

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

58.

OA 1382/2023 WITH MA 132/2025

Ex HAV (ACP NB SUB) Verender Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Ved Prakash, Advocate
For Respondents : Mr. Kumar Gaurav, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER
22.01.2025

MA 132/2025

Counter affidavit has been filed. There being some delay in filing the counter affidavit, this application has been filed seeking condonation of delay. Delay condoned. Counter affidavit is taken on record.

2. MA stands disposed of.

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3. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this application seeking conduct of a resurvey/review medical board post-discharge.

4. The applicant was enrolled in the Indian Army on 02.05.1996 and discharged from service

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on 31.05.2022 in Shape-I. The applicant's case is that while in service he had taken leave and while returning to join his duties he met with an accident on 06.03.2018 near his Government accommodation, as a result of which, he sustained an Undisplaced Fracture Lateral Tibial Plateau (RT). He was admitted to the Military Hospital, Jaipur, on 06.03.2018, immediately after the accident and discharged from the hospital on 17.04.2018. According to the applicant, he was not fully recovered at the time of discharge from the hospital. Despite this, he was not placed in the Low Medical Category for reasons best known to the respondents and was subsequently discharged from service on 31.05.2022 in Shape-I. A legal notice/representation seeking conduct of a review/resurvey medical board for the assessment of his disability was sent on 23.08.2022. When no action was taken, he invoked the jurisdiction of this Tribunal and seeks constitution of a medical board. He contends that after his discharge, he faced certain medical issues and, as a result, sought medical advice and underwent treatment. He was diagnosed with certain ailments, as detailed in the MRI report at Page No. 18, issued by a private consultant neurologist on 22.06.2022. The

applicant was found to be suffering from mild degenerative changes in both knee joints, which he submits is the result of the accident. As the ailment manifested within seven years of his discharge in accordance with the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008, he is entitled to seek a review/resurvey medical board. Since the said claim has been arbitrarily rejected, he has invoked the jurisdiction of this Tribunal.

5. The respondents have filed a counter affidavit admitting the factual aspects concerning the applicant's enrolment, discharge, and admission to the Military Hospital, Jaipur, as well as his discharge in Shape-I after the medical examination. However, they contend that with regard to the accident sustained by the applicant in March 2018 and the treatment provided at the Military Hospital, Jaipur, there is nothing to indicate that the injury sustained by the applicant is attributable to or aggravated by military service. They submit that since the applicant was discharged in Shape-I according to Para 86 of the Pension Regulations, 2008, he is not entitled to seek any review medical board in the matter.

6. We have heard the learned counsel for the parties and perused the documents available on the records. The

Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008, supersede the earlier Entitlement Rules of 1982 and now govern the process to be followed for conducting or seeking a review medical board.

7. A perusal of the said rules, namely, Rule 8, indicates that post discharge claims are to be evaluated and granted under this clause. Sub-clause 8(a) thereof reads as follows:

8. Post discharge Claims:-

(a) Cases in which a disease was not present at the time of the members' retirement/discharge from service but arose within 7 years thereafter, maybe 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 from 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.

8. A perusal of the aforesaid provision clearly shows that if a disease was not present at the time of the member's retirement or discharge from service, i.e., the discharge was in Shape-I without any disability or ailment, but a disability or ailment arises within seven years thereafter, the same 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 the pathological process set in

motion by service conditions obtaining prior to discharge; this provision needs recognition. The purpose of this section is to allow for the recognition of service related disability within seven years of discharge. Whether the ailment suffered by the applicant within seven years of his discharge is attributable to or aggravated by service can only be assessed by the constitution of a competent medical board and conducting a medical examination by that board. Based on these rules, resurvey/review medical boards are conducted if the demand is made within seven years from the date of discharge or retirement.

9. In this case, the applicant was discharged on 31.05.2022 and within a period of seven years the medical records filed by him indicate that he suffered certain ailments, i.e., in June 2022. Whether the said ailment is attributable to or aggravated by service can only be assessed by conduct of a resurvey/review medical board, as per the rules. Since the necessary criteria for claiming resurvey/review medical boards are met by the applicant, we have no hesitation in allowing his prayer. In the present circumstances, we direct that a resurvey/review medical board as contemplated under Rule 8 of the Entitlement Rules

for Casualty Pensionary Awards, 2008, be constituted. The applicant shall be examined, and based on the report, appropriate action shall be taken as permissible under the rule/law.

10. The medical examination, as directed above, should be conducted within a period of three months from the date of receipt of a copy of this order, and appropriate action should be taken thereafter.

11. In view of the above, the OA stands disposed of.

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[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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[RASIKA CHAUBE]
MEMBER (A)

/Ps/