stipulated to the effect:-

*“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.”*

6. In terms of Para-8(a) of the said Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008, it has thus been categorically stated to the effect that where a disease was not present at the time of the member's retirement/discharge from service but arose within 7 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. Apparently the prayer made by the applicant herein is within a period of 7 years from the date of discharge of the applicant who was discharged on 30.11.2013 and the applicant is entitled to the conducting of the post discharge medical board in relation to his stated disability.

7. The OA 1363/2019 is disposed of with directions to the respondents to conduct the Post Discharge Medical board of the applicant within a period of two months from the date of receipt of this order in accordance with the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008.

Copy of this order be given *DASTI*.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(RASIKA CHAUBE)
MEMBER (A)

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