

RESERVED
Court No.1

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

Original Application No. 109 of 2017

Wednesday, this the 17th day of October 2018

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

Ram Deo, Son of Shri Dewta Deen, Resident of Village-Derwaha-ribanspur, Post-Shivdha, Distt-Bahraich-271871, (U.P.).

..... Applicant

Ld. Counsel for the: **Shri R. Chandra**, Advocate
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), DHQ, Post Office, New Delhi-110011.
3. The Officer-in-Charge, Records Office, Bengal Engineer Group, Kirkee, Pune.
4. Presiding Officer, Re-Assessment of Medical Board, Central Command (CC), Lucknow-226002.

..... Respondents

Ld. Counsel for the :**Dr. S.N. Pandey**
Respondents Central Govt Counsel.

ORDER**“Per Hon’ble Air Marshal BBP Sinha, Member (A)”**

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

- (a) *The Hon’ble Tribunal may be pleased to set aside order dated 15.03.2016 (Annexure No A-2) and order dated 08.07.2016 (Annexure No A-3) supplied on 27.07.2016 in Hon’ble Court.*
- (b) *The Hon’ble Tribunal may be pleased to quash Para 13 of Appendix ‘C’ of Army Order 3/2001 (Annexure No A-1) which stops medical experts/release medical board to give independent opinion/decision.*
- (c) *The Hon’ble Tribunal may be pleased to direct the respondents to reinstate the applicant in service with all consequential benefits because Discharge Order has already set aside by the Hon’ble Tribunal.*
- (d) *Any other appropriate order or direction which this Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case including cost of the litigation.*

2. Briefly stated facts of the case are that the applicant was enrolled in the Indian Army on 24.10.1986 and promoted to the rank of Naib Subedar. The applicant was granted extension of service for the period from 24.10.2012 to 23.10.2014. On 01.09.2012 i.e. prior to commencement of extension period, the applicant was downgraded to medical category P2 (Permt) being a case of ‘Coronary Artery Disease Non Stem I (1-25.4)’ and he was discharged from service on 31.10.2012 due to not having the requisite medical criteria at

the time of inception of the extension period without availing two years' extension period.

3. In December 2012, i.e. after discharge from service, the applicant had filed O.A. No. 532 of 2012 which was disposed of on 05.10.2015 with the observations that 'though ordinarily it is not for the Tribunal to interfere with the opinion of the Release Medical Board or the Doctors, but in the present case, it appears that some error has been committed by the respondents for reevaluating the applicant for the purpose of discharge.' Therefore the Court had allowed the O.A. and directed the respondents to convene a fresh Release Medical Board (RMB) consisting of experts of the different fields. It was further directed by the Tribunal that the applicant may approach the Tribunal if aggrieved by the decision of the respondents. On the directions of the Court, a fresh RMB was carried out at Command Hospital, Central Command Lucknow on 15.03.2016 which assessed the applicant's disability @ 30% for life.

4. Contention of Ld. Counsel for the applicant is that the applicant should have been re-instated in service after setting aside of discharge order dated 03.09.2012 by the Hon'ble Tribunal on 05.10.2015 thereby allowing the applicant to serve for two years more during the extension period already sanctioned.

5. On the other hand Ld. Counsel for the respondents submitted that the Re-Survey Medical Board (RSMB) as

ordered vide AFT order dated 05.10.2015 has confirmed that the applicant has a disability and that this RSMB justifies the action of the respondents in discharging the applicant from service due to low medical category on 31.10.2012. Ld. Counsel also drew attention of the Tribunal that on one hand the applicant is drawing disability pension since his discharge i.e. from 31.10.2012 and on the other hand he is also asking for re-instatement on grounds of being fit.

6. We have heard Ld. Counsel for the parties and perused the material placed on record.

7. It is pertinent to mention here that earlier the applicant had filed O.A. No. 532 of 2012 for quashing the discharge order dated 03.09.2012 which was quashed by the Hon'ble Tribunal with certain conditions vide order dated 05.10.2015. Relevant portion of the judgment is as follows:-

"12. In view of the above, we allow the O.A. and set aside the impugned order dated 03.09.2012 and direct the respondents to convene a fresh release medical board consisting of experts of the different fields and shall take fresh decision whether the applicant is to be continued with the army or not, keeping in view the medical opinion prepared after thorough check-up by medical gadgets."

8. Thus perusal of aforesaid order passed in the earlier O.A. of the applicant shows that the order of his discharge dated 03.09.2012 was set aside but there was no direction to re-instate the applicant. The respondents were only directed to convene a fresh RMB consisting of experts of different fields and to take fresh decision as to whether the applicant is to be continued with the Army or not. Therefore the decision to

take the applicant into Army service or not was made subject to outcome of the fresh RMB. There was absolutely no such direction that the applicant shall be re-instated first and thereafter the fresh RMB shall be conducted. So the re-instatement of the applicant was made subject to the outcome of the findings of the fresh RMB. Since the fresh RMB held the disability of the applicant @ 30%, therefore the respondents have not committed any illegality or irregularity in not re-instating the applicant.

9. As per directions of the Tribunal the respondents have carried out fresh RSMB which was conducted on 15.03.2016 and this RSMB has assessed the disability of the applicant as 30% for life. It has also been opined by the RSMB that the disability is aggravated by military service. Additionally, the speaking order dated 08.07.2016 issued by Officer-in-Charge Records Bombay Engineer Group on the direction of this Tribunal speaks volume as delineated in para 5 of the speaking order, which for convenience sake is reproduced as under :-

"WHEREAS you were directed to report Command Hospital, Central Command Lucknow for Re-assessment of Medical Board as per direction of Hon'ble Tribunal Order dated 05 October 2015 and sanction accorded vide Integrated Headquarters of Ministry of Defence (Army) letter No 76101/RAMB/DGMS-5A dated 12 Jan 2016. Accordingly, you were examined by a Re-assessment of Medical Board on 15 Mar 2016 and was placed in low medical category P2 (permanent) for the disease "CORONARY ARTERY DISEASE NON STEMI 1-25.4" WITH 30% disability for life. There being no upgradation of your medical category as recommended by the said board, the earlier decision taken to release

you from service without grant of 2 years extension stands good."

10. Since, the applicant has been re-assessed and found to be suffering from 'Coronary Artery Disease Non Stem I (1-25.4)' with 30% disability in the fresh RSMB and he is drawing the consequent disability pension w.e.f. 01.11.2012 for the same disability for which he was discharged from service, his claim that he was fit and was wrongly discharged on 31.10.2012 and should be re-instated has no legal basis. We agree with the findings of RSMB on the disease of the applicant and the decision of the respondents to discharge the applicant on 31.10.2012 due to his low medical category. Thus we find no error in the decision taken by the respondents denying reinstatement to the applicant.

11. In view of the above mentioned facts, the O.A. is devoid of merits, hence **dismissed**.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

Dated : October, 2018
gsr

(Justice SVS Rathore)
Member (J)