

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No. 1 (Sl. No. 27)

O.A. No. 307 of 2022

Ex. Nk Krishna Murti Tewari
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>10.01.2023</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Atul Kumar Jain, Member (A)</u></p> <ol style="list-style-type: none">1. Counter affidavit filed by the respondents is taken on record.2. Heard Ex Nk Krishna Murti Tewari, applicant present in person and Shri Pushpendra Mishra, Ld. Counsel for the respondents.3. This Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, for the following reliefs:-<ol style="list-style-type: none">“(i) To issue an order or direction to the respondents directing them to constitute Review Medical Board in order to assess the degree of disablement.(ii) To issue an order or direction to the respondent to grant disability pension to the applicant from the date he became disable/retire.(iii) To issue an order or direction to the respondents to decide the representation dated 10 Apr 2018 within a stipulated time as may be fixed by this Hon'ble Tribunal.(iv) To issue an order or direction that this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case.(v) Award the cost of the application to the applicant.”4. Submission of learned counsel for the applicant is that applicant was discharged from service on 31.03.1991 in low medical category after rendering more than 16 years of service and was granted service pension & disability pension for life. His further submission is that during service tenure the applicant suffered three disabilities but injury caused in the spine was not considered at the time of conduct of RMB and no disability pension on this account has been paid to the applicant. He pleaded to assess degree of disablement on account of his spine injury to which he is still suffering as is evident from X-Ray report dated 19/20.03.1991 for which a Review Medical Board to be conducted to assess gravity of his injury and accordingly his

disability pension should be increased by adding percentage of spine injury disability.

5. On the other hand, learned counsel for the respondents submitted that applicant was discharged from service on 31.03.1991 and his three disabilities ('Low Back Ache', 'CH Active Hepatitis' and 'Tubercular Lymphadinitis') were assessed @ 70% for 5 years as attributable/aggravated by military service and accordingly, applicant was paid disability element. Thereafter, three Re-survey Medical Boards of the applicant have been conducted in Jan 1991, Sep 1997 and Oct 2002. The benefit of broad banding has also been granted to the applicant as per Govt. of India, Ministry of Defence letter dated 15.09.2014 and presently applicant is in receipt of 50% disability element for life for his all three disabilities vide PPO dated 04.08.2015.

6. His further submission is that applicant submitted representations for grant of additional disability pension of injury in his spine, however, no such injury neither recorded during the RMB nor recorded/reported during subsequent RSMBs. Hence, applicant was suitably replied vide letters dated 17.10.2017 and 11.01.2018 stating that if he feels his ailments have substantially increased, he should forward a medical certificate from a competent medical authority/District Medical Officer (DMO) stating therein that he is suffering from spine injury but no such certificate was submitted by the applicant rather he filed present Original Application before this Tribunal for conduct of a Review Medical Board to assess his degree of disablement of spine injury and to grant disability pension.

7. Learned counsel for the respondents further submitted that applicant was discharged from service in 1991 and therefore, his case is also not covered under the provisions of Para 54 of Pension Regulations for the Army, 1961 (Part-1), which stipulates that "*if a person within a period of seven years from the date of retirement is found to be suffering from a disease which is accepted as attributable to military service may at the discretion of the President be granted in addition to his disability element at the appropriate rate with effect from such date, as the President may decide in the circumstances of the case.*" He pleaded for dismissal of O.A. being devoid of merits.

8. In the instant case, there is no dispute that applicant was discharged from service on 31.03.1991 and his three disabilities were assessed @ 70% for 5 years as attributable/aggravated by military service and accordingly, applicant was paid disability element. Thereafter, Re-survey Medical Boards have been conducted in Jan 1991, Sep 1997 and Oct 2002 and presently applicant is in receipt of 50% disability element for life.

9. We find that no spine injury was reported by the applicant during his service nor it was recorded during the RMB. Thereafter, applicant's three RSMBs were conducted and no such injury was reported/recorded by the

subsequent Medical Boards. Hence, at this stage to assume that he is having spine injury which was not detected at the time of retirement from service/RMB after 30 years from the date of retirement from service cannot be taken into consideration and therefore, no Review Medical Board can be constituted to review his so-called spine injury and grant him additional disability pension.

10. In view of the above, we find that Original Application is devoid of merit, deserves to be dismissed and is accordingly **dismissed**.

11. No order as to costs.

12. Pending Misc. Application(s), if any, shall stand disposed off.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

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