

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

**OA 1857/2018**

**Ex Hav Rakesh Kumar Sharma** ..... Applicant  
**VERSUS**  
**Union of India and Ors.** ..... Respondents

**For Applicant** : Mr. Ajit Kakkar, Advocate with  
Ms. Eti, Advocate  
**For Respondents** : Mr. Satya Ranjan Swain,  
Advocate with Mr. Ankush Kapoor,  
Advocate

**CORAM**

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

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

- “(a) To set aside the letter dated 05.09.2018 issued by the respondents.*
- (b) To direct the Respondents to produce all medical records of the Applicant including medical boards conducted by the respondents while in service.*
- (c) To direct the Respondents to conduct Resurvey Medical Board to assess the disability of the Applicant.*
- (d) To direct the respondents to grant disability pension to the Applicant;*
- (e) To grant broad banding of disability pension.*

**(f) To pay interest @12% on the arrears of pension and other benefits.**

**(g) 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 Army on 18.11.1988 and discharged from service on 30.11.2014(AN) on completion of terms of engagement under Army Rule 13(3) iii(i). He was granted Service Pension w.e.f. 01.12.2014 vide Office of the PCDA(Pensions), Allahabad Pension Payment Order no. S/38088/2014(Army) dated 18.07.2014. The applicant was discharged in medical category SHAPE-1 as per the medical examination carried out on 24.04.2014 as per AFMSF-18(Ver 2002) dated 08.05.2002.

### **CONTENTIONS RAISED**

3. The applicant submits that during his service tenure in 2013, he suffered from a low backache and was given symptomatic treatment. The respondents through their counter affidavit in Para-3(c) also state that the applicant had reported sick on 05.03.2014 complaining of low backache and had been prescribed medicine and excused PPG for 15

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days. The applicant has submitted vide Para 4.7 of the OA that he is from the MT trade and used to carry out duties of driving of long hours and that he was also detailed on DR duties(dispatch of mail). The applicant further submitted that the Rheumatologist has also recorded the medical findings in relation to him to the effect:-

***“Onset of levoscoliosis after prolonged motorcycle ride”***

and that he was advised for X-ray of the Pelvis on 30.04.2014. The said averments in Para-4.7 of the OA have not been controverted by the respondents vide their counter affidavit, and thus deemed to be admitted.

4. It is the grievance of the applicant that though he continued to complain of a low backache problem during his 26 years of service, the respondents always graded him in medical category SHAPE-1 and did not consider his medical condition seriously which led to formation of cancerous cells in his body. The applicant along with the OA has placed on record copies of the medical case sheets issued by the ASC Centre & College, Bangalore dated 05.03.2010 wherein his

trade is mentioned as ASC MT and that he suffered from low backache and was excused PPG duties for 15 days apart from his also suffering from Sciatica. Furthermore, the copy of the medical case sheet of the dated 10.04.2014 indicates that the applicant was referred for opinion of the Rheumatologist and as per the said medical case sheet on 30.04.2014 in the OPD of the Rheumatology Medical Division, CHAF Bangalore -560 it was recorded(as scanned) to the effect:-

“

MEDICAL DIVISION  
 CHAF, BANGALORE - 560  
 Date 30/4/14 T.N. 41  
 OPD Rheumatology No. 05

Lowbackache ~ 3 months

Onset of pain after prolonged motorcycle ride

Op. par localised to (Rt) buttock &

(L) lower back. mechanical in nature.

No RT or tenderness  
 FABER'S test (RT)

Spinal fluid - normal.

