

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No. 1(Sl. No. 19)

Original Application No. 845 of 2024

782390-N Sgt. Vipul Kumar Upadhyay, MTD (Retd.) Applicant
By Legal Practitioner for the Applicant : Shri Mahendra Kumar Singh, Advocate

Versus

Union of India & Others Respondents
By Legal Practitioner for Respondents : Shri Alok Kumar Mishra, Advocate

Notes of the Registry	Orders of the Tribunal
	<p><u>26.03.2025</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. Counter Affidavit filed by the respondents is taken on record.</p> <p>2. Ld. Counsel for the applicant submits that the applicant is not inclined to file Rejoinder Affidavit.</p> <p>3. Heard Shri Mahendra Kumar Singh, Ld. Counsel for the applicant and Shri Alok Kumar Mishra, Ld. Counsel for the respondents.</p> <p>4. 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 (RSMB) to assess present condition of the applicant and to grant disability element of disability pension in terms of disability found in RSMB.</p> <p>5. Briefly stated, facts of the case are that the applicant was enrolled in the Indian Air Force on 17.06.2002 and discharged from the service on 30.06.2022 on fulfilling the conditions of his enrolment in medical Category A4G1 after rendering 20 years and 13 days of service. The Release Medical Examination held at 2228 Sqn., Air Force on 23.11.2021 assessed the applicant fit to be released from service in medical classification AYE. The applicant is in receipt of service pension. As per averments made by the applicant in the Original Application, while he was posted at 2228 Sqn., Air Force Station, Bawana, in August, 2021 he started facing pain and stiffness in all joints specially in morning. Subsequently, it developed as consistent pain in joints. The applicant reported the matter to SMC, wherein he was administrated with local medicines and deployed to routine duties without any diagnosis. As the applicant was in consistent and regular pain so again approached the SMC from where he was referred to Base Hospital and then Army Hospital Research and Referral (R & R) where through medical investigation was carried and applicant was diagnosed with Poly Arthritis and treatment was for the disease as OPD</p>

	<p>patient. Since then, the applicant is on regular medication and regular follow up under Specialist Rheumatology of Army Hospital Research and Referral. At the time of Release Medical Examination the applicant's ongoing treatment for the disability of Poly Arthritis was not considered and the Medical Officer recommended the applicant to be released in a4G1 Category. The applicant is still suffering with pain, stiffness and swelling in several joints even after treatment, the applicant visited to Army Hospital Research and Referral for following up treatment on 18.04.2022, 25.05.2022, 30.05.2022 and 15.06.2022 and during the aforesaid visits with Doctors he conveyed that his condition is not improving but other doctors just extended the treatment being a case of another Sr. Resident Doctor and Dr. Gargi Sasmal was not available on those dates. On 13.07.2022, Dr. Gargi Sasmal was available and as advised she decided to downgrade the applicant's Medical Category and Recommended to place in LMC but by the time the applicant has already been discharged from service on 30.06.2022, therefore, the same was not executed. The applicant was on continuation of Medical Treatment from Army Hospital Research and Referral till 24.10.2022, thereafter, the applicant shifted to Lucknow. The applicant is continuing his treatment at Lucknow for undifferentiated Polyarthrities initially from SGPGI, Lucknow and not taking treatment from Command Hospital, Lucknow. The applicant has filed copies of relevant medical documents as Annexure A-3 to this Original Application. The applicant preferred representation dated 04.09.2023 for grant of disability element of disability but of no avail. It is in this perspective that the applicant has preferred the present Original Application.</p> <p>6. Ld. Counsel for the applicant submitted that at the time of enrolment, the applicant was found mentally and physically fit for service in the Air Force and there is no note in the service documents that he was suffering from any disease at the time of enrolment in the Air Force. The respondents did not conduct Release Medical Board of the applicant while in service even after knowing that the applicant is continuously taking treatment for the aforesaid disability. Thus, the present disability has a strong causal connection that the disability was contacted during the service tenure only. The applicant has manifested with the aforesaid disability in August, 2021 while he was in service. Thus, it ought to be considered as attributable to or aggravation by Air Force Service. He relied upon Para 8(a) of the Entitlement Rules for the Casualty Pensionary Awards to the Armed Forces Personnel, 2008.</p> <p>7. Ld. Counsel for the respondents submits that the applicant has proceeded on discharge in the medical category A4G1 after undergoing Release Medical Examination at his last unit, which indicates that the applicant was suffering from 'NIL' disease, wounds or injuries at the time of discharge. Before discharge from the service, Release Medical Examination held at 2228</p>
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	<p>Sqn., Air Force on 23.11.2021 found that the applicant was in medical category AYE with no disability detected/claimed. Further, the applicant had not claimed any disability and he has given no such information about his health vide Para 3, 5 & 6 of Part-I (Personal Statement) respectively of AFMSF-18 dated 23.11.2021. The applicant by affixing his signature to the medical examination findings, indicated that he accepted their recommendations. As such there is no need for issuing direction to hold Re-Survey Medical Board (RSMB) to assess the disability of the applicant and the applicant is not entitled for the grant of disability element of disability pension.</p> <p>8. Para 8(a) of the Entitlement Rules for the Casualty Pensionary Awards to the Armed Forces Personnel, 2008 reads as under :-</p> <p>“8. Post discharge claims:</p> <p><i>(a) Cases in which a disease was not present at the time of the member’s retirement/discharge from service but arose within 7 years thereafter, may be recognized as attributable to service if it can be established by the competent medical authority that the disability is delayed manifestation of a pathological process set in motion by service conditions obtaining prior to discharge.”</i></p> <p>9. Upon hearing submission of Ld. Counsel of both the parties and considering the facts and circumstances of the case especially Para 8(a) of the Entitlement Rules for the Casualty Pensionary Awards to the Armed Forces Personnel, 2008, the applicant suffering from the aforesaid disability from August, 2021 and that the applicant was discharged from service on 30.06.2022, we dispose of the Original Application finally with a direction to the respondents to conduct Re-Survey Medical Board (RSMB) of the applicant to assess his disability for deciding entitlement of disability element of disability pension within a period of four months from the date of receipt of a certified copy of this order.</p> <p>10. Let a copy of this order be provided to the learned Counsel for the parties.</p> <div><div>(Vice Admiral Atul Kumar Jain) Member (A)</div><div>(Justice Anil Kumar) Member (J)</div></div> <p>AKD/-</p>
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