

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

O.A. No. 844 of 2023

JC-693313A, Ex Sub Shiv Kumar Saroj S/o Mani Ram Saroj R/o Village and Post – Pandwasi, Tehsil – Sadar, District – Pratapgarh – 230144

By Legal Practitioner for the Applicant - **Applicant**
- **In person**

Versus

Union of India & Others - Respondents
By Legal Practitioner for Respondents - **Shri Devesh Kumar Mishra, Advocate**

Notes of the Registry	Orders of the Tribunal
	<p><u>09.01.2024</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. Heard applicant in person and Shri Devesh Kumar Mishra, Ld. Counsel for the respondents.</p> <p>2. Applicant has filed present application under Section 14 of the Armed Forces Tribunal Act, 2007 and has sought following reliefs:-</p> <p style="padding-left: 40px;"><i>“(a) Issue/pass an order or direction to set aside/quash the letter/order dated 19.07.2021, which is annexed as Annexure No. A-1 to this Original Application.</i></p> <p style="padding-left: 40px;"><i>“(b) To issue/pass an order or directions to the respondents to constitute a fresh medical board for assessment of present medical condition/disability percentage of the applicant and accordingly grant disability element of disability pension to the applicant from date of discharge alongwith @12% interest on arrear oin light of Hon'ble Apex Court judgements.</i></p> <p style="padding-left: 40px;"><i>“(c) To issue/pass an order or directions to the respondents to grant benefits of rounding off/broad banding off disability pension under the assessment in the proposed Re-Survey Medical Board to he held for the assessment of present disability percentage of the applicant.</i></p> <p style="padding-left: 40px;"><i>“(d) 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.</i></p> <p style="padding-left: 40px;"><i>“(e) To allow this original application with costs.</i></p>

3. Brief facts of the case are that applicant was enrolled in the army on 25.03.1987 and was discharged from service on 31.07.2016 in SHAPE-1 under Army Rule 13 (3) III (i) on completion of terms of engagement. In the year 2009, the applicant sustained back injury during BPET (Battle Physical Efficiency Test) while crossing 9 feet ditch. Due to this injury, he suffered Low Backache. Since then he was under routine medication. During 2014 applicant reported sick to Base Hospital, Lucknow and was seen by Col Barun Datta, Senior Advisor (Ortho & Joint Replacement & Surgery) and on his prescription, he underwent MRI and was diagnosed as a case of Low Backache. Since then till retirement he was under active medication of many specialists. The applicant continued with conservative treatment as advised by Neuro Surgeon but not much relief. At the time of retirement also the applicant requested for conduct of his Release Medical Board but was denied being in Shape-I category. Applicant preferred many representations to the competent authorities but of no avail. His last representation dated 20 May 2021 for Post Discharge claim was rejected by the respondents vide letter dated 19.07.2021. Aggrieved, filed the present Original Application.

4. The applicant submitted that he was diagnosed suffering from Backache before retirement from service and he has been discharged from service in Shape-1 instead of in low medical category without holding Release Medical Board. He submitted that directions may be issued to the respondents to constitute Re-Survey Medical Board for assessment of his present medical condition/disability percentage and accordingly grant disability element of disability pension from the date of discharge alongwith 12% interest on arrear in light of Hon'ble Apex Court Judgements.

5. On the other hand, learned counsel for the respondents submitted that applicant was discharged from service in Shape-1 and service pension has been notified vide PPO dated 09.06.2016. He submitted that after discharge from service the applicant preferred a personal application for conduct of his Special Review Medical Board to assess his disabilities Low Backache and

PIVD (L3-L4) to L5-S1) stating that he had sustained injury in the year 2009 during BPET but neither medical record nor any investigation report is available in the unit. However post discharge claim of the applicant was sent to DGAFMS for consideration which was rejected after due examination, in absence of Injury Report/Court of Inquiry. Against the rejection of post discharge claim the applicant has filed the instant original application on the basis of wrong and misleading facts whereas applicant is not entitled for any relief hence the original application is liable to be dismissed.

6. We have perused the records and we find that applicant was under treatment for his ailment in various Military Hospitals since 2009 before being discharged from service. His Release Medical Board was not held as he was in Shape-I.

7. In view of above, Re-survey Medical Board (RSMB) of the applicant is required to be conducted to assess gravity of his disease and medical category from which he suffered during his service and also was suffering at the time of discharge from service.

8. In view of aforesaid, the respondents are directed to conduct Re-Survey Medical Board for the applicant to assess his medical condition recommending the percentage of disability, if any. The respondents are directed to inform applicant the place and date where RSMB is to be conducted and give effect to this order positively within a period of four months from the date of receipt of certified copy of the order.

9. No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Anil Kumar)
Member (J)

DDS

