

Court No. 1 (E-Court)

**ARMED FORCES TRIBUNAL, REGIONAL
BENCH, LUCKNOW**

ORIGINAL APPLICATION No. 680 of 2021

Wednesday, this the 29th day of April, 2022

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

IC -47010P Col Anurag Kumar (Retd) S/o Shri Ashok
Kumar R/o House No. 6/3, Kabir Marg, Clay Square,
Lucknow.

..... Applicant

Ld. Counsel for the : **Shri SG Singh**, Advocate and
Applicant **Shri Anand Yadav**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of
Defence, New Delhi.

2. ADG (PS) Integrated Headquarter of the Ministry of
Defence (Army)-10.

3. DG MS (Army), Integrated Headquarter of the
Ministry of Defence (Army) New Delhi-10.

4. MG Med, HQ Central Command Lucknow-2.

5. MG Med, HQ UB Area, Bareilly.

.....Respondents

Ld. Counsel for the : **Dr Gyan Singh**, Advocate
Respondents. Central Govt. Counsel

ORDER

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

(i) Issue/Pass an order or direction of appropriate nature whereby commanding the respondents to produce the record in original and thereafter quash the order dated 10.08.2021 whereby rejecting the claim of the applicant to constitute a fresh medical board for Re-Med Cat annexed as Annexure No.A-1(i) (ii) with the application.

(ii) Issue/pass an order or direction of appropriate nature whereby commanding the respondents to constitute a fresh medical board for Re-med Cat of the applicant.

(iii) Issue/Pass an order or direction of appropriate nature whereby commanding the respondents to give compensation to the applicant with all consequential benefits.

(iv) Issue/pass any other order or relief which Hon'ble Tribunal may deem fit and proper in the circumstances of the case of the applicant.

(v) Allow the application with all consequential benefits with exemplary cost.

2. Brief facts of the case are that the applicant was commissioned in the Indian Army on 19.12.1987 and retired from service on 30.11.2020 (AN) on attaining the age of superannuation in medical category SHAPE-I as per AFMSF-18 dated 26.06.2020 (Annexure CA-1). Earlier the applicant was downgraded to low medical category A4 (T-06) for disability 'ACL and Medial Meniscus Tear (Lt) Knee (Optd)'

w.e.f. 12.11.2006 which was reviewed from time to time and finally he was placed in medical category SHAPE-I w.e.f. 19.12.2009 vide AFMSF-15 (Annexure CA-2). The applicant had preferred an appeal dated 20.10.2020 for holding a fresh medical board to assess his medical status. During pendency of said appeal he filed O.A. No 66 of 2021 before this Tribunal for conducting of a fresh medical board for assessment of his present medical category which was disposed of vide order dated 21.01.2021 with the directions to the respondents to decide his appeal which was rejected by speaking order dated 10.08.2021. Applicant has filed this O.A. to quash order dated 10.08.2021 and issuing directions to hold his re-medical board with all consequential benefits.

3. Learned counsel for the applicant submitted that the applicant initially sustained knee injury on 19.12.1996 while taking part in Inter Unit Football Competition. He was admitted to Military Hospital, Barrackpore and discharged on 31.12.1996. On 26.10.2006 while commanding a unit at Lucknow, his left knee collapsed during visit of GOC-in-C. Due to severe pain he was admitted to Base Hospital, Lucknow and thereafter transferred to Army Hospital (R&R), New Delhi on 27.10.2006 where his knee surgery was carried out and he was discharged from there on 11.11.2006 in medical category S1H1A2(T-24)P1E1 (Annexure 2). The

said medical category was reviewed on 24.12.2007 and again he was placed in the same medical category with approx 30% disability. His other version is that the applicant remained in low medical category up to 23.12.2009 but during Annual Medical Examination (AME) held on 23.12.2009 at 164 Military Hospital he was upgraded to SHAPE-I medical category (Annexure 3). His submission is that condition of applicant's left knee was not normal in 2009 therefore, his medical category should not have been upgraded to SHAPE-I which he feels arbitrary. By efflux of time the knee condition of the applicant gradually deteriorated in last 2-3 years and he is now not able to even walk properly and there is always varying degree of swelling in his left knee. Applicant's learned counsel further submitted that while posted in Uri on 21.06.2020 applicant participated in Yoga Camp and during the course of yoga exercise he experienced unbearable pain in his knee. On 23.06.2020 he visited 7 Air Force Hospital at Kanpur and was examined by the Orthopaedic Surgeon. On seeing the condition of the applicant the doctor expressed genuine surprise as to how he was placed in SHAPE-I medical category despite he having an abnormal knee condition. On 27.06.2020 the Release Medical Board (RMB) of the applicant was carried out and he was again placed in medical category SHAPE-I in gross arbitrary and malafide manner. His contention is that the

