

Court No. 1 (E-Court)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 248 of 2019

Tuesday, this the 16th day of March, 2021

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 2997293 A Ex. Nk. Sarvesh Singh, S/o Vijay Chandra Singh,
R/o Village and Post Maseni, District Farrukhabad (UP).

..... Applicant

Ld. Counsel for the : **Shri K.K. Misra**, Advocate.
Applicant

Versus

1. Union of India, through its Secretary, Ministry of Defence,
New Delhi.
2. Chief of Army Staff, Army HQ, New Delhi.
3. Officer-in-charge, Records, Rajput Regiment, Fatehgarh.
4. PCDA (P), Allahabad.

.....**Respondents**

Ld. Counsel for the : **Ms. Anju Singh**,
Respondents. Central Govt. Counsel

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs.

- (i) To direct the respondents to hold re survey board/RMB of the applicant to assess the medical condition of the applicant.*
- (ii) If found in lower medical category than SHAPE-1, grant disability pension in accordance with the assessment of the board, with arrear of disability pension and interest as applicable.*
- (iii) Any other relief which the Hon’ble Court may think just and proper may be granted in favour of the applicant.*
- (iv) Cost of the case may be allowed.*

2. Briefly stated, applicant was enrolled in Rajput Regiment of Indian Army on 30.12.1997 and was discharged on 31.05.2014 under Rule 13 (3) Item III (iv) of the Army Rules, 1954 before fulfilling the conditions of his enrolment on compassionate grounds at his own request. During October 2013, the applicant participated in inter Unit Spots competition in Basketball. On 14.10.2013, while he was playing Basketball match he sustained injury in his left knee. His treatment was done at Command Hospital (Central Command), Lucknow and three injuries i.e. Interstitial injury of the anterior cruciate ligament, (ii) synovial effusion and (iii) Bone contusion lateral tibial and femoral condyles were detected. In spite

of the said injuries the respondents kept applicant posted in High Altitude area in November, 2014 and did not pay any heed to his (applicant's) request to keep him posted in Peace area with the result he applied for prematurely discharge and, accordingly, was discharged from service on 31.05.2014. At the time of discharge no Release Medical Board was held which is a mandatory requirement and applicant was discharged in SHAPE-1. The applicant preferred representations dated 14.07.2014, 10.11.2014 and 16.08.2015 for holding Release Medical Board on him to assess his disability but all in vain. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in the Army. The applicant sustained knee injury during inter unit organized game which is treated as part of duty and hence it is attributable to and aggravated by Military Service. He pleaded that various Benches of the Armed Forces Tribunal have also granted disability pension in similar cases, as such the applicant be granted disability pension as well as arrears thereof by holding Re-Survey Medical Board/Release Medical Board on him.

4. On the other hand, Ld. Counsel for the respondents contended that at the time of discharge from service, the Release

Medical Board (RMB) held at Medical Inspection Room, Headquarters 41 Infantry Brigade on 29.10.2013 assessed applicant in medical category S1H1A1P1E1 (SHAPE – 1). As per Part – 1 (Personal Statement) of the said RMB proceedings, in reply to question ‘Do you claim any disability due to service?’ the applicant answered ‘NO’ and in reply to question ‘Any other information you wish to give about your health?’ The applicant answered ‘NIL’. The applicant had sustained injury on 14.10.2013, as averred by him, and had if (injury) resulted into disability then Injury Report would have been initiated by the Medical Authorities and attributability certificate in terms of Appendix ‘C’ to Integrated Headquarters to Ministry of Defence (Army) letter No. B/40122MA/(FVAG/PS-5 dated 20.07.200 would have also been initiated by the Brigade Commander and occurrence to this effect would also be notified in Part II Orders. As per service record, no such occurrence to this effect has been found published. Hence applicant is not entitled to Re-Survey Medical Board or and disability pension. He thus pleaded for dismissal of the Original Application.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Medical Examination Report Release/Discharge dated October 2013 as well as the records and we find that only question which needs to be answered in this case is “whether at the time of

discharge the applicant was suffering from any disability and the said disability of the applicant is attributable to or aggravated by Military Service?”

6. On careful scrutiny of the record we find that at the time of release/discharge Medical Examination was conducted on applicant in October 2013. In the said proceedings in Part – 1 Personal Statement was recorded and signed by the applicant in which in reply to question 3 ‘Give particulars of any diseases, wounds of injuries from which you are suffering’ the applicant answered ‘NIL’, in reply to para 4 ‘Did you suffer from any disability mentioned in question 3 or anything like it before joining the Armed Forces? If so give details and dates’ the applicant answered ‘NO’, in reply to para 5 ‘Do you claim any disability due to service? (Y/N)’ the applicant answered ‘NO’ and in reply to para 6 ‘Any other information you wish to give about your health’ the applicant answered ‘NIL’. Although at page 15 of the Original Application the applicant has annexed copy of MRI report in which three injuries have been shown, but in the Medical Examination report the applicant himself has not mentioned any such injury. According to the applicant, he had sustained injury on 14.10.2013, if so, such injury report ought to have been published in Part II Order but the same was not done as nothing alike has been found on the record. Further, once the Medical Examination was done at the time of discharge/release and applicant was found in SHAPE-1, we do not

feel it proper and appropriate to order to conduct Re-Survey Medical Board/RMB of the applicant furthermore.

7. In view of the above, the Original Application is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

8. No order as to costs.

9. Pending applications, if any, are disposed of accordingly.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)
Dated : 16 March, 2021

AKD/-