

**RESERVED**  
**Court No. 2**

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

**Original Application No. 740 of 2022**

Thursday, this the 23<sup>rd</sup> day of November, 2023

**Hon'ble Mr. Justice Anil Kumar, Member (J)**  
**Hon'ble Maj Gen Sanjay Singh, Member (A)**

Ghanshyam Singh, Rank – LCK(S), No. 155748-Z  
R/o Heera Patti, Shivaji Nagar Colony,  
Near Pahari Singh RO Plant,  
Dist – Azamgarh - 276401

..... Applicant

Ld. Counsel for the Applicant : **Shri Parijaat Belaura,**  
Advocate

Versus

1. Union of India, through Secretary Ministry of Defence, New Delhi.
2. Chief of the Naval Staff, Integrated Headquarters, Ministry of Defence, South Block, New Delhi.
3. Officer in charge, Naval Pension Office, C/o INS Tanaji, Sion-Trombay Road, Mankhurd, Mumbai – 400088.
4. The Principal Controller of Defence Account (Navy) Mumbai.

..... Respondents

Ld. Counsel for the Respondents : **Shri Rajiv Pandey,**  
Central Govt Counsel

**ORDER**

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

- “(I) To direct to opposite party No-3 to enable to conduct Re-Survey Medical Board to assess his present condition after duly approval of DGAFMSF.
- (II) Any other suitable relief this Hon’ble Court deems fit and proper may also be granted.

2. The facts of the case, in brief, are that applicant was enrolled in the Indian Navy on 03.04.2001 and was discharged from service on 30.04.2016 after rendering 15 years and 27 days of service. Release Medical Board assessed applicant’s disability “**IgA NEPHROPATHY ICD N 14.4**” @ 40% for life and considered it aggravated by Naval service. The applicant is in receipt of service pension and disability pension @ 40% for life duly rounded off to 50% for life. Now, the applicant has filed this case to conduct Re-Survey Medical Board (RSMB) as condition of the applicant is deteriorating day by day after retirement of Naval service which is supported by Lab tests in which Urea has reached to 98 mg/dl which is supposed to be 15-40 mg/dl and Creatinine has reached to 10.04 mg/dl which normally should be 0.9-1.3 mg/dl. Hence, the present Original Application is filed to conduct RSMB of the applicant to assess his present condition and to grant disability pension as per assessment of RSMB.

3. Learned Counsel for the applicant submitted that applicant was enrolled in the Indian Navy on 03.04.2001 and was discharged from service on 30.04.2016 in low medical category in the rank of LCK(S) after completion of 15 years of service. After completion of 7 years of service, applicant was detected to be suffering from IgA

Nephropathy when he was posted in INS Battimalv (Port Blair). The applicant was placed in low medical category S3A2(P). The applicant has been discharged from serviced w.e.f. 30.04.2016 and RMB has assessed his disability @ 40% for life and applicant is in receipt of disability pension @ 50% for life. Now, the condition of the applicant is deteriorating day by day after retirement of Naval service which is supported by pathological tests, conducted in Heritage Specialty Lab in which Urea has reached to 98 mg/dl which is supposed to be 15-40 mg/dl and Creatinine has reached to 10.04 mg/dl which normally should be 0.9-1.3 mg/dl. Hence, under the provisions of Para 86 of Pension Regulations for the Army, 2008 (Part-1) and Para 65(III) of Pension Regulations for the Army, 2008 (Part II), there is a provision to conduct RSMB of the applicant, if gravity of disability is increased and condition is deteriorating day by day, hence, there is a requirement to assess his present condition and to grant disability pension as per assessment/recommendation of RSMB.

