

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 1022 of 2023**Thursday, this the 07th day of March, 2024**“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Lt. Gen. Anil Puri, Member (A)”**

JC-541781-W Subedar (Clk, SD) Jaswant Singh Bhandari, S/o Late Guman Singh, R/o Village – Bhandari Gaon, Post Office – Raita Gar, Tehsil – BerinagDidihar, District – Pithoragarh (UK)-262534. Presently residing at House No. 592 Ka/668, Subhani Khera, Telibagh, Lucknow, UP-226001.

..... Applicant

Ld. Counsel for the Applicant : **Shri Parijaat Belaura**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi.
2. Addl. Dte. Gen. of Personnel Services, Adjutant General’s Branch, Integrated Headquarters, Ministry of Defence Z(Army), L-1 Block, Church Road, church road, New Delhi-01.
3. Officer-in-Charge, Records, The Kumaon Regiment, PIN-900473, C/o 56 APO.
4. The Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (UP).

.....Respondents

Ld. Counsel for the Respondents. : **Shri G.S. Sikarwar**, Advocate
Central Govt. Standing Counsel
Assisted by Major Danish Farooqui,
Departmental Representative

ORDER

“Per Hon’ble Mr. Justice Anil Kumar, Member (J)”

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

- (I) *To set aside order dated 15.05.2023 in violation of Para 65(III) of Defence Service Regulations 2008 Part II.*
- (II) *To conduct fresh Re-Survey Medical Board to assess present conditions of applicant and grant Disability Pension accordingly.*
- (III) *To pay the difference of arrear of disability pension along with 12% interest from the date of RSMB till it is actually paid.*
- (IV) *Any other suitable relief this Hon’ble Court deems fit and proper may also be granted.*

2. Briefly stated, applicant was enrolled in the Kumaon Regiment of Indian Army on 26.12.1993 and discharged on 31.12.2021 in Low Medical Category on completion of terms of engagement under Rule 13 (3) Item I (i) (a) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at Military Hospital, Ranikhet on 15.12.2021 assessed his disabilities (i) **‘PSORIASIS VULGARIS (I-40.0)’**, (ii) **‘PSORIATIC ARTHRITIS (L-409)**, both combined @30% and (iii) **‘SENSORINEURAL HEARING LOSS BILATERAL (L-30.0)’**

@20%, composite disabilities @44% for life and opined the disabilities to be not attributable to service but **aggravated by military service**. Accordingly, the applicant was granted disability element of disability pension @44% rounded off to 50% for life. The applicant preferred representation dated 28.11.2022 for grant of disability pension @60% rounded off to 75% which was rejected vide letter dated 19.12.2022. The applicant preferred representation dated 24.02.2023 for holding of Re Survey Medical Board which was rejected vide letter dated 15.05.2023 which was communicated to the applicant vide letter dated 03.06.2023. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that after retirement condition of the applicant is deteriorating day by day, he is unable to hear anything without hearing machine. He further submitted that as per Para 65 (III) of Pension Regulations for the Army, 2008 (Part II) one Re Survey Medical Board can be held at the request of the applicant. Accordingly, the applicant preferred representation for holding Re-Survey Medical Board but the respondents have arbitrarily rejected the applicant's aforesaid representation.

4. On the other hand, Ld. Counsel for the respondents contended that at the time discharge from the applicant's

composite disabilities was @44% for life as such he was granted disability element of disability pension @44% for life rounded off to 50% for life. He further submitted that there is no provision for re-assessment of percentage of disability after finalisation of Release Medical Board. He further submitted that applicant's disabilities were found to be not attributable to service but disabilities have been found to be **aggravated** by military service. As per IHQ of MoD (Army) MP-8 (I of R) letter No. A/2004/xx/MP-8 (I of R) (a) dated 01.02.2018, prior sanction for carrying out RSMB is required to be obtained from DGMS (Army) along with copy of court order. In the instant case there is no such order or direction for carry out RSMB of the applicant. He pleaded for dismissal of the Original Application.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Release Medical Board proceedings as well as the records and we find that the questions which need to be answered is whether the applicant is entitled for the Re-Survey Medical Board?

6. Regulation 65(III) of the Pension Regulations for the Army, 2008 (Part-II), which is relevant for adjudication of this Original Application, reads as under :-

“(III) RE- ASSESSMENT OF DISABILITY:

There shall be no periodical reviews by the Resurvey Medical Board for reassessment of disabilities. In case of disabilities adjudicated which are of a permanent nature, the decision once arrived at shall be final and for life unless the individual himself requests for a review. In case of disabilities, which are not of a permanent nature, there shall be only one review of the percentage by a Re-assessment Medical Board to be carried out later within a specified time frame. The percentage of disability assessed/recommended by the Re-assessment Medical Board shall be final and for life unless the individual himself asks for a review.

Note- Review Medical Board will be ordered by Director General Armed Forces Medical Services and finding of the Review Medical Board shall be final.”

7. In the instant case although the disabilities are in permanent nature but the applicant himself has requested for re-assessment of disabilities, therefore, in view of Regulation 65(III) of the Pension Regulations for the Army, 2008 (Part-II) it will be appropriate to direct the respondents to conduct the Re-survey Medical Board for re-assessment of applicant's disabilities.

8. In view of the above, the **Original Application No. 1022 of 2023** deserves to be allowed, hence **allowed**. The impugned orders, rejecting the applicant's application for conducting the Re-Survey Medical Board, are set aside. The respondents are directed to conduct Re-Survey Medical Board (RSMB) of the applicant to re-

assess his disabilities within a period of four months from the date of receipt of a certified copy of this order.

9. No order as to costs.

10. Major Danish Farooqui, Departmental Representative for the respondents orally submitted to grant Leave to Appeal against the above order which we have considered and no point of law of general public importance being involved in the case the plea is rejected.

(Lt. Gen. Anil Puri)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 07 March, 2024

AKD/-