

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

31.

OA 3270/2024 WITH MA 1996/2025 AND MA 3548/2024

Hav Md Jibrail (Retd)	Applicant
Versus		
Union of India & Ors.	Respondents

For Applicant	:	Mr. Nawneet Krishna Mishra, Advocate
For Respondents	:	Mr. Sudhir Kumar, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER
22.05.2025

MA 1996/2025

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

2. The MA stands disposed of.

MA 3548/2024

3. Keeping in view the averments made in the miscellaneous application and finding the same to be bona fide, in the light of the decision in Union of India and others Vs. Tarsem Singh [(2008) 8 SCC 648], the MA is allowed condoning the delay in filing the OA.

4. The MA stands disposed of.

OA 3270/2024

5. 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 for disability of Diabetic Mellitus Type-2.

6. The applicant was enrolled in the Indian Army on 26.06.1995 and discharged from service on 30.06.2021 under Army Rule 13(3) Item III(i) on fulfilling the conditions of service in medical category SHAPE-1 after completing 26 years and 04 days of service as per Release Medical Examination conducted on 14.01.2021.

7. An application for seeking conduct of a review/resurvey medical board for the assessment of his disability was sent by him on 04.02.2024 which was rejected by the respondents vide their Impugned Order dated 13.06.2024. He has thus 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 in Air Force Central Medical Establishment, New Delhi & Base Hospital, Delhi Cantonment. He was diagnosed with disease DM Type-2 in year 2021 post his retirement.

The applicant claims that as the ailment manifested 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 been arbitrarily rejected, he has invoked the jurisdiction of this Tribunal.

8. The respondents have filed a counter affidavit admitting the factual aspects concerning the applicant's enrolment and discharge. However, they contend that since the applicant was discharged in SHAPE-1 at the time of retirement and was never downgraded to Low Medical Category during his entire service, there is nothing to indicate that the ailment of the applicant is attributable to or aggravated by military service and therefore he is not entitled to seek any review medical board in the matter.

9. 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.

10. 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.

11. 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 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.

12. In this case, the applicant was discharged on 30.06.2021 and within a period of less than seven years, i.e., in one year, the medical records filed by him indicate to the effect that he suffered from DM Type-2 in February 2022. Whether the said ailment is attributable to or aggravated by service can only be assessed by conduct of a Post Discharge Medical Board as per the rules. Since there is no medical document on records to suggest the applicant was suffering from the ailment during his service, the necessary criteria for claiming resurvey/review medical boards are not met by the applicant. However, we have no hesitation in allowing a Post Discharge Medical Board under Rule 8 of Casualty Pensionary Awards, 2008 to be constituted. The applicant shall be examined, and based on the report;

appropriate action shall be taken as permissible under the rule/law.

13. 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.

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

15. No order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN C.P. MOHANTY]
MEMBER (A)

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