respondents have committed a gross error while conducting the medical examination and putting him in medical category SHAPE-I as such there is a requirement of holding re-examination medical board in order to determine the genuine medical category of the applicant. He pleaded for issuing directions to the respondents to hold applicant's re-medical examination medical board.

4. On the other hand, learned counsel for the respondents submitted that the applicant has retired from service on 30.11.2020 on attaining the age of superannuation in medical category SHAPE-I vide AFMSF-18 dated 26.06.2020 (Annexure CA-1). He further submitted that the applicant was downgraded to medical category A4 (T-06) for disability 'ACL and Medial Meniscus Tear (Lt) knee (optd) w.e.f. 12.11.2006 which was modified to medical category A3 (T-24) w.e.f. 28.12.2006 and further modified to medical category A2 (T-24) w.e.f. 15.06.2007, medical category A2 (P) w.e.f. 19.12.2007 and finally upgraded to SHAPE-I w.e.f. 19.12.2009. He further submitted that after retirement the applicant has also been re-employed in medical category SHAPE-I (Annexure CA-2). Learned counsel for the respondents further submitted that applicant's appeal for conducting re-medical board after retirement has been rejected vide order dated 10.08.2021 (Annexure CA-3).

Respondents' learned counsel further submitted that entitlements to disability pension are governed by the eligibility conditions enumerated in Regulation 81 of Pension Regulations for the Army, 2008 (Part-I) which stipulates that unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an officer who is invalided out of service on account of a disability which is either attributable to or aggravated by military service in non-battle casualty cases and the disability is assessed at 20% or over. He submitted that since the applicant has retired in medical category SHAPE-I, he is not entitled to any relief. His further submission is that for same cause of action since O.A. No 66 of 2021 filed before this Tribunal has been disposed of vide order dated 21.01.2021 and appeal dated 20.10.2020 has also been rejected vide order dated 10.08.2021, therefore, the applicant is not entitled to any relief. He pleaded for dismissal of O.A.

5. We have heard learned counsel for the parties and perused the material placed on record.

6. Col Anurag Kumar was commissioned in the Army on 19.12.1987 and he retired from service on 30.11.2020 on attaining the age of superannuation in medical category SHAPE-I. While in service in the year 2006 the applicant

sustained left knee injury and it was operated in Army Hospital (R&R), New Delhi. After surgery he was downgraded to low medical category and this medical category remained till the year 2009. On 19.12.2009 he was upgraded to SHAPE-I medical category vide AFMSF-15 (Annexure CA-2) and he served in the Army till his retirement in SHAPE-I medical category. One month prior to his date of retirement the applicant preferred an appeal dated 20.10.2020 for conduct of his re-medical board. During pendency of the said appeal he filed O.A. No 66 of 2021 before this Tribunal and on 21.01.2021 the O.A. was disposed off with directions to the respondents to decide his appeal within four months.

7. Admittedly, the applicant suffered with the said disability during the course of his service and his medical category was downgraded to below SHAPE-I. He served in low medical category up to the year 2009 and thereafter his medical category was upgraded to SHAPE-I and he retired from service in SHAPE-I medical category in the year 2020 (that is to say he was in SHAPE-I for nearly 11 years while in service). During the feg end of his service he submitted a representation for conduct of his re-medical board, which was rejected vide order dated 10.08.2021. For convenience sake order dated 10.08.2021 is reproduced as under:-

“Whereas, the applicant IC-47010P Col Anurag Kumar (Retd) S/o Shri Ashok Kumar R/o House No 613, Kabir Marg, Clay Square, Lucknow has filed O.A. No 66 in Hon’ble AFT (RB) Lucknow challenging against his release from Army in SHAPE-I and pleading for medical examination to that effect and grant him disability and compensation thereof. The Hon’ble AFT (RB) Lucknow has directed the respondents which includes Major General Medical, Headquarters, Central Command as the 4th respondent among others to give a reasoned speaking order to the applicant. The grievances brought out by applicant was examined as per existing policies and ruling on the subject.

