

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No. 1 (Sl. No.39)

O.A. No. 593 of 2023

Lt. Col. Nidhikant Dhyani (Retd.) Applicant
By Legal Practitioner for the Applicant : Shri Raj Kumar Mishra, Advocate
Ms. Upasna Mishra, Advocate

Versus

Union of India & Others Respondents
By Legal Practitioner for Respondents : Shri Rajeev Narayan Pandey, Advocate

Notes of the Registry	Orders of the Tribunal
	<p><u>20.12.2023</u> <u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u> <u>Hon'ble Vice Admiral Atul Kumar Jain, Member (A)</u></p> <ol style="list-style-type: none">1. Rejoinder Affidavit filed by the applicant is taken on record.2. Heard Shri Raj Kumar Mishra, Ld. Counsel for the applicant and Shri Rajeev Narayan Pandey, Ld. Counsel for the respondents.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 conduct Re-Survey Medical Board for applicant's disease Cervical Spondylosis Disorder with PIVD C5-C6 with endorsement of composite and aggregated physical disablement percentage in respect of applicant from December 2016 onwards i.e. the date of report of onset of disease, after quashing RMB dated 12 January, 2021 at Military Hospital, Dehradun, the place of residing of the applicant in a time bound manner.4. Briefly stated facts of the case are that the applicant was commissioned in the Territorial Army (TA) on 09.03.2000 and retired from service on 31.12.2020 on attaining the age of superannuation in Low Medical Category. At the time of retirement of service at Military Hospital, Saugor on 12.01.2021 assessed the applicant disability 'PRIMARY HYPERTENSION (ICD i.10.0)' @30% for life as aggravated by service. Accordingly, the applicant was granted disability element @30% (broad banding to 50%) for life and the applicant is receiving the same. The applicant preferred representations dated 14.12.2020,

06.08.2021, 16.09.2021, 21.12.2021, 02.02.2022, 07.05.2022 and 30.05.2022 but of no avail. The applicant also served Legal Notice dated 17.02.2023 which was rejected vide letter dated 06.03.2023. It is in this perspective that the applicant has preferred the present Original Application.

5. Ld. Counsel for the applicant submits that the applicant was first time detected with disease "Cervical Spondylosis" on 06.12.2016 when deployed for operational duties under HQ 25 Infantry Division and was reported for treatment to 325 Field Hospital at Naushera. The applicant was referred to 150 General Hospital for further treatment on 13.12.20216, the X-Ray was done, and the regular treatment of disease started. The applicant has filed copy of Medical Case Sheet dated 13.12.2026. The applicant reported for treatment at Military Hospital, Dehradun vide Medical Case Sheet dated 09.12.2017 (Annexure A-8 of the Original Application), wherein MRI test of neck (Annexure A-9), back and shoulders was advised by the Graded Specialist and the investigation and findings of the MRI revealed and affirmed the impression of Cervical Spondylosis with generative disc disease C3-4, C4-5, C5-6 and C6-7 with neural compromise at C5-6 as described. The applicant was admitted to Military Hospital, Dehradun on 31.01.2018 for the treatment of Cervical Spondylosis and he was referred to Command Hospital, Lucknow for treatment under graded Specialist (Annexure A-10). The applicant was admitted to Command Hospital, Lucknow for opinion and treatment of Specialist vide Admission Slip dated 04.02.2018 (Annexure A-11). The applicant sent back to Military Hospital, Dehradun from Command Hospital, Lucknow and discharged from Military Hospital, Dehradun on 07.02.2018 with disease Cervical Disc disorder and PIVD C5-C6. On 08.08.2018 the applicant was administered treatment of Cervical Spondylosis and Prolapse Intervertebral Disc Disorder at Section Hospital, Dehradun. The applicant reported to Military Hospital, Saugor (MP) on 13.09.2018, X-Ray was done and local treatment administered. The treatment of said disease was undertaken in Govt. Doon Medical College, Dehradun on 03.10.2029 through OPD Card No. 280742 dated 03.10.2019 (Annexure A-15). In spite of above, the Release Medical Board did not consider

the applicant's aforesaid disease for assessing the disability.

6. Ld. Counsel for the respondents submits that at the time of retirement from service the Release Medical Board held at Military Hospital, Saugor on 12.01.2021 assessed the applicant disability 'PRIMARY HYPERTENSION (ICD i.10.0)' @30% for life as aggravated by service. Accordingly, the applicant was granted disability element @30% (broad banding to 50%) for life and the applicant is receiving the same. He further submitted that as per documents of annual Medical Examination (AME/Medical Board Proceedings AFMSF-15) (Ver-2000) held applicant was not downgraded to Medical Category due to Cervical Spondylosis with Prolapsed Inter Vertebral Disc (PIVD) disorder C5-C6. The instant condition was evaluated by the Specialist and accordingly he was not downgraded for the said disability. In view of above, he submitted that there is no need for issuing direction to hold Re-Survey Medical Board (RSMB) to assess the applicant's aforesaid disability Cervical Spondylosis with Prolapsed Inter Vertebral Disc (PIVD) disorder C5-C6.

7. Upon hearing submission of Ld. Counsel of both the parties and considering the facts and circumstances of the case specially that the applicant was suffering with the disability 'Cervical Spondylosis Disorder with PIVD C5-C6' prior to his retirement, we **dispose of** the Original Application finally with the direction to the respondents to conduct Re-Survey Medical Board (RSMB) of the applicant to assess his disability 'Cervical Spondylosis Disorder with PIVD C5-C6' with endorsement of composite and aggregated physical disablement percentage at Military Hospital, Dehradun, where the applicant is residing. Respondents are further directed to give effect to the order within four months from the date of receipt of a certified copy of this order. Default will invite interest @ 8% per annum till the actual payment

8. Let 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/-