

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 852 of 2022**Monday, this the 28<sup>th</sup> day of November, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

No. 692660-K, WO Girish Chandra Tripathi  
 S/o Shri Chandrika Prasad Tripathi,  
 R/o Tripathi Home, H.No. 38, Avadh Vihar Colony,  
 Chak Malhauri Chinhat, District – Lucknow – 226028 (UP)  
 Presently posted to No. 25 Equipment Depot, Air Force, Air Force  
 Station Devalali (South) Distt – Nashik (Maharashtra) – 422501  
 ..... Applicant

Ld. Counsel for the Applicant: **Shri Manoj Kumar Awasthi**, Advocate

Versus

1. The Union of India, through the Secretary, Ministry of Defence (Air Force), New Delhi-110011.
2. The Chief of Air Staff, Air Headquarters, Vayu Bhawan, New Delhi-110011.
3. The Director General of Medical Services (Air), Air HQ, RK Puram, New Delhi – 110066.
4. The Senior Medical Officer, No 505 Signal Unit, Air Force, Air Force Station, Mamaura, Lucknow (UP).
5. The Senior Medical Officer, No 25 Equipment Depot, Air Force, Air Force Station Devalali (South), Nashik - Maharashtra – 422501.
6. AOC, AFRO, Subroto Park, New Delhi – 110010.

..... Respondents

Ld. Counsel for the Respondents : **Shri Rajeev Narayan Pandey**,  
Central Govt Counsel

**ORDER (Oral)**

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

- “A. To issue/pass an order or directions to set aside/quash Release Medical Board proceedings dated 15 Mar 2022 conducted by the Respondent no. 4, being wholly illegal, arbitrary and perverse.
- B. Considering the career of the applicant may please be under went medically re-examined pursuant to application 10 Jun 2022 as per the provisions of Para 3(a) of Air HQ letter No. Air HQ/261441/Medical-7 dated 03 Dec 2021.
- C. To release the rank of MWO wef 01 Jul 2022 having been placed as the number one in the promotion panel by promotion board 2022-23.
- D. To consider the applicant for grant of Honorary Commission against the rank/cadre of MWO on 15 Aug 2022.
- E. To award Rupees 20 lakhs as compensation for the stress, stigma and mental agony and humiliation suffered by applicant.
- F. 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.

G. To allow this original application with costs.”

2. Rejoinder cum written submissions on behalf of the applicant filed today in the court is taken on record.

3. The factual matrix on record is that the applicant was enrolled in the Air Force on 04.04.1984 and due for retirement w.e.f. 30.11.2022. The applicant has been considered for promotion to the rank of Master Warrant Officer (MWO) in promotion panel for 2022-23 vide AFRO letter dated 06.06.2022. During Oct. 2019, the applicant was diagnosed with ‘Diabetes Mellitus Type-2’ and was placed in low medical category A4G4 (T-24) vide medical board dated 14.10.2019. In review, the applicant was re-categorised as A4G2 (P) as on 22.02.2021. In Mar 2022, applicant has been placed in LMC A4G4 (P) by Release Medical Board (RMB). Thus, applicant could not be promoted to the rank of MWO being in non promotable medical category A4G4 (P) as per promotion policy. Being aggrieved, the applicant has filed the present Original Application for unjust and arbitrary denial of promotion to the rank of MWO including honorary rank due on 15.08.2022.

4. Learned counsel for the applicant submitted that the applicant was enrolled in the Air Force on 04.04.1984 and presently serving in 25 ED, AF w.e.f. 05.04.2021. The applicant will proceed on retirement

