

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

OA 2008/2019 with MA 2932/2019

Ex Sgt Manoj Kumar Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Ved Prakash, Advocate
For Respondents : Mr. Pankaj Sharma, Incharge DAV
Legal Cell

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

MA 2932/2019

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 416 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of **UoI & Ors Vs Tarsem Singh 2009(1)AISLJ 371** and in **Ex Sep Chain Singh Vs Union of India & Ors (Civil Appeal No. 30073/2017)** and the reasons mentioned, the MA 2932/2019 is allowed despite opposition on behalf of the respondents

and the delay of 416 days in filing the OA 2008/2019 is thus condoned. The MA 2932/2019 is disposed of accordingly.

2. 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.”

3. The applicant No. 774784-H Ex Sgt Manoj Kumar was enrolled in the Indian Air Force on 05.12.1998 and was discharged from the service on 28.02.2018 in medical category A4G1 under the clause “On fulfilling the conditions of his enrolment” after rendering a total of 20 years and 23 days of regular service. As per the Release Medical Board(RMB) held on 28.02.2018 vide AFMSF-18 dated 28.02.2018, no disability was detected or claimed by the applicant.

CONTENTIONS RAISED

4. The applicant vide the present OA has however further submitted to the effect that he was into sports i.e. Body Building, Weight Lifting and Athletics and earned various medals and certificates in these games and consequently suffered a disability of Diffuse Disc Bulge at L3-4,L4-5 levels causing bilateral neural foraminal compromise in 2012. *Inter alia* the applicant submits that he also suffered shoulder pain radiating to his arm when he was in active service. It has been further submitted by the applicant that his MRI Lumbo-Sacral Spine was conducted on 20.12.2012 in which the CI Spl(Radiodiagnosis) opined the Lumbar Spondylotic changes with difuse disc bulge at L3-4 and L4-5 causing bilateral neural foraminal compromise. It is further submitted by the applicant that he reported at 3 Air Force Hospital AF Stn Amla for Shoulder Pain on 18.08.2017 whilst he was in active service was not placed in low medical category. The applicant has further submitted in his OA instituted on 22.10.2019

that he is still suffering from the disability and facing difficulties in day to day life.

5. The applicant has also placed on record as Annexure A-3 copy of the report of MRI Lumbo-Sacral Spine conducted on 20.12.2012 in the Department of Radiodiagnosis and Imaging, Base Hospital, Delhi Cantt wherein there is a mention to the effect:-

“Impression: Lumbar spondylotic changes with diffuse disc bulge at L3-4 and L4-5 along with thickened ligamentum flavum and hypertrophic facet joints indenting the thecal sac and causing bilateral neural foraminal compromise.”

6. Inter alia the applicant has placed on record the copy of the medical examination conducted on 3 Air Force Hospital AF Stn Amla on 18.08.2017 when he is stated to have been diagnosed with left shoulder pain radiating to his Arm with it having been opined as per the medical document which as scanned reads as under:-

3 AIR FORCE HOSPITAL
AF STN AMLA

PROVIDING COMPREHENSIVE HEALTH CARE 24X7

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Sr.No. 774784	Rank Sgt	Unit 2860	Ref. Self
Name Manoj		Trade	
Name of Patient		Age 37yr	
Diagnosis (L) Shoulder pain radiating to arm.			
Ref.No./ Date	Treatment / Disposal		
18/8/17	<p>Surgical specialist advised MRI (L) shoulder. Seen by ortho surgeon (Biceps Tendonitis) Refer to CAHS empanelled Dr. P. Nagpur for MRI & further management.</p> <p style="text-align: right;">(Ankita Mukherjee) F11 Lt Medical Officer 3 Air Force Hospital</p>		
OD - दिन में एक बार	BD - दिन में दो बार	TDS - दिन में तीन बार	
QID - दिन में चार बार	HS - रात में सोने के समय	CM - कम चुबह	
LA - Local Application	PC - भोजन के पश्चात्	SOS - आवश्यकता पड़ने पर	
Report sick on expiry of ED		Self medication is dangerous	
Consult your doctor before stopping medication			
Maintain ideal body weight by regular exercise and balanced diet			
HAVE FUN WITH ONE			
I Integrity C Compassion A Accountability R Respect E Excellence			

