

RESERVED
(Court No 2)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

**TRANSFERRED APPLICATION No. 51 of 2023
With M.A. No. 2629 of 2021**

Tuesday, this the 30th day of January, 2024

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

SS-41331W Capt Viraj Singh Chaudhry (Retd), S/o Shri Virendra Chaudhry, R/o A-4 (3rd Floor), Ring Road, Naraina Vihar, New Delhi-110028.

.....Petitioner

Learned counsel for the: **Shri JL Joel**, Advocate
Petitioner

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, DHQ, PO-New Delhi-110011.
2. Chief of Army Staff, through Adjutant General, IHQ of Ministry of Defence (Army), South Block, DHQ, PO-New Delhi-110011.

.....Respondents

Learned counsel for the : **Shri Shyam Singh**, Advocate
Respondents. Central Govt. Counsel

ORDER

1. Being aggrieved with denial of re-categorization medical board, petitioner had filed O.A. No. 2517 of 2021 in AFT, PB, New Delhi under Section 14 of the Armed Forces Tribunal Act, 2007 which on transfer to this Tribunal has been re-numbered as T.A. No. 51 of 2023. The following prayer has been made:-

(i) To direct the respondents to order a resurvey medical board to determine degree of disability of Bilateral Sensory-Neural Hearing Loss (SNHL) in case of the petitioner alongwith attributability/aggravation due to army service.

(ii) To direct the respondents to also determine the degree of Obsessive Compulsive Disorder, and to also give an opinion whether it is likely to be caused due to disability of SNHL and/or is attributable or aggravated due to service conditions.

(iii) Any other relief that the petitioner is found entitled to and this Hon'ble Tribunal may deem appropriate, just and proper in the facts and circumstances of the case in the interests of justice.

M.A. No. 2629 of 2021

2. There is delay of 3963 days in filing O.A. Petitioner has moved delay condonation application in filing O.A. An affidavit has also been filed alongwith delay condonation application in which it is stated that delay is not deliberate but on account of reasons stated in application. It is further submitted that grant of disability pension being a recurring cause of action, delay in filing O.A. be condoned.

3. Per contra, submission of learned counsel for the respondents is that delay has not been properly explained.

4. Upon hearing both the parties and considering the facts and circumstances of the case, we find that cause shown is sufficient. Accordingly, delay is condoned and miscellaneous application is disposed off.

T.A. No. 51 of 2023

5. Brief facts of the case are that the petitioner was commissioned in the Indian Army as a Short Service Commissioned (SSC) officer on 19.03.2005. On completion of contractual service, he was discharged from service on 30.06.2010 (AN) in medical category SHAPE-I.

6. In the year 2021, he submitted representation dated 27.09.2021 requesting to conduct his re-categorization medical board for assessing his disability on the ground that prior to discharge from service he was suffering from hearing loss which has manifested subsequent to his discharge from service. It was also contended that after discharge from service, he also suffered from Obsessive Compulsive Disorder (OCD), which needs to be examined for causal connection with Army service. This being denied by the respondents vide letter dated 20.10.2021, this O.A. was filed in AFT, Principal Bench.

7. Submission of learned counsel for the petitioner is that during the course of service, due to exposure of constant heavy tank firing in the year 2007, he was diagnosed to be suffering from Sensorineural Hearing Loss (SNHL) at Base Hospital, Delhi

Cantt and Command Hospital, Eastern Command, Kolkata (Annexure A-3) but even then he was discharged from service in medical category SHAPE-I. His further submission is that at the time of release from service petitioner showed his medical documents relating to his disability to concerned medical officer but no cognizance was taken to his plea.

8. Learned counsel for the petitioner further submitted that about two years after discharge from service, he was diagnosed with Obsessive Compulsive Disorder (OCD) which being related to hearing loss ought to be attributable to military service and thus, petitioner is entitled to grant of disability pension. His further submission is that at the time of discharge since he was placed in medical category SHAPE-I, his Re-survey Medical Board (RSMB) should be conducted to decide his medical disability in terms of Entitlement Rules for Casualty Pensionary Awards-2008.

9. On the other hand, submission of learned counsel for the respondents is that the petitioner was discharged from service on 30.06.2010 (AN) in medical category SHAPE-I as per AFMSF-18 (Ver 2002) dated 29.06.2010. It was further submitted that during the course of his service since petitioner was not placed in low medical category, which necessitated conduct of Release Medical Board, routine medical examination was conducted on 29.06.2010 in which he was placed in SHAPE-I medical category.

10. Learned counsel for the respondents further submitted that representation dated 27.09.2021 submitted by the petitioner was

suitably replied vide letter dated 20.10.2021 suggesting him to approach Adjutant General's Branch/MP 5&6. Later, after sending letter dated 07.11.2021 to MP-5&6 he filed O.A. in AFT, Principal Bench, New Delhi after an inordinate delay of 3963 days from the date of discharge which is barred by Section 22 of the AFT Act, 2007. He pleaded for dismissal of T.A.

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

12. SS-41331W Capt Viraj Singh Chaudhry (Retd) was enrolled in the Army as SSC officer. He was discharged from service in medical category 'SHAPE-I' w.e.f. 30.06.2010 (AN) after completion of initial terms of engagement. Eleven years from the date of discharge, petitioner submitted representation dated 27.09.2021 requesting concerned authority for conduct of RSMB on two grounds i.e. (i) prior to discharge from service he was suffering from SNHL and (ii) he suffered from OCD two years after discharge. Petitioner's contention is that since the disability OCD is due to his first disability which he suffered during the course of his service, his RSMB should be conducted for assessment of both the disabilities for grant of disability pension.