on superannuation w.e.f. 30.11.2022 vide AFRO letter dated 19.08.2021. The applicant has been considered for promotion to next higher rank of Master Warrant Officer (MWO) and placed at Serial No. 1 in promotion panel for 2022-23 vide AFRO letter dated 06.06.2022. The applicant upto the year 2018 was placed in low medical category A4G1. During Oct. 2019, the applicant was diagnosed with 'Diabetes Mellitus Type-2' and was placed in low medical category A4G4 (T-24) vide medical board dated 14.10.2019. In review, the applicant was re-categorised as A4G2 (P) as on 22.02.2021. In Feb. 2022, applicant was referred to MH Devlali (Nashik) for conduct of Release Medical Board (RMB). The Medical Specialist recommended as medical category LMC A4G2 (P) whereas medical authorities of 25 ED has placed the applicant under A4G4 (P) relying arbitrarily and illegally on the HbA1C singular report of Feb. 2022 instead of opinion of the concerned competent authorised Medical Specialist at MH. It is evident that current categorisation of A4G4 (P) is much lower from the previous medical category A4G2 (P) by SMC 25 ED is in violation of Specialist opinion without having any other material to form such an opinion to differ with the Medical Specialist of MH Devlali. A similar test was also conducted on 09.06.2022 in which HbA1C level was 7, hence, A4G2 (P) category was to be maintained.

5. Learned counsel for the applicant further submitted that on 10.06.2022, after detection of HbA1C as 7, applicant applied for re-medical examination for re-categorisation medical board after RMB which was denied by the respondents through RTI reply dated 06.09.2022. It means that AOC, AFRO has acted upon and put the applicant's medical category as A4G4 (P) without approval of RMB by the competent authority. In reply to applicant's personal application dated 17.08.2022 to conduct re-categorisation board, the respondents rejected request of the applicant stating :-

“Release Medical Board for Air Warrior is done 8 to 11 months prior to date of release and a final medical category is awarded taking into account the clinical status of the individual at the time of opinion for release. Further, there is no provision of re-assessment of the same disability which has been assessed by the RMB.

In view of the above, the application submitted by the Air Warrior for Re-categorisation after RMB has not been agreed upon.”

6. Learned counsel for the applicant further submitted that medical category of the applicant was A4G2 (P) vide medical board dated 22.02.2021 which was valid till approval of RMB dated 15.03.2022. The applicant's case is falling under the ambit of Para 3(a) of Air HQ letter dated 03.12.2021 in which it is clarified about conduct of re-medical examination after RMB who falls in medical category A4G4(P) and is in promotable zone. Therefore, wrongful interpretation of Para 5.4.74 of IAP 4303 (5<sup>th</sup> Edition) of 'Manual of

Medical Examinations and Medical Boards' to deny re-medical board of the applicant after RMB is utterly vague and baseless.

7. Learned counsel for the applicant placed reliance on the judgment of AFT (PB), New Delhi in OA No. 1607 of 2021, **Lt Col Karan Mehta vs. Union of India & Others**, decided on 21.09.2022 and further submitted that keeping in mind, applicant's 38 years of service and short period of medical category A4G4(P) for 87 days (from 15.03.2022 to 09.06.2022), non conduct of applicant's re-categorisation medical board after RMB shows malafide intension of the respondents and violation of para 3 of Air HQ letter dated 03.12.2021. Hence, the applicant deserves to be promoted to the rank of MWO w.e.f. 01.07.2022 as per his seniority and further consideration of honorary ranks w.e.f. 15.08.2022 onwards. He pleaded for grant of promotion to the rank of MWO w.e.f. 01.07.2022 and honorary rank due on 15.08.2022.

8. Learned counsel for the respondents submitted that applicant was enrolled in the Indian Air Force on 04.04.1984. The applicant was promoted to the rank of Warrant Officer (WO) on 01.01.2010 and his scheduled superannuation date is 30.11.2022 (AN) in present medical category A4G4 (P). As per medical board dated 17.10.2019, applicant was placed in LMC A4G4 (T-24) for his disability 'Diabetes Mellitus Type-2' and continued in LMC A4G4(T-24) till 01.03.2021.

