

RESERVED
Court No 1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

ORIGINAL APPLICATION No. 389 of 2017

Thursday, this the 07th day of February, 2019

"Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)"

Brig Kulwant Singh (Retd) (IC 35513 N) H. No. 3H-501
Gurjinder Vihar, Phase-2, AWHO Township, Pocket P-5,
Sector Chi-1, Greater Noida, Gutam Budh Nagar (UP).

.....Applicant

Ld. Counsel for: **Col (Retd) AK Srivastava**, Advocate.
the Applicant

Versus

1. The secretary, Govt of India (MoD), South Block,
DHQ, PO-New Delhi-110001.
2. The Chief of Army Staff, Integrated HQ of MoD
(Army), South Block, DHQ, PO-New Delhi-110001.
3. The Addl Dte Gen of Personnel Services, Adjutant
General's Branch MP-6 (A), Integrated HQ of MoD
(Army), Sena Bhawan, DHQ, PO-New Delhi-110001

.....Respondents

Ld. Counsel for the : **Shri Asheesh Agnihotri**,
Respondents. Central Govt Counsel.

ORDER**“Per Hon’ble Air Marshal BBP Sinha, Member (A)”**

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby he has sought following reliefs:-

- (a) *Issue/Pass an order or direction of appropriate nature to quash/set aside the respondent’s letter dated 10 Feb 2017, being misconceived, misleading and irrational to ask the applicant to forward RMB/RME proceedings whose originals are supposed to be in their custody, intended to not to constitute a post retirement Medical Board to assess applicant’s percentage of disabilities.*
- (b) *Issue/pass an order or direction of appropriate nature to the respondents to convene a RMB/RSMB based on original medical prescription, test reports and opinions of Army and leading civil specialists, available with the applicant whose photocopies, already forwarded to them, are annexed as Annexure No A-7 to A-21 which can be taken at the time of assessment by a Medical Board from the applicant, perused by RMB/RSMB besides relying on their entries in their registers and computer data of respective hospitals.*
- (c) *Issue/pass an order or direction of appropriate nature to the respondents to issue a disability PPO duly rounded off his assessed percentage of disability to 50% or 75% or 100%, as applicable, pursuant to assessment by a RMB/RSMB with effect from dates of retirement from service i.e. 01 Sep 2013.*
- (d) *Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*

2. Brief facts of the case are that the applicant was commissioned in the Army on 16.12.1978 and retired from service w.e.f. 31.08.2013 on reaching the age of superannuation in medical category SHAPE-I vide Release

Medical Examination (RME) held on 16.01.2013. The applicant, has claimed as stated in the O.A., to be suffering from 'Early Osteoarthritis Rt Elbow and Rt Knee'. He has filed the present O.A. for holding a fresh RSMB after his retirement and grant of disability pension w.e.f. the date of retirement in terms of para 9 of Integrated Headquarters of MoD (Army) letter dated 20.07.2006.

3. Ld. Counsel for the applicant pleaded that the applicant was commissioned in the Army, promoted to the rank of Brigadier and has retired from service w.e.f. 31.08.2013 in SHAPE-I but before retirement he was suffering from 'Early Osteoarthritis Rt Elbow and Rt Knee' and has undergone regular treatment in various Military Hospitals as well as Civil Hospitals. He further pleaded that on account of pain in his Rt Elbow and Rt knee the applicant had first approached the Armed Forces Medical Clinic (AFMC), New Delhi on 26.07.2012 and on investigation he was found to be suffering from 'Early Osteoarthritis Rt Elbow and Rt Knee' but the disease was managed through medication. Thereafter he was referred to Base Hospital (BH), Delhi Cantt on 26.04.2013 where Senior Advisor Surgery and Orthopaedics advised him to manage the problem with medicines and regular Quadriceps exercises. The applicant himself underwent MRI scan at AIIMS on 07.05.2013 at his own expense and

got treatment in Army Hospital (R&R), Delhi Cantt and various Civil Hospitals. The Ld. Counsel for the applicant further pleaded that since the applicant was suffering from the disability before retirement and it manifested after retirement, he is entitled to disability pension. The Ld. Counsel for the applicant further contended that in view of para 9 of Policy Letter dated 20.07.2006 applicant has requested for fresh Medical Board, however his request has been turned down vide letter dated 09.06.2017. In this regard the Ld. Counsel for the applicant has also relied upon the judgment of Hon'ble Apex Court in the case of **Dharamvir Singh vs Union of India & Ors**, (2013) 7 SCC 316, **KJS Buttar vs Union of India & Ors**, Civil Appeal No 5591 of 2006 and **Union of India & Ors vs Ram Avtar**, Civil Appeal No 418 of 2012 and pleaded for a fresh Medical Board akin to RMB to be carried out on the applicant so that his claim to disability pension can be established.

4. On the other hand, Ld. Counsel for the respondents pleaded that the applicant was discharged from service w.e.f. 31.08.2013 after rendering more than 34 years of service and 56 years of age in SHAPE-I meaning thereby that at the time of retirement the applicant was not suffering from any ailment when his Release Medical Examination (RME) was held on 16.01.2013, hence since

the incumbent has been discharged in SHAPE-I medical category he is not entitled to any disability pension. Ld. Counsel for the respondents further submitted that the applicant vide letter dated 21.02.2017 had requested for holding post discharge Medical Board for the disability 'Early Osteoarthritis Rt Elbow and Rt Knee' but the competent authority has rejected the claim vide order dated 09.06.2017. The Ld. Counsel concluded that since the applicant was not suffering from any disability at the time of his superannuation and was in SHAPE-I, he is not entitled to disability element. He pleaded the O.A. to be dismissed.