13. An Annual Medical Examination (AME) of all Army personnel, which includes complete clinical examination and investigations, is conducted annually by the authorised medical attendant (AMA). The details and findings including medical advice, if any, are entered in the health record card of an individual. In case during

the AME, the AMA finds that the individual requires specialised investigations/treatment, reference is made to the nearest hospital where such facilities are available. In the case in hand, petitioner has filed Annexure A-3 indicating that he was suffering from SNHL in the year 2007 but the said disability was never referred by the AMA to medical specialist and that was the reason he was discharged from service in fit medical category SHAPE-I.

14. While filing rejoinder affidavit, learned counsel for the petitioner has conceded in Para 6 that prior to discharge from service, petitioner's RMB was not conducted as he was not placed in low medical category; rather his routine medical board was conducted and petitioner was released in SHAPE-I medical category. For convenience sake, extract of Para 6 of rejoinder affidavit is quoted as under:-

"6. It is the rule position and hence not denied. However, the rules pertain to non-regular officers who were released in Low Medical Category-petitioner was released in SHAPE-I and is also not an invalided-out case and hence the rules quoted are not applicable to the instant case. Being released in SHAPE-I RMB, was not held, only a Routine Medical Examination by generalist doctor. x x x x"

15. Perusal of petitioner's acceptance that being not placed in low medical category, neither RMB was conducted nor was he subjected to invaliding medical board, makes it clear that prior to discharge RMB is conducted for an individual if he is placed in low medical category during the course of service. Petitioner's contention is that his RSMB be conducted to decide degree of disability for grant of disability pension. In regard to conduct of

RSMB, Army Order 152/73 is relevant which for convenience sake, is reproduced as under:-

"Ex-servicemen invalidated out of service on account of disabilities attributable to or aggravated by war/military service and who claim substantial increase in their disabilities should be directed to report to the nearest military hospital. The officer Commanding hospital will admit for investigation and treatment individuals who are in receipt of disability pensions. They will, if the hospital is authorized to hold such a board, or else they will be transferred to the nearest military hospital where medical boards can be held. The resurvey medical board will give their recommendations regarding increase in the percentage of disability on Form AFMSF-17. The procedure detailed in Para 1 will also apply to Ex-servicemen originally granted temporary disability pension which was discontinued as their disability was re-assessed at below 20 percent by a resurvey medical board, notwithstanding rejection of their claims for higher assessment of their disability. Individual applying for re-assessment of their disability will be required to produce a medical certificate from a Registered Medical Practitioner giving details of their existing disability and their present state of health. If the military hospital authorities decide after perusal of that certificate and invaliding documents of the individual, that he should be called for investigation/treatment and medical board, he will be paid normal travelling concessions. In case he is unable to produce a medical certificate for any reason, he will be paid travel concession only if it is admissible to him under Rule 369 Travel Regulations or if his claim to increase assessment is upheld."

16. A perusal of the aforesaid Army Order clearly brings out that RSMB is to be held only in those cases where the individual is invalidated out on account of disabilities attributable to or aggravated by military service and who claims substantial increase in disabilities. It will apply to those individuals who were originally granted temporary disability pension which was discontinued as their disability was re-assessed at below 20% by RSMB. In the instant case, the petitioner being discharged from service in medical category SHAPE-I does not seem to be entitled to undergo RSMB as claimed.

17. Additionally, on perusal of Release Medical Examination report dated 29.06.2010 (Annexure A-4) we find that petitioner has endorsed nil against Para 3 of the report which makes it clear

that he was not suffering from any disease/disability prior to date of discharge and accordingly, he was released in SHAPE-I medical category. For convenience sake, extract of Para 3 of medical examination report is appended below:-

*"3. Give particulars of any diseases, wounds or injuries from which you are suffering – **NIL***

18. Further, perusal of Para 5 of the Release Medical Examination report dated 29.06.2010 also reveals that the petitioner did not claim any disability due to service. For convenience sake, Para 5 is extracted as under:-

*"5. Do you claim any disability due to service? - **No***

19. Thus, from the aforesaid, it is crystal clear that plea for relief by the petitioner lacks substance and appears to be an after thought to seek financial benefits.

20. In view of the discussions made hereinabove, we do not find any merit in the present T.A. which is liable to be dismissed. It is accordingly, **dismissed**. No order as to costs.

21. Pending application (s), if any, stands disposed of.

(Maj Gen Sanjay Singh)
Member (A)

Dated: 30.01.2024
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(Justice Anil Kumar)
Member (J)

RESERVED

(Court No 2)

Form No. 4

{See rule 11(1)}
ORDER SHEETARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

T.A. No. 51 of 2023 with M.A. No. 2629 of 2021

Capt Viraj Singh Chaudhry (Retd)

PetitionerBy Legal Practitioner for the **Petitioner**

Versus

Union of India & Ors

Respondents

By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>30.01.2024</u> <u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u> <u>Hon'ble Maj Gen Sanjay Singh, Member (A)</u></p> <p>Judgment pronounced. T. A. No. 51 of 2023 is dismissed. For orders, see our judgment and order passed on separate sheets.</p> <p>(Maj Gen Sanjay Singh) Member (A) <i>rathore</i></p> <p>(Justice Anil Kumar) Member (J)</p>