

Form No. 4

{See rule 11(1)}

ORDER SHEET

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

OA No. 226 of 2015 with M.A. No 130 of 2017

Col S.K.Tiwari

Applicant

By Legal Practitioner for the Applicant

Versus

Union of India and others

Respondents

By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>06.07.2018</u></p> <p><u>Hon'ble Mr. Justice S.V.S. Rathore, Member (J)</u></p> <p><u>Hon'ble Air Marshal BBP Sinha, Member (A)</u></p> <p>Present: Maj (Retd) R.D. Singh, Ld. Counsel for the applicant and Shri Sunil Sharma, Ld. Counsel for the respondents, assisted by Capt Piyush Thakran, OIC Legal Cell.</p> <p>By order dated 13.04.2018, the Departmental Representative had prayed for time to bring on record Army Headquarter Letter No. 12642/DGMS-5(A) dated 22.04.1992 whereby the applicant was declined periodic medical examination. Today, again request has been made for further time to file said letter.</p> <p>It is admitted fact that the applicant retired on 31.03.2011 in Shape-I. Thereafter he was re-employed on 02.05.2011 in Shape-I and posted to Allahabad. He retired from re-employment on 30.06.2014. During re-employment the applicant was found to be suffering from MENINGO ENCEPHALITIS, CHOLETITHIASIS AND HYPERTENSION and his medical category was downgraded to P-2 (Permanent) vide Medical Board dated 22.10.2012. Learned counsel for the applicant further submits that the Medical Board recommended his disability MENINGO ENCEPHALITIS 11 – 14% and HYPERTENSION 30%. A copy of the Medical Board proceeding has been placed as Annexure A-3 in the O.A. Learned counsel further submits that the applicant tenure has been curtailed from 4 years to 3 years due to being in Low Medical Category and he has been retired without conducting a Release Medical Board. Learned counsel for the applicant strenuously submits that the applicant is entitled to receive disability pension, but without conducting a Release Medical Board, his</p>

entitlement of disability cannot be ascertained.

We are surprised by the stand taken by respondents in their counter affidavit and during hearing. The respondents have taken a peculiar stand in the counter affidavit that if the applicant was in Low Medical Category during re-employment, he should have been subjected to Release Medical Board (RMB) before retirement. However, since RMB was not conducted for the applicant, the respondents were not in a position to comment on the medical/disability aspect of the applicant's claim.

We also find that the counter affidavit filed by the respondents was very poorly prepared and the counter affidavit is silent on two crucial aspects of the O.A., i.e. curtailment of tenure and denial of disability pension. However, during hearing the learned counsel for the respondents brought out Army Instruction 1/S/80 which spells out terms and conditions of service. The learned counsel for the respondents quoted para-25 (a) of the Army Instruction vide which if tenure of re-employed officer is not curtailed, then he is not eligible for disability pension.

The issue of disability pension during re-employment of regular officers is no more RES INTEGRA. The law on this point is well settled by following cases:

- (i) ***Mahavir Singh Narwal vs. UOI***, CW No. 2967 of 1989 decided on 05.05.2004 (**Delhi High Court**);
- (ii) ***Ex Naik Parmod Kumar vs. UOI & ors*** (Civil Writ Petition No.14417 of 2007 decided on 18.02.2009 (**Punjab & Haryana High Court**); and
- (iii) ***Col (Retd) Inder Singh Thind vs. UOI & ors*** (M.A. No. 8183 of 2014, decided on 06.05.2015 (**Armed Forces Tribunal, Chandigarh**).

The summary of law flowing out of these judgments is as follows:

- (a) If an individual at the time of release was in Low Medical Category than what he was recruited, then such person will be treated as invalided out from service.
- (b) Unless there is a contrary provision, the ratio laid down in the case of PBOR, for above case, will also be applicable to a Commissioned Officer.
- (c) The purpose of giving disability pension is that during the tenure of military service, disability if suffered and the same is attributable to military service, or is aggravated by military service, an individual is entitled to pension on that account,

i.e. acquiring disability. Any differentiation, such as the one suggested by respondents in aforesaid Special Army Instruction, i.e. discharge on completion of tenure of dismissal or reduction of entitlement of re-employment due to disability will clearly be unreasonable and arbitrary. The aforesaid Special Army Instruction should be understood in a reasonable manner and denial of disability pension to a person who has suffered disability attributable to military service on the ground that there is no reduction in the term of re-employment does not appear reasonable.

We have considered the submissions made at Bar by learned counsel for either of the parties. In light of established law on this matter, we are of the opinion that Para 25(a) of Army Instruction 1/S/80 will not be a bar to applicant's eligibility to disability pension if otherwise he is found to be eligible. Non conduct of Release Medical Board at the time of retirement of the applicant after re-employment was an act of gross omission by the respondents and defies logic. To ascertain the eligibility to disability pension, conduct of Release Medical Board is a must before retirement.

As such, we direct that the respondents shall conduct a Release Medical Board of the applicant within two months from today. Applicant's claim to disability pension shall be subject to the outcome of Release Medical Board.

Since the respondents have pushed the applicant for taking to legal recourse by failing to conduct a Release Medical Board at the time of his retirement, they shall compensate him for the cost of litigation by paying him an amount of Rs. 50,000/- (Rupees fifty thousand) which shall be deposited by the respondents before 15.09.2018 in the Registry of this Tribunal and shall be released in favour of the applicant through cheque.

List the case on **15.10.2018** for further orders.

(Air Marshal BBP Sinha)

(Justice S.V.S. Rathore)

Member (A)

Member (J)

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