5. We have heard Ld. Counsel for the parties and perused the material placed on record. We find that this is a unique case where an officer who has retired in SHAPE-I is claiming disability pension for 'Early Osteoarthritis Rt Elbow and Rt Knee' after discharge. Thus the issue to be decided by us is twofold i.e.:-

(a) Can an officer retired in SHAPE-I demand disability pension?

(b) Is the rejection letter dated 09.06.2017 rejecting the applicant's demand for conduct of a fresh Medical Board, by DGAFMS office valid in law?

6. On careful perusal of the RME form dated 16.01.2013 we find that the applicant had declared himself fit and put his signatures at the time of holding of the RME. In para 5 and 6 of the aforesaid Medical Examination Form, the applicant has not claimed any disability and declared himself to be having no health problems. For convenience sake, paras 5 and 6 of the RMB are reproduced as under:-

“5. Do you claim any of disability due to service?-Nil.

*6. Any other information you wish to give about your health.
Nil.”*

7. Additionally, the applicant has certified the following under para 6 and has signed it in his own handwriting about 07 months before discharge:-

“I certify that I have answered as fully as possible all the questions about my service and personal history and that the information given is true to the best of my knowledge.”

The above endorsement has also been witnessed by a Senior Officer viz. Air Commodore Neeraj Yadav who authenticated the endorsement made by the applicant.

8. Thus it is clearly established that the applicant was not suffering from any disability at the time of superannuation though he has placed on record material with regard to 'Early Osteoarthritis Rt Elbow and Rt Knee' to show that he was suffering from the aforesaid disability before discharge from service.

9. We find that the applicant on one hand is giving a signed certificate dated 15.01.2013 witnessed by another very senior officer, stating that he has no disability and health related issues while on the other hand he is claiming to be having problems related to his elbow and knee since 2012. In this context the applicant has demanded a fresh Medical Board akin to RMB to examine him in light of para 9 (b) of policy letter dated 20.07.2006. This letter has been scrutinized by us and it deals with a large number of subjects which are related to disability pension and it has following to say on consideration of post discharge claims of disability pension:-

(a) Cases of substantial increase in the disability claimed by an individual after invalidment/retirement/discharge (Reassessment Medical Board).

(b) Manifestation of any disability within 10 years of retirement/discharge (Fresh Medical Board similar to RMB).

10. In response to his post discharge claim, the Adjutant General's Branch has replied him vide letter dated 09.06.2017 and rejected his claim. Relevant extract of the aforesaid letter is as follows:-

"2. Your request for holding Post Disch Med Board for diag "Early Osteoarthritis Rt elbow and Rt Knee" with the available medical documents was processed to HQ DGAFMS for examination by the Competent Authority. After due examination, the Competent Authority has rejected your claim on the following grounds:-

(a) Post Disch Claims are 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. These cases may be recognised as attributable to mil service if it can be established by the Competent Medical Authority that the disability is a delayed manifestation of pathological process set in motion by service conditions obtaining prior to discharge in terms of the Entitlement Rules for Casualty Pensionary Awards for Armed Forces Personnel 2008 (ER 2008). Sanction of the DGAFMS is required for constitution of a medical board in such Post Disch Claims as per Service HQ policy i.e. B/410122/MA (P)/AG/PS-5 dt 20 Jul 2006.

(b) In the instant case, you have retired from service on 31 Aug 2013 in medical category SHAPE-I. You have preferred the Post Disch Claim for the disability 'Early Osteoarthritis Rt Elbow and Rt Knee' on the grounds that you have suffered from the disease since 2012, which the specialist had managed conservatively and had not deemed serious/severe enough to warrant observation in LMC. Moreover, the applicant was 55 years old at the time of appearance of symptoms and hence related degenerative changes must have also been seen kept in mind. It is a well known fact that age related osteoarthritis changes can be unilateral to begin with. It is also pertinent to mention here that you did not claim any such disability in Part-I of AFMSF-18 dated 16 Jan 2013 and therefore there is no documentary evidence that your disability was not included at the time of Release Medical Examination (RME).

3. In view of the above, it is regretted to inform you that your request for holding your Post Disch Med Board has been rejected by the Competent Authority being devoid of merit."

11. We find that as a thumb rule a soldier who is discharged in SHAPE-I has no business to claim disability pension. In our considered opinion the Army

Headquarters policy letter dated 20.07.2006 giving a window of opportunity for post discharge claims of disability pension is primarily for substantial increase in existing disability, however it can be used to claim disability pension for SHAPE-I personnel in exceptional circumstances where the disability/disease has escaped notice during Annual Medical Boards of a soldier and has emerged after retirement and where the disability can be clearly linked to military service. Additionally, since it is a medical issue, the office of DGAFMS is fully competent to decide such claims, based on the medical records, as to whether such a request is to be acceded to or not.

12. In this particular case the office of DGAFMS has rejected the claim of the applicant to hold a fresh Medical Board after discharge and the same has been conveyed to the applicant vide Adjutant General's Branch letter dated 09.06.2017, we find no reason to interfere with the decision of the office of DGAFMS on this matter.

13. Thus keeping in view the rejection of applicant's request for holding post discharge medical board, we are of the considered opinion that the applicant is not entitled post discharge claim for disability pension specially so when he had declared himself fully fit, at the time of conduct of RME in the year 2013 i.e. 07 months before his

superannuation. Thus the respondents have not erred while deciding applicant's appeal dated 21.02.2017.

14. Accordingly, we decline to interfere in the matter. The Original Application deserves to be dismissed. It is accordingly **dismissed**.

No order as to cost.

(Air Marshal BBP Sinha)
Member (A)

(Justice S.V.S. Rathore)
Member (J)

Dated: February 2019
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