

**ARMED FORCES TRIBUNAL,
REGIONAL BENCH, GUWAHATI**

OA-24/2024

Ex-Nk (TS) Athisii Mao

.....Applicant

By legal practitioners for Applicant

AR Tahbildar

-Versus-

UOI & Ors

..... Respondents

By legal practitioner for Respondents

Pranjal Sharma, CGSC

CORAM:

**HON`BLE MR. JUSTICE UMESH CHANDRA SHARMA, MEMBER
(J)**

HON`BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER

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

- (i) *To quash and set aside the impugned order No. 14702343/DP/NE & PG dated 31.08.2022 vide which claim for disability element of pension for the disability "Neurosis Anxiety State" was rejected by the authorities*

- (ii) *To direct the authorities to grant disability element of pension in commensuration with applicant's degree of composite disability of 50% along with rounding off benefit and arrears from three years prior to the date of filing the instant OA.*
- (iii) *To pass such other or further order(s) as deem fit and proper.*

2. The facts briefly stated are that the applicant was enrolled in the Indian Army on 28.12.1986 in SHAPE-1 after finding him physically and mentally fit by a duly constituted Medical Board. It is stated that in December, 1993, the applicant was deployed in J&K in Counter Insurgency (Operations). During the operational duty under "Operation Rakshak", the applicant developed the disease "Neurosis Anxiety State" for the first time on 04.09.1997 and was placed in Low Medical Category. Even after placing in Low Medical Category, the applicant was made to serve in the Counter Insurgency (Operation) Area in J & K for another four years resulting his worsening health condition. He was also diagnosed with "Pulmonary Tuberculosis" in Feb 2000. The applicant was discharged from service w.e.f. 01.01.2004 in Low Medical Category under Army Rule 13 (3) III (i) of the Army Rules, 1954 after serving about 17 years of service. At the time of discharge from service, the Release Medical Board (RMB) held at Base Hospital, Delhi on 19.08.2003

assessed his disabilities (i) Pulmonary Tuberculosis @ 20% for life and (ii) Neurosis (Anxiety state) @ 30% for life with composite disability @ 50%. Disability No.(i) was opined to be attributable to military service and disability No. (ii) was initially held to be aggravated by military service and later on opined the same as neither attributable to nor aggravated by military service and accordingly, disability element of pension for the disability No. (i) "Tuberculosis" was started and disability element of pension for disability No. (ii) "Neurosis Anxiety State" was denied to the applicant holding as idiopathic in nature. The applicant filed an application before the competent authority on 02.08.2022 with a prayer to review his case which was rejected vide order dated 31.08.2022 on the ground that the disability "Neurosis Anxiety State" is neither attributable to nor aggravated by military service (NANA). Thereafter, the applicant submitted his first appeal on 29.01.2023 which was rejected vide letter dated 18.02.2023. Thereupon, the applicant has preferred the present Original Application.

Submission on behalf of the applicant

3. Learned Counsel for the applicant submitted that at the time of enrolment, the applicant was found mentally and physically fit for

service in the Army and there is no mention in the service documents that he was suffering from any disease at the time of enrolment in Army. It is also submitted that being actively participated in "Operation Rakshak", the applicant had to undergo exceptional stress and strain in addition to the inherent stress and strain of the military duty. The disease of the applicant was contracted during the service, hence it is attributable to and aggravated by Military Service.

Submission on behalf of the respondents

4. On the other hand, Ld. Counsel for the respondents contended that disability No.(i) "Pulmonary Tuberculosis" was assessed attributable to military service and disability No. (ii) "Neurosis Anxiety State" was assessed neither attributable to nor aggravated by military service (NANA) by the RMB. Hence the applicant was granted disability element for disability No.(i) , "Pulmonary Tuberculosis" being attributable to military service. It is also contended by the learned counsel for the respondents that the applicant is not eligible for disability pension due to NANA by military service with composite assessment for both the disabilities as 50% (20% for first disability & 30% for second disability). Hence pleaded for dismissal of the Original Application.

Consideration

5. We have heard Mr. Anup Ranjan Tahbildar, learned counsel for the applicant and Pranjali Sharma, learned Central Govt. Standing counsel appearing for the respondents, perused the record and considered the rival submissions,

6. It has been established on record that at the time of discharge from service, the Release Medical Board (RMB) held at Base Hospital, Delhi on 19.08.2003 assessed his disabilities (i) Pulmonary Tuberculosis @ 20% for life and (ii) Neurosis (Anxiety state) @ 30% for life with composite disability @ 50% attributable to and aggravated by military service. Later on administrative authority opined the disability no. (ii) as neither attributable to nor aggravated by military service.

7. It is now well settled that an administrative authority has no right to sit over the finding of duly constituted Release Medical Board. It has been so held by the Hon'ble Supreme Court of India in **CA No. 164 of 1993, Ex-Sapper Mohinder Singh Vs. Union of India & others**, decided on 14.01.1993 by observing that finding of a duly constituted Release Medical Board could not have been interfered with by the Record Office.

Since, the rejection of disability element of disability no. (ii) is based on interference made by the Record Office, it is patently illegal.

8. Thus, keeping in view **Ex-Sapper Mohinder Singh** (supra), the Original Application is allowed. Refusal of grant of disability element of disability no. (ii) is quashed. The applicant is held entitled to grant of disability element of pension in commensuration with applicant's degree of composite disability of 50%, rounding off to 75%. Corrigendum PPO be issued within three months from the date of receipt of certified copy of this order by learned counsel for the respondents/ OIC, Legal Cell. Arrears be also paid within the said period, failing which they shall become payable with interest @ 6 % per annum.

9. There shall be no order as to costs.

Pronounced in the open Court on this 10th day of September, 2026.

(**UMESH CHANDRA SHARMA**)
MEMBER(J)

(**LT GEN C.P.MOHANTY**)
MEMBER(A)

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