The applicant was placed in LMC A4G2 (P) w.e.f. 22.02.2021. The applicant was due for his Annual Medical Board on 22.02.2021 for review/re-cat and RMB also as his discharge order was issued vide DO No. 166/2021. Since the medical category recommended by the Specialist was not in accordance with Para 6.7.14 of IAP 4303 (5<sup>th</sup> Edition) which clearly states that a Diabetes Mellitus Type-2 with HbA1C level above 8.0% is having grade IV Glycaemia control and therefore, as per opinion of Medical Specialist of MH Devlali, applicant was recommended to be placed in A4G4 (P) category. As per RMB dated 15.03.2022, applicant was placed in LMC A4G4 (P) for his disability 'Diabetes Mellitus Type-2' subject to approval of higher medical authority, as his HbA1C level was 8.1% (Grade IV Control). The medical board proceedings were forwarded to AFRO (Medical Wing) for approval and approved by higher medical authority as per prevailing policy/rules.

9. Learned counsel for the respondents further submitted that applicant sent a personal application on 10.06.2022 for conduct of re-medical board which was forwarded to higher medical authorities for feasibility/rules to conduct re-medical board of the applicant after finalisation of RMB but it was clarified that there is no provision to conduct re-categorisation medical board after RMB as per Air HQ letter dated 17.08.2022. He further submitted that at the time of

conduct of RMB in March 2022, applicant was unaware about eligibility of his promotion as promotion panel was released in June 2022. Being in promotion zone, the applicant asked/claimed for re-categorisation medical board only when he found his name in the promotion panel as per seniority w.e.f. 01.07.2022. Thus, the applicant could not be promoted to the rank of MWO due to his non promotable medical category A4G4(P) w.e.f. 15.03.2022 as per promotion policy dated 25.08.2020.

10. Learned counsel for the respondents further submitted that higher medical authority, i.e. DGMS (Air) has also confirmed that there is no provision of re-assessment of the same disability which has already been assessed by the RMB and placed in LMC A4G4(P) for his disability 'Diabetes Mellitus Type-2' as his HbA1C level was 8.1% (Grade IV Control) and thus as per final medical category A4G4(P) approved by RMB, applicant cannot be promoted to the rank of MWO being placed in non promotable low medical category. Further, there is also no provision of reassessment of the same disability or to hold a re-categorisation board which has been assessed by the RMB. He pleaded for dismissal of O.A.

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

12. It is pertinent to mention here that judgment relied up by the applicant in Para 7 above is not relevant in this case being based on different facts and circumstances and the same is not applicable in the present case as it is with regard to suitability of LMC officers for promotion/restriction on deployment who are found unfit for Staff/ERE/Instructional appointments as per criteria for conduct of Selection Boards/promotion policy and therefore, applicant cannot be given the benefit of aforesaid judgment.

13. We find that applicant was upgraded in LMC A4G2 (P) for his disability 'Diabetes Mellitus Type-2' as per medical board dated 22.02.2021 which was a promotable medical category. However, as per RMB dated 15.03.2022, applicant was placed in LMC A4G4 (P) for the same disability as his HbA1C level was 8.1% (Grade IV Control) which is a non promotable medical category. Though, the applicant came in seniority in promotion panel for his promotion to the rank of MWO w.e.f. 01.07.2022 but the applicant being placed in LMC A4G4 (P) w.e.f. 15.03.2022 cannot be promoted to the rank of MWO being placed in non promotable medical category as per promotion policy.

14. We also find that since there is no provision of reassessment of the same disability or to hold a re-categorisation medical board after finalisation/approval of RMB, prayer of the applicant to hold a re-

categorisation medical board for upgradation of the applicant in A4G2 (P) promotable medical category is rejected.

15. In view of rule position and policy letters on holding of medical boards and granting of promotion in low medical category, we hold that the claim of applicant to hold a re-categorisation medical board after RMB and to grant promotion to the rank of MWO and subsequent grant of honorary commission on 15.08.2022 has rightly been rejected by the respondents as per rules which needs no interference. Resultantly, O.A. is **dismissed**.

16. No order as to costs.

17. Pending Misc. Application(s), if any, shall stand disposed off.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)  
Member (A) Member (J)

Dated: November, 2022

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