

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 313 of 2023

Friday, this the 09th day of February, 2024

**“Hon’ble Justice Anil Kumar, Member (J)
Hon’ble Lt Gen Anil Puri, Member (A)”**

Bhupendra Singh (No 15119672M Ex Gnr), son of Sri Sohan Lal, R/o Village & Post-Akbarpur Bass Kaneni, Tehsil-Khurja, District-Bulandshahr (UP), PIN-203131.

..... Applicant

Ld. Counsel for the : **Shri Ashok Kumar**, Advocate.
Petitioner

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, Delhi-110011.
2. Officer-in-Charge Records, Artillery Records, PIN-908802, C/o 56 APO.
3. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the : **Shri Alok Kumar Mishra**, Advocate
Respondents. Central Govt. Counsel

ORDER (Oral)

1. Applicant has filed this O.A. under section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- (i) This Hon'ble Court may graciously be pleased to direct the respondents to refer the case of applicant for re-survey/review medical board and if degree of disability of the applicant 'low back ache' found, give disability pension (element) along with its arrears and interest to the applicant with effect from the date of RSMB.*
- (ii) This Hon'ble Court may further be pleased to pass such other and/or further order as deem fit, proper and necessary in the circumstances of this case.*
- (iii) Award cost to the applicant.*

2. Brief facts of the case are that the applicant was enrolled in the Regiment of Artillery on 26.02.1994. During the course of his service, he was tried by Summary Court Martial (SCM) on 18.01.1999 by Commanding Officer (CO) 65 Field Regiment. The SCM had awarded three months rigorous imprisonment in civil jail and dismissal from service w.e.f. 18.01.1999. At the time of dismissal from service, he was in medical category 'CEE (Temp) due to 'Acute Lumbago' w.e.f. 12.08.1998, however, his Release Medical Board (RMB) could not be conducted as he was facing summary trial.

3. Against SCM, he filed Writ Petition No 399 of 2000 in the Hon'ble Delhi High Court which was transferred to AFT (PB), New Delhi and re-numbered as T.A. No. 609 of 2009. This case was decided on 28.09.2010 setting aside SCM

proceedings and granting pensionary benefits to the applicant after notional re-instatement. Accordingly, he was notionally re-instated into service w.e.f. 18.01.1999 vide Part-II Order No 1/2945/0001/2011 and notionally discharged from service w.e.f. 16.08.2009 (AN) vide Part-II Order No 1/2946/0001/2011. He is in receipt of service pension w.e.f. 17.08.2009 vide PPO No S/040905/2011 (Army) dated 21.10.2011. Since the applicant was in low medical category at the time of dismissal from service and his RMB was not conducted, he has filed this O.A. for conducting his Re-Survey Medical Board (RSMB) to decide his present medical category and grant of disability element of pension.

4. Submission of learned counsel for the applicant is that applicant being placed in low medical category 'CEE (Temp)' w.e.f. 12.08.1998 for disability 'Low Back Ache' is entitled for grant of disability element of pension. It was further submitted that due to his involvement in SCM, his RMB was not carried out. His further submission is that after setting aside SCM proceedings and thereafter, notional re-instatement into service, his RMB ought to have been conducted to decide his degree of disablement. He pleaded for conduct of RSMB in respect of the applicant and grant disability element of pension.

5. On the other hand, submission of learned counsel for the respondents is that the applicant was placed in low medical category, but his RMB could not be conducted due to ongoing SCM proceedings. His further submission is that after filing this O.A. his case has been processed with IHQ of MoD (Army) on 21.07.2023 to obtain sanction of competent authority for conduct of his RSMB. Concluding his submission, learned counsel for the respondents submitted that applicant would be brought before RSMB to decide his degree of disablement soon after receipt of sanction from the competent authority.

6. Heard learned counsel for the parties and perused the record.

7. Facts regarding enrolment and notional discharge from service in respect of the applicant are not disputed. The applicant's SCM proceedings were set aside by AFT (PB), New Delhi vide order dated 28.09.2010 and he was notionally reinstated into service w.e.f. 18.01.1999 and casualty was notified vide Part-II Order No 1/2945/0001/2011. He was notionally discharged from service w.e.f. 16.08.2009 (AN) vide Part-II Order No 1/2946/0001/2011 and granted service pension w.e.f. 17.08.2009 vide PPO No S/040905/2011 (Army) dated 21.10.2011.

8. It is not disputed that applicant was in low medical category 'CEE (Temp)' when he was subjected to SCM. The respondents in Para 3 of their counter affidavit have admitted that his RMB could not be conducted due to applicant's involvement in disciplinary proceedings. Further, in Para 6 of the counter affidavit, the respondents have conceded that his case for post discharge release medical board has been processed with competent authority to decide his degree of disablement. For convenience sake, extract of Para 6 of the counter affidavit is reproduced as under:-

"xxxxxxxon receipt of the said original application the case has been examined appropriately by the competent authority at Artillery Records and the same has been processed with IHQ of MoD (Army) Arty-10 vide Artillery Records letter No 15119672H/Initial (T-1)/Pen-2 dated 21 July, 2023 to obtain sanction of the applicant."

9. In view of the facts that process for conduct of RSMB is in progress, respondents are directed to take sanction of competent authority for conduct of applicant's RSMB within a period of three months from today.

10. The O.A. is **allowed**, accordingly.

11. No order as to costs.

(Lt Gen Anil Puri)
Member (A)
 Dated :09.02.2024
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(Justice Anil Kumar)
Member (J)