Whereas, the applicant claims that the injury to his knee occurred during bonafide military duty, relevant documents such as Court of Inquiry/Unit Part-I Order to corroborate the same are not enclosed. Similarly, no documents are enclosed to corroborate the repeat injury. The applicant had a surgery of the Lt Knee in a civil set up Fortis Noida on 13 Apr 2005 while he was posted in peace station Zirakpur. However, he did not report to any military medical facility/authorised medical attendant. He allegedly had a repeat injury in 2006 for which he was operated and subsequently placed in Low Medical Category A3 (Temporary for 24 weeks) and thereafter A2 (Permanent) with effect from 19 Dec 2007.

Whereas, as per the applicant, he was upgraded to SHAPE-I vide Annual Medical Examination dated 23 Dec 2009, but, there is no provision for upgradation from Low medical Category during the Annual Medical Examination. No reclassification medical board proceedings to the effect with respect to the applicant’s medical category upgradation is enclosed. And, if there was any physical disability even after treatment and subsequent upgradation, the applicant never appealed against the upgradation in 2009 thereafter till this application just before his superannuation.

Whereas, the applicant experienced unbearable pain in the affected knee on 27 Jun 2020, he did not seek medical help the same day. However, the applicant went for his re-employment medical examination the next day on 22 Jun 2020. Relevant portion of re-employment medical examination on AFMSF-2 form or opinion of the surgical specialist corroborating injury is not enclosed. The applicant was in SHAPE-I and accordingly underwent Release Medical Examination by Authorized Medical Attendant.

Whereas, the applicant sustained the injury during 1996 which was managed conservatively at that time. He underwent Anterior Cruciate Ligament reconstructed in Private Hosp in Mar 2005 i.e. 9 yrs after his injury, and all through the 9 yrs, applicant was serving in SHAPE-I.

Applicant alleges repeat injury in May 2006 following which he underwent surgery again in Nov 2006 in Army Hosp (R&R). Offr was medically downgraded to A4 (Temporary for 04 weeks), followed by A3 (Temporary for 24 weeks) and then to permanent low medical category A2 with effect from Dec 2007. He was upgraded to SHAPE-I during Dec 2009, allegedly during Annual Medical Examination, which is not in order. Any upgradation/downgrading in medical category has to be done through a classification/re-classification medical board. No such classification/re-classification medical board documents have been enclosed. However, copy of Part II order upgrading to SHAPE-I has been encl. The offr never represented at that time. Approximately one month prior to his retirement applicant appealed against being in SHAPE-I. Applicant again alleges injury on 21 Jun 2020 for which he did not seek medical help immediately but underwent re-employment medical examination on AFMSF-02 on 22/24/26 Jun 2020 and Release Medical Examination during 22-26 Jun 2020. He did not appeal against either the re-employment medical examination or the Release Medical Examination which declared him fit to be released in medical classification SHAPE-I. He appealed against the Release Medical Examination on 20 Oct 2020.

And now therefore, taking into consideration the above and the policies in vogue on the subject, the applicant IC-47010P Col Anurag Kumar (Retd) has been appropriately released from service in SHAPE-I. There is no provision for holding Release Medical Board after retirement.”

8. Apropos above, we find that the applicant did not represent the matter to the respondents from the year 2009 and served in SHAPE-I medical category till his release from service i.e. upto 30.11.2020. He preferred an appeal on 20.10.2020 for holding his re-medical board which was rightly rejected vide order dated 10.08.2021 and since the applicant was released from service in medical category SHAPE-I, he is not entitled to undergo re-medical board at this stage in accordance with extant rules.

9. Additionally, it is intriguing to note that if applicant's medical condition was not appropriate, which he did not raise

at that time, the same could have been verified at that stage. During his RMB dated 01.07.2020 at Part I para 5 where the applicant has to confirm whether he claims any disability due to service condition, the applicant has not mentioned anything and signed underneath which clearly brings out that the applicant's claim is an afterthought.

10. The applicant was retired from service on 30.11.2020 in medical category SHAPE-I, therefore he is not entitled to undergo re-medical board at this stage.

11. In view of the above, the O.A. deserves to be dismissed, hence **dismissed**.

12. No order as to costs.

13. Miscellaneous application(s), pending if any, stand disposed of.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 29.04.2022
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