Sciatica -

”

5. The applicant has also placed on record the OPD card of the Spinal Injuries Centre, Vasant Kunj, New Delhi dated 10.02.2017 which is after his discharge to state that he was suffering from the gluteal region tumour on the right side and was also operated upon for the same on 24.03.2017. The respondents vide their counter affidavit dated 05.04.2019 have submitted to the effect that these documents of the year 2017 relate to said treatment that the applicant took for low backache in the hospitals after retirement, and thus no comments in relation thereto by the respondents. The applicant has submitted that PET-CT Study carried out by the Delhi Institute of Functional Imaging on 17.02.2017 indicated

**“A low grade metabolic active lobulated mass lesion along the intramuscular plane of the right gluteal region.”**

6. Inter alia, the applicant submitted that he was referred to Max Super Speciality Hospital, New Delhi and was diagnosed with

**“a large well demarcated heterogeneous dumb bell shaped mass in the right gluteal region”**

7. The applicant has further submitted that the RMB conducted at the time of release of the applicant which opined the applicant was to be released in SHAPE-1 did not take into account the problems faced by the applicant, which developed during his service career. The applicant has thus submitted that he suffered from Chondrosarcoma which has apparently not occurred within a short span of two or three months but is a buildup of years which surfaced in medical tests, which the medical board of the respondents failed to diagnose. The applicant submits that as a consequence of the negligence of the medical boards of the respondents, the applicant has suffered with the disease which resulted due to the low backache that he suffered as early as in 2013 which low backache has to be held to be attributable to military

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service even as per the medical case sheet of the medical division of CHAF, Bangalore-560 dated 30.04.2014 which indicates the onset of the low backache due to prolonged motorcycle rides with the applicant deployed as a motorcycle rider, which ought not to have been overlooked.

8. The applicant has further submitted that even if it be contended by the respondents that the disease that he suffers from was not directly caused by military service, the same has to be held to be aggravated due to military service and the applicant is suffering now from 'well differentiated extra skeletal right gluteal chondrosarcoma(post excision)', anxiety and depression.

9. The applicant has further submitted to the effect that vide applications dated 03.11.2017 and 24.08.2018, he had requested the respondents to conduct a Re-Assessment medical board qua his medical problem and to declare the same as attributable and aggravated due to service so that he may be granted disability pension but that the respondents vide letter no 14801264L/Appl/DP-II dated 21.03.2018 (of

which reference has also been made in the impugned letter no.14801264L/Apl/DP-II dated 05.09.2018) informed the applicant that he had been discharged from service in medical category SHAPE-1 and thus there was no provision for the conducting of the Re-Assessment medical board in terms of letter no. 16050/RMB/DGAFMS/ MA(Pension)/RKS dated 20.02.2018.

10. The applicant has submitted that in terms of Rule-8(a) of the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel which prescribes 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 a period of 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.”,***

the applicant is entitled to conduct of the Re-Assessment medical examination to ascertain whether the medical

ailment that he suffers from and which has been in existence within a period of seven years from the date of his discharge, - is or is not attributable to military service and whether it was a delayed manifestation of a pathological process set in motion by service conditions obtaining prior to discharge.

11. On behalf of the respondents, it was the avowed contention that the applicant was released in SHAPE-1 and thus a Re-Assessment medical board cannot be conducted.

12. A further submission was made on behalf of the respondents that the prayers-(d),(e) and(f) made by the applicant adverted to hereinabove cannot be granted without it being known as to whether or not the applicant suffered from any disability in as much as he was discharged in SHAPE-1 and without ascertaining whether the disability was attributable to or aggravated by military service.

13. A further submission was made on behalf of the respondents that the applicant having been since discharged from service, no Re-survey medical board can be conducted,

and all that can be conducted is a Post Discharge Medical Board.

### **ANALYSIS**

14. That the applicant in the instant case has been discharged from service on 30.11.2014 and the instant OA has been filed on 13.11.2018 within a period of seven years from the date of discharge of the applicant from military service is unrefuted and borne out through the record. The applications dated 03.11.2017 and 24.08.2018 made by the applicant also for the conduct of the medical board to assess his medical ailment and its attributability have **also been made within a period of seven years from the date of discharge.** Apparently in terms of Rule-8(a) of the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008 already referred to in para 10 hereinabove:-

