

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

O.A. No. 2562 of 2024 WITH MA 2966/2024

In the matter of :

Naik Sardar Mal Yadav (Retd) ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Mr. Nawneet Krishna Mishra, Advocate

For Respondents : Ms. Jyotsna Kaushik, Advocate

CORAM :

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

ORDER

MA 2966/2024

MA 2966/2024 is filed on behalf of the applicant seeking condonation of 2541 days delay in filing the present OA for reasons mentioned therein. In the interest of justice, in view of the judgments of the Hon'ble Supreme Court in the matter of ***UoI & Ors Vs Tarsem Singh*** (2008) 8 SCC 648 and in ***Ex Sep Chain Singh Thr LR. Dhaneshwari Devi Vs Union of India & Ors*** in Civil Appeal No. 022965/2017 arising out of Civil Appeal Diary No. 30073/2017 and the reasons mentioned, the

MA 2966/2024 is allowed and the delay of 2541 days in filing the OA is thus condoned. The MA is disposed of accordingly.

OA No. 2562/2024

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 conduct Re-survey/ Review Medical Board of the applicant.***
- (b) To direct the respondent to consider the case of applicant for grant of disability element of pension @100% with the benefits of Constant attendance allowance, if after RSMB, the applicant is found suffering from the above disabilities and the arrears also be paid accordingly.***
- (c) 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***

***applicant in favour of the applicant and against
the respondents.***

2. The applicant was enrolled in the Indian Army on 03.07.2000 in the Regiment of Artillery. During the service, the applicant was diagnosed with 'Chronic Interstitial Nephritis – Chronic Kidney Disease, Stage-III' and was placed in Low Medical Category S1H1A1P2(P)E1 w.e.f 08.10.2015. It is the case of the applicant that the Release Medical Board held at Military Hospital, Gwailor on 08.05.2017 conceded his disability of 'Chronic Interstitial Nephritis – Chronic Kidney Disease, Stage-III' as 'attributable to Military Service' and the disability was assessed as 40% for life. He is in receipt of disability pension @50% for life vide PPO No. 153201704776 dated 17.01.2019 by the Competent Authority.

3. An application for seeking conduct of a re-assessment of medical board for his disability was sent by him on 21.05.2023, which was not replied to by the Competent Authority. He contents that after his discharge, he faced certain medical issues and underwent treatment in Army

Hospital (R&R) and presently on dialysis. The applicant claims that as the ailment had manifested during service and has worsened within seven years of his discharge and, therefore, 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 not been replied by the competent authority, he has invoked the jurisdiction of this Tribunal and seeks constitution of Medical Board.

4. *Per contra*, the learned counsel for the respondents justified the action of the respondents admitting the factual aspects concerning the applicant's enrolment and discharge. However, they contend that the applicant was discharged in S1H1A1P2(P)E1 due to 'Chronic Interstitial Nephritis - Chronic Kidney Disease, Stage-III' at the time of retirement and was assessed @40% disability for life time and the applicant has already been granted @50% disability pension for life vide PPO No. 153201704776 dated 17.01.2019 by the Competent Authority i.e., PCDA (P), Prayagraj.

5. The learned counsel for the respondents further submitted that the applicant has filed first appeal for

conducting a Re-survey Medical Board for re-assessment of his disabilities after five years of his discharge and as per the existing policy of Ministry of Defence, Department of Ex-Servicemen Welfare D/(Pen/Policy) Not No.1(3)/2008-D(Pen/Pol) dated 17 May 2016 received vide IHQ of MoD (Army) vide letter No A/20037/Policy/MP-8 (I of R) dated 28 Jun 2016 his request for RSMB/ Review Medical Board of the applicant is not tenable. Therefore, the OA deserves to be dismissed.

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

7. On behalf of the applicant, a prayer has been made for conduct of the RAMB/RSMB to ascertain the present medical condition and assess his disability i.e. Chronic Interstitial Nephritis – Chronic Kidney Disease, Stage-III', which he has been suffering since 08.10.2015. Along with the present OA, the applicant has annexed various medical case sheets of Army Hospital (R&R), Department of Nephrology of various dates and various reports and case sheets of Manipal Hospitals, which show that the applicant has been under

treatment for the diseases which was shown as Chronic Interstitial Nephritis – Chronic Kidney Disease, Stage-III’.

8. The applicant was released from service on 31.07.2017 with the disability of Chronic Kidney Disease being assessed @40% attributable to service and he is in receipt of Disability Pension @50% for life for the said disability. However, on 21.05.2023 he has sent the application/appeal requesting for conduct of the Re-Survey Medical Board as he submits that his disability has increased, but the same was not replied by the respondents. In this regard, we may refer to Para 7 of Govt. of India, Ministry of Defence letter No. 1(2)/97/D(Pen-C) dated 07.02.2001, which reads as under:-

“7. Re-assessment of Disability. There will be no periodical reviews by the Resurvey Medical Board for re-assessment of disabilities. In cases of disabilities adjudicated as being of a permanent nature, the decision once arrived at will be final and for life unless the individual himself requests for a review. In cases of disabilities which are not of permanent nature, there will be only one review of the percentage by a Reassessment Medical Board, to be carried out later, within a specified time frame. The percentage of disability assessed/recommended by the Reassessment Medical Board will be final and for life unless the

individual himself asks for a review. The review will be carried out by Review Medical constituted by DGAFMS. The percentage of disability assessed by the Review Medical Board will be final.”

(emphasis supplied)

From the above, it is clear that if the disability was adjudicated being of a permanent nature, the decision once arrived at will be final unless the individual himself request for a review. In this case, the applicant himself requested for conduct of Re-Survey Medical Board for the first time in his life as the applicant has been suffering from Chronic Kidney Disease and with the passage of time the medical condition has deteriorated as is evident by the medical documents attached by the applicant. Therefore, we are of the considered view that the applicant is entitled for re-assessment by conducting RSMB so that proper percentage of disablement may be fixed, as per the provision of the letter dated 07.02.2001 as brought out hereinabove.

9. In view of the above, O.A. No. 2562 of 2024 is allowed to the extent that the respondents are directed to conduct the RSMB of the applicant within a period of three months from the date of this order so as to re-assess the percentage

of the disablement of Chronic Kidney Disease and the decision of the RSMB be communicated to the applicant accordingly.

10. There is no order as to costs.

Pronounced in the open Court on this day of 25th

November, 2025.



[JUSTICE RAJENDRA MENON]
CHAIRPERSON



[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

/AK/