4. **Per contra**, learned counsel for the respondents submitted that applicant was enrolled in the Indian Navy on 03.04.2001 and was discharged from service on 30.04.2016 after rendering 15 years and 27 days of service. Release Medical Board assessed applicant's disability "**IgA NEPHROPATHY ICD N 14.4**" @ 40% for life and considered it aggravated by Naval service. The applicant is in receipt of disability pension @ 40% for life duly rounded off to 50% for life. Now, the applicant has filed this case to conduct Re-Survey Medical

Board (RSMB) to assess his present condition. He further submitted that there is no provision for conduct of Re-Survey Medical Board of the applicant after retirement when he was discharged from service and is already in receipt of disability pension @ 50% for life, Hence, demand of the applicant to conduct RSMB is not justified. He pleaded for dismissal of Original Application being devoid of merit.

5. Heard learned counsel for the parties and perused material placed on record.

6. On perusal of record and Pathological Test Report of Heritage Specialty Lab annexed alongwith Original Application, it shows that urea and Creatinine have increased much more than the standard measurement which may have caused some complexity in normal function of the organs.

7. Before dealing with the rival submissions, it would be appropriate to examine the relevant Rules and Regulations on the point. Para 86 of the Pension Regulations for the Army, 2008 (Part I), Para 65 (III) of the Pension Regulations for the Army, 2008 (Part II) and Para 8 of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008 being relevant are reproduced below:-

***“MANIFESTATION OF DISABILITY AFTER RETIREMENT/DISCHARGE***  
**86.** *Service personnel who had retired/discharged (otherwise than at his own request or in any of the circumstances specified in Regulation 29 & Regulation 41) on a retiring/service pension/gratuity, but who within a period of 10 years from the date of retirement is found to be suffering from a disease which is accepted as attributable to his military service, be granted in addition to his retiring/service pension/gratuity, a disability element with effect from the date of Review Medical Board constituted by the Director General Armed Forces Medical Services”.*

**“65 (III) RE- ASSESSMENT OF DISABILITY:**

There shall be no periodical reviews by the Resurvey Medical Board for re-assessment of disabilities. In case of disabilities adjudicated which are of a permanent nature, the decision once arrived at shall be final and for life unless the individual himself requests for a review. In case of disabilities, which are not of a permanent nature, there shall be only one review of the percentage by a Re-assessment Medical Board to be carried out later within a specified time frame. The percentage of disability assessed/ recommended by the Re-assessment Medical Board shall be final and for life unless the individual himself asks for a review”.

**Note-** Review Medical Board will be ordered by Director General Armed Forces Medical Services and finding of the Review Medical Board shall be final”.

**“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 a delayed manifestation of a pathological process set in motion by service conditions obtaining prior to discharge.
- (b) In cases where an individual in receipt of a disability pension dies, within a period of 7 years from the date of release/retirement, may be considered to have died of the disease for which he was granted disability pension if it can be so established by the competent medical authority. If the medical certificate as to the cause of the death is not available, other factors and circumstantial evidence would be taken into account”.

8. As per Govt. of India, Ministry of Defence letter dated 12.06.2014, service personnel, who had retired/discharged within 07 years from the date of retirement, are eligible for grant of disability element of

pension even after retirement/discharge, if the disability is found to be attributable to military service.

9. In view of the above, we are of the considered opinion that keeping in view the increased ratio of Urea and Creatinine as per Renal Function Test report and rules and policy letter on the subject, there is a requirement to hold Re-survey Medical Board of the applicant to assess his present condition/gravity of disability and to consider for grant of disability element as per revised percentage/recommendation of RSMB.

10. In the result, Original Application is allowed. Impugned order, if any, is hereby set aside. The respondents are directed to hold applicant's Re-survey Medical Board (RSMB) for re-assessing his present medical condition within a period of four months from the date of receipt of certified copy of this order and if, percentage of disability is found increased in RSMB, then to consider grant of disability element to the applicant as per revised percentage/assessment.

11. No order as to costs.

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

**(Maj Gen Sanjay Singh)**  
**Member (A)**

Dated: November, 2023  
SB

**(Justice Anil Kumar)**  
**Member (J)**