**“10. *Attributability:***

**(a) *Injuries:***

***In respect of accidents or injuries, the following rules shall be observed:***

***(i) Injuries sustained when the individual is 'on duty', as defined, shall be treated as attributable to***

*military service, (provided a nexus between injury and military service is established).*

*(ii) In cases of self-inflicted injuries while \*on duty', attributability shall not be conceded unless it is established that service factors were responsible for such action.*

*(b) Disease:*

*(i) For acceptance of a disease as attributable to military service, the following two conditions must be satisfied simultaneously:-*

*(a) that the disease has arisen during the period of military service, and*

*(b) that the disease has been caused by the conditions of employment in military service.*

*(ii) Disease due to infection arising in service other than that transmitted through sexual contact shall merit an entitlement of attributability and where the disease may have been contacted prior to enrolment or during leave, the incubation period of the disease will be taken into consideration on the basis of clinical course as determined by the competent medical authority.*

*(iii) If nothing at all is known about the cause of disease and the presumption of the entitlement in favour of the claimant is not rebutted, attributability 'should be conceded on the basis of the clinical picture and current scientific medical application.*

*(iv) When the diagnosis and/or treatment of a disease was faulty, unsatisfactory or delayed due to*

**exigencies of service, disability caused due to any adverse effects arising as a complication shall be conceded as attributable.**

**11. Aggravation:**

**A disability shall be conceded aggravated by service if its onset is hastened or the subsequent course is worsened by specific conditions of military service, such as posted in places of extreme climatic conditions, environmental factors related to service conditions e.g. Fields, Operations, High. Altitudes etc.”**

it is a Post Discharge medical Board that can be and has to be conducted.

15. We are fortified in so holding in view of the orders of this Tribunal in:

OA 1491/2019 in **Ex CPO COM Pritam P Kange vs. UOI & Ors.** dated 15.05.2023,

in **Hav Pooran Mal(Retd) vs. UOI & Ors.** in OA 1088/2019 dated 05.12.2024,

in **Brig Sagar Singh vs. UOI & Ors.** in OA 1110/2017 dated 21.12.2023, and

in **Lt Col Harvinder Thakur(Retd) vs. UOI & Ors.** in OA 1017/2019 dated 05.07.2023.

16. As to whether or not the ailment that the applicant suffers from as stated by him in relation to levoscoliosis, Chondrosarcoma and gluteal sarcoma, anxiety and depression are delayed manifestations of a pathological process set in motion by service conditions of the applicant has essentially to be ascertained by the medical board. The grant of the disability element of pension and broadbanding thereof of payment of interest thereon are also aspects relatable to the determination of any ailment or disease or disability being suffered by the applicant as a manifestation of a pathological process set in motion by service conditions obtaining prior to his discharge and which arose within a period of seven years from the date of discharge.

## **CONCLUSION**

17. The OA 1857/2018 is thus disposed of with directions to the respondents to conduct a Post Discharge Medical Board in relation to the applicant's medical condition qua

- (i) levoscoliosis,
- (ii) well differentiated extra skeletal right gluteal chondrosarcoma(post excision);
- (iii) Anxiety and depression;
- (iv) Low Back Ache;
- (v) Percentage of disability;
- (vi) Duration of disability;
- (vii) whether the same is/are a manifestation of a pathological process set in motion by service conditions obtaining prior to discharge;
- (viii) and of the same having arisen within a period of seven years from the date of discharge.

18. The said Post Discharge Medical Board is directed to be conducted in terms of the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008 in view

of the factum that the applicant was discharged on 30.11.2014 when the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008 were in force and applicable to the applicant in the facts and circumstances of the instant case.

19. The said Post Discharge Medical Board is directed to be conducted by the respondents within a period of two months from the date of this order with a copy of the said assessment made being supplied to the applicant.

20. It would be open to the applicant to seek such redressal as available in accordance with law thereafter.

Pronounced in the open Court on the 24<sup>th</sup> day of February, 2025.

**[RASIKA CHAUBE]**  
**MEMBER (A)**

**[JUSTICE ANU MALHOTRA]**  
**MEMBER (J)**

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