

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No. 1(SI. No. 31)

Original Application No. 966 of 2023

Service No. IC-52082H Col. Raman Kumar Arora (Retd.) Applicant
By Legal Practitioner for the Applicant : Maj. S.M. Mustafa (Retd.), Advocate

Versus

Union of India & Others Respondents
By Legal Practitioner for Respondents : Shri Ashish Kumar Singh, Advocate

Notes of the Registry	Orders of the Tribunal
	<p><u>29.01.2025</u> <u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u> <u>Hon'ble Vice Admiral Atul Kumar Jain, Member (A)</u></p> <p>1. The Original Application was filed on 09.08.2023. Despite of several opportunities granted to the respondents they have failed to file Counter Affidavit, due to non-receipt of para-wise comments by the Ld. Counsel for the respondents, hence, opportunity to file Counter Affidavit was closed vide order dated 15.10.2024.</p> <p>2. Heard Maj. S.M. Mustafa (Retd.), Ld. Counsel for the applicant and Shri G.S. Sikarwar, Ld. Counsel for the respondents.</p> <p>3. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for issuing direction to the respondents to hold Review Medical Board for grant of War Injury.</p> <p>4. Briefly stated, facts of the case are that the applicant was commissioned in the Indian Army on 12.06.1993 and retired from the service on 28.02.2022 after rendering more than 20 years of service. The Release Medical Examination held at Dehradun on 30.07.2021 assessed the applicant fit for release in medical category S1H1A1P1E1. The applicant is in receipt of service pension. As per the applicant, he was posted in a field area during Operation "RAKSHAK", which was declared as war like situation. On 11.09.1997 the applicant was engaged in cross border firing at RUPA Post of Richmar (104 Inf. Bdge.) and got injured from enemy fire. The applicant was evacuated from the post to 168 Military Hospital, Tangdhar (J & K) and has undergone surgery for splinter injury on right arm wrist and left leg. The applicant was kept in dangerously ill list (DIL). The classified surgeon Lt. col. S. Sofat carried out the surgery and thereafter the applicant remained hospitalized till 25.09.1997 (1800 hrs.). the applicant joined the active duty on same post under prevalent stressed situation under line of control. The applicant was medically downgraded and within six weeks his medical category upgraded again. The</p>

applicant was not granted Sick Leave due to insurgency of service and shortage of number of officers in the Unit. The applicant's name was recommended and forwarded for citation of bravery award SENA MEDAL by unit. However, the applicant was awarded Commendation Card for bravery by General Officer Commanding-in-Chief, Northern Command. The 12 Assam Regiment published two Part II Orders. Part-II order No. 70 dated 26.09.1997 for hospitalization and another Part-II order No. 71 dated 27.09.1997 for award of wound medal. The WOUND MEDAL was confirmed by Adjutant General's Branch Org 9 (d) letter dated 12.11.1997 (Annexure No. A-3 to the Original Application). The Adjutant General's Branch, Army Headquarters communicated to CCDA (O) Golibar Maidan, Pune vide letter No. 12825/OW/OPR/Org 3(d) dated 26.09.1997 and SITREP No. 80/97 dated 12.09.1997 wherein the officers who are wounded in operation RAKSHAK classified as Battle Casualties. The applicant has filed copy of letter dated 26.09.1997. During the Release Medical Board prior to retirement the applicant brought out to the notice of the Medical authorities the deteriorating medical condition due to injury sustained near LOC in J & K sector in September 1997 in the face of enemy and the same ought to have taken in consideration by the Release Medical Board but no cognizance was taken by the said Board, despite it was adequately and clearly brought out in writing in AFMSF-18 and in person to the Medical Officer. The applicant submitted two Post Discharge claims for arranging Review Medical Board for grant of War Injury on 31.03.2022 and 08.08.2022 which was rejected by respondent No. 3 vide letter dated 04.07.2022. It is in this perspective that the applicant has preferred the present Original Application.

5. Ld. Counsel for the applicant submitted that the applicant sustained injury due to heavy shelling from rocket-propelled grenade splinters (RPG) resulting into deep wounds which makes the applicant eligible for War Injury. The medical category ought to have been lower but the applicant was kept in service in SHAPE-1 and was posted in high altitude area and also to difficult UN Mission. The post discharge claim for holding Review Medical Board was submitted with the affidavit narrating proof for injury and Part-II order published as regards the same injury rejection of holding post discharge claim without assigning any reason stands unsustainable in the eyes of law. He relied upon Para 8(a) of the Entitlement Rules for the Casualty Pensionary Awards to the Armed Forces Personnel, 2008.

6. Although the respondents have failed to file Counter Affidavit, however, Ld. Counsel for the respondents orally submits that the applicant was retired in medical category S1H1A1P1E1 as such he is not entitled for holding Review Medical Board and grant of War Injury.

7. Para 8(a) of the Entitlement Rules for the Casualty Pensionary Awards

to the Armed Forces Personnel, 2008 reads as under :-

“8. Post discharge claims:

(a) 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, may be recognized as attributable to service if it can be established by the competent medical authority that the disability is delayed manifestation of a pathological process set in motion by service conditions obtaining prior to discharge.”

8. Upon hearing submission of Ld. Counsel of both the parties and considering the facts and circumstances of the case especially Para 8(a) of the Entitlement Rules for the Casualty Pensionary Awards to the Armed Forces Personnel, 2008, the applicant's sustained injury in the year 1997, and that the applicant was retired from service on 28.02.2022, we **dispose of** the Original Application finally with a direction to the respondents to conduct Review Medical Board of the applicant to assess his disability for deciding entitlement of War Injury pension within a period of four months from the date of receipt of a certified copy of this order.

9. Let a copy of this order be provided to the learned Counsel for the parties.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Anil Kumar)
Member (J)

AKD/-