7. The applicant submits that though he sent a Legal Notice cum Representation/ Appeal dated **11.02.2019** for conducting a Review/Re-survey Medical Board in terms of the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008 vide this application dated 11.02.2019 in relation to his disability of Diffuse Disc Bulge at L3-4,L4-5 levels in view of his suffering from Shoulder pain

radiating to his arm whilst submitting to the effect that the disability that he suffered from had arisen whilst in service and was connected with service conditions, the respondents vide the letter no. Air HQ/99801/774784/5/DAV(Med) dated 04.09.2019 stated that the disease did not exist at the time of discharge of the applicant and that his request for conducting a Review Medical Board under the Post Discharge Claim could not be acceded to in terms of the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008.

8. The applicant vide the OA has placed reliance on the orders of this Tribunal in OA 1715/2018 in **Cdr SC Jaidwal vs. UOI & Ors** vide order dated 22.10.2018 and order dated 09.12.2013 of the AFT(RB), Chandigarh in OA 2584/2013 in **Sandeep Bansal vs. UOI & Ors.** to submit to the effect that the applicant is entitled to the conducting of the Post Discharge Review Medical Board. Vide their counter affidavit dated 23.12.2022 the respondents have not refuted the contentions of the applicant in relation to his participation in

sports activities and submitted that there is no record of the disability of the applicant. *Inter alia* the respondents reiterate that as per the release medical examination at 3 Air Force Hospital AF Stn vide AFMSF-18 dated 28.02.2018, the applicant had been reaffirmed to be fit to be released in medical category A4G1 and no disability having been detected at that time, coupled with the factum that the applicant had no issues between 2012-2017, the applicant is not entitled to the grant of any disability pension nor broadbanding thereof.

ANALYSIS

9 It is essential to observe that the applicant was discharged from the Indian Air Force on 28.02.2018 and has submitted a representation dated 11.02.2019 within a period of seven years from the date of discharge in medical category A4G1. The applicant has also filed the instant OA on 22.10.2019 within a period of seven years of his discharge, he having been discharged on 28.02.2018. The applicant has submitted that he is suffering because of the disability of

Diffuse Disc Bulge at L3-4, L4-5 levels of the disability which he suffered during his service tenure and that the same has resulted into Lumbar Spondylotic changes as per the Lumbo-Sacral Spine conducted on 20.12.2012 at the Base Hospital, Delhi Cantt and has also suffered from left Shoulder Pain radiating to his arm as per the medical examination at the 3 Air Force Hospital AF Stn Amla on 18.08.2017. The applicant has further submitted through the OA that he is still suffering from this disability and is facing difficulties in day to day life. The application filed on 11.02.2019 to the respondents and the instant OA filed on 22.10.2019 to this Tribunal have both been filed by the applicant seeking a Review Medical Board to be conducted to assess his medical ailment and its attributability due to military service within a period of seven years from the date of his discharge, he having been discharged on 28.02.2018.

10. Apparently in terms of Rule-8(a) of the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008 which is to the effect:-

“(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.”

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

11. 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.

in ***Cdr SC Jaidwal vs. UOI & Ors*** in OA 1715/2018 dated 22.10.2018.

12. As to whether or not the ailment that the applicant suffers from as stated by him in relation to Left Shoulder Pain radiating to his arm and Diffuse Disc Bulge at L3-4, L4-5 levels is a 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

13. The OA 2008/2019 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) Left Shoulder Pain radiating to his arm,
- (ii) Diffuse Disc Bulge at L3-4, L4-5 levels;
- (iii) Percentage of disability;
- (iv) Duration of disability;
- (v) whether the same is/are a manifestation of a pathological process set in motion by service conditions obtaining prior to discharge;

14. 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.

15. 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.

16. 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 6 day of March, 2025.

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

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/TS/