

1st September, 2025
(M/L No.12)
Ct. No.4
(SKB)

W.P.C.T.169 of 2025

Union of India and others
Versus
No 15773126 F Lance Havildar (D.S.)
Balmiki Yadav

Ms. Debjani Ghosasl
... for the petitioner.

Mr.
... for the respondent.

1. The petitioner, an Air Force Personnel, was discharged from his service on being placed in low medical category. He challenged the discharge orders dated 17.04.2017 and 26.05.2017 before the Armed Forces Tribunal, Kolkata Bench by filing O.A. No.107 of 2017.
2. The primary relief sought by the applicant/respondent was that he may be allowed to continue in service till he completes 22 years' service after setting aside his discharge.
3. When the matter was being considered by the Tribunal, an alternative prayer had verbally been made/recorded in the Tribunal's order (paragraph 19) that the applicant/respondent be granted disability element of disability pension from the date of his discharge from service @

50% for life by rounding it off from 30%. Such prayer of the applicant/respondent has been allowed by the Tribunal.

4. The learned counsel for the petitioners submits that the prayer was made orally during hearing of an application where no such prayer for grant of disability element of disability pension was setout in the O.A. The original application was filed for a different relief of setting aside of discharge and for being allowed to continue to serve the Force.
5. The learned counsel for the applicant/respondent, however, submits that since the Release Medical Board was produced by the authorities in the course of the proceedings before the Tribunal, it is on going through the same, that the petitioners could see that the respondent was found to be suffering with disability, which the authorities had held "not attributable and not aggravated" to service. It is only when the applicant/respondent came to know that 30% disability had been found by the Release Medical Board that he made an oral prayer for grant of the benefit by rounding it off to 50%.
6. It is submitted that the findings of the Tribunal, therefore, are based on such oral prayer made

by the applicant/respondent upon discovery of the disability being held by the Release Medical Board dated 25.01.2015.

7. We have considered the rival submissions. The applicant had approached the Tribunal primarily for setting aside the order of discharge from service. It is not in dispute that the respondent was discharged from service on being found in low medical category. He had completed the qualifying period of service for grant of service pension which he is getting. An issue regarding disability element of disability pension was raised by the applicant orally before the Tribunal when he got an opportunity to see the Release Medical Board, which was produced in the proceedings before the Tribunal. Such prayer has been introduced orally in the course of hearing of the application on the date on which it has been allowed by the Tribunal i.e. on 06.08.2024.

8. The irresistible conclusion, therefore, is that the respondent had no opportunity of responding to such prayer. It is also worth taking into consideration the fact that since no proper application had been filed seeking grant of benefit of disability pension, there was no material before the Tribunal to consider such a

claim. Another aspect of the matter is that once the Release Medical Board found the respondent/applicant's disability not attributable and not aggravated by service in the Force, the respondent/applicant had the option of challenging the findings before the authorities by filing first appeal and thereafter, if not satisfied, a second appeal under the Regulations for the Medical Service of the Armed Forces, 2010. The relevant clause being Clause 483 of the Armed Forces-2010 reads as follows:

“483. The Appeal Medical Board will be convened by the DGAFMS at Delhi⁹. Depending on the merit of the case, sanction of DGAFMS will be issued following appeal submitted by individuals against the recommendation of Release/Invaliding Medical Board. Such Boards will be held both at First and Second Appeal stages, at the office of DGAFMS. Composition of the Appeal Medical Board will be as under:-

(a) First Appeal Medical Board

President – Dy DGAFMS (Pens)

Members – (i) Senior Adviser of Speciality/
Allied speciality concerned

(ii) JDAFMS (Pens)/Director AFMS(Pension)

(b) Second Appeal Medical Board

President – DGHS(AF)

Members – (i) Senior Consultant in Medicine
(ii) Senior Consultant in Surgery”

9. The learned counsel for the applicant/respondent submits that an appeal could be preferred provided rejection of the claim for disability pension is communicated, which, in this case, has not been done. It is not

in dispute that the Release Medical Board was produced, for the first time, to be shown in the proceedings, before the Tribunal.

10. The applicant, thus, even today is deprived of considering the findings of the Release Medical Board, let alone assail the same, since copy was not served on the applicant.

11. We, therefore, direct that the Release Medical Board be communicated to the respondent to facilitate taking of appropriate steps in this regard. Let the same be communicated to the applicant/respondent within two weeks from the date of receipt or production of a copy of this order.

12. Thereafter it will be open to the respondent to consider the same and, the respondent would be at liberty to assail the same in accordance with law.

13. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)