

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 111 of 2021**Thursday, this the 9th day of September, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)****Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

No. 7763102, Ex Nk Gyanendra Bahadur Singh, Son of
Ram Krishan, R/O 130/14-A, Bagahi, T.P. Nagar, Kanpur, Uttar Pradesh-208023.

..... Applicant

Ld. Counsel for the Applicant: **Shri Pankaj Kumar Shukla**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of Army Staff, IHQ MOD (Army), Army HQ, South Block, New Delhi.
3. The Officer In-Charge Records, Sena Police Corps, Abhilekh Karyalaya, Corps of Military Police Records, PIN-900493, C/O 56 APO.
4. P.C.D.A. (Pension) Draupadi Ghat, Allahabad-14.

..... Respondents

Ld. Counsel for the Respondents : **Ms. Appoli Srivastava**,
Govt. Standing Counsel.**ORDER (Oral)**

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

- (a) To issue/pass an order or directions to the respondents to Re-assess the present medical condition of applicant by conducting Re-Survey Medical Board, so that applicant's disability could be assessed minutely.

(b) To issue/pass an order or directions to the respondents to grant deserved and entitled disability pension as recommended by the proposed Re-Survey Medical Board thereby rounded off accordingly as per the Govt of India letter No 1 (2)/97/I/D (Pen-C) dated 31.01.2001 and pensionary benefits as recommended by the proposed Re-Survey Medical Board to the applicant.

(c) To issue/pass any other order or direction as this Hon'ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.

(d) To allow this original application with costs.

2. Briefly stated facts of the case are that applicant was enrolled in the Indian Army on 16.02.1963 and was discharged from service on 30.06.1976 in low medical category and has rendered more than 13 years, 04 four months and 14 days of service. At the time of discharge, his Release Medical Board (RMB) was conducted at Military Hospital, Jhansi on 07.04.1976 which assessed his disability **'PERIPHERAL VASCULAR DISEASE EFFECTS OF (Y-34)'** @ 20% for 02 years attributable to and aggravated by military service. Accordingly, applicant was granted disability pension 20% for two years i.e. for the period from 01.07.1976 vide PPO No D/2763/1976. Thereafter, various Re-Survey Medical Board (RSMBs) were conducted on the applicant and he was granted disability pension @ 20% from 01.07.1976 to 23.02.1980, vide PPO Nos. D/2763/1976 & D/RA/8352/1978 and @ 30% from 24.02.1980 to 24.04.1991 vide PPO Nos. D/RA/14736/1979 & D/RA/10106/1981. Thereafter, final RSMB dated 31.01.1991 conducted on applicant assessed his disability @ 30% for life and he is in receipt of disability pension @ 50% for life w.e.f. 25.04.1991 vide PPO No. D/RA/5060/1991. His

disability pension was revised as per 6th & 7th CPC vide PPO No. DE/CORR/10089/2020 dated 10.11.2020. On his right leg being amputated on 16.10.2018 applicant is stated to have submitted his grievances to PCDA (P), Allahabad for increasing the disability percentage of disability pension, which seems to be pending as yet. This O.A. has been filed for conduct of fresh RSMB to assess applicant's present disability percentage.

3. Ld. Counsel for the applicant pleaded that applicant was discharged from service on 30.06.1976. Prior to discharge applicant's Release Medical Board held at Military Hospital, Jhansi on 07.04.2016 and he was suffering from **PERIPHERAL VASCULAR DISEASE EFFECTS OF (Y-34)** @ 20% for 02 years attributable to military service and opined as aggravated by stress and strain of service till his change of disability percentage @ 30% for life for the period 16.07.1981 to 24.04.1991 and he was granted disability pension vide PPO No. D/RA/10106/1981 dated 19.08.1981. Thereafter Re-Survey Medical Board of applicant was held on 31.01.1991 and assessed his disability @ 30% for life and granted disability pension for life w.e.f 25.04.1991 vide PPO No. D/RA/5060/1991 dated 14.06.1991. Thereafter, applicant's disability pension was revised w.e.f. 01.01.2006 and he drawing his entitlement continuously. The applicant claims that his disease was aggravated day by day and in helplessness he was operated upon at Command Hospital Lucknow on 16.10.2018 and his right leg was amputated 10 inches below the knee due to which he is unable to walk properly. Applicant's pleading is that a fresh RSMB be conducted to decide his

present medical condition so that his disability percentage of his disability pension could be re-assessed.

4. On the other hand, submission of learned counsel for the respondents is that since the applicant's medical condition was finally assessed by RSMB held on 31.01.1991 with disability percentage @ 30% for life which he is receiving duly rounded off vide PPO No.DE/CORR/10089/2020 dated 10.11.2020. Therefore, once a final RSMB has been conducted, a fresh RSMB on the applicant is not in order and cannot be held afresh. He pleaded for dismissal of O.A.

5. We have heard learned counsel for both sides and perused the material placed on record.

6. On careful perusal of the medical documents, it has been observed that applicant was enrolled on 16.02.1963 and he was found to be suffering with the aforesaid disease. Re-Survey Medical Board conducted on applicant has assessed his disability @ 30% for life and applicant is in receipt of his entitled disability pension.

7. We have observed that applicant's right leg was amputated in the year 2018 and since applicant was discharged from service in the year 1976 with the disability finally leading to amputation of his leg, therefore, keeping in view that amputation of leg was necessary on account of aforesaid disability for which he was discharged from service, we are of the view that applicant's RSMB should be conducted afresh to decide his present assessment of disability especially since the applicant has made a request for the same and is

governed by GOI, MOD letter No 1(2)/97/D(Pen-C dated 07.02.2001 which reads as follows:-

“Para 7. Re-Assessment. *There will be no periodical reviews by the RSMB for reassessment of disabilities in cases of disabilities adjudicated as being of a permanent nature, the decision once arrived at will be final for life “unless the individual requests for a review”.*

8. Thus, it is clear that w.e.f. 07.02.2001, conducting of RSMB has been dispensed with but there is a provision for conduct of RSMB if, individual a requests for the same.

9. In view of the above proviso and the fact that applicant has applied for conduct of his RSMB, we are of the view that applicant’s RSMB should be conducted afresh to decide his present medical condition with regard to his gravity of disability and its percentage.

10. In view of the above, we direct the respondents to conduct his RSMB within a period of three months from today.

11. The petition is disposed off accordingly.

12. No order as to costs.

13. Pending applications, if any disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 9th September, 2021

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