

**COURT No.1, ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

118.

OA 1563/2017 with MA 1163/2017

Lt. Col. Sharad Dua (Retd) (IC-42352Y) ..... Applicant  
Versus  
Union of India &Ors. .... Respondents

For Applicant : Mr. V.S. Kadian, Advocate  
For Respondents : Mr. J.S. Yadav, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE VIRENDER SINGH, CHAIRPERSON  
HON'BLE LT. GEN. SANJIV LANGER, MEMBER (A)**

**ORDER**  
**19.09.2017**

**MA 1163/2017**

For the reasons mentioned in the instant application and the grounds taken in the OA for the relief sought therein, we in the interest of justice, condone the delay of 289 days. MA stands allowed.

**OA 1563/2017**

Admitted.

2. Issue notice. Notice is accepted by learned counsel for the respondents.
3. Since it is a short matter, we intend to dispose of it at the admission stage itself.
4. At the very outset, Mr. Kadian states that inadvertently in para 4.9 of OA in the relief sought, it is mentioned that when the earlier Original Application (OA No. 863 of 2015) was filed by the applicant and got the relief for broad banding of the disablement suffered by him which had all connection with the military service as mentioned in the first para of the order dated 12.02.2016 in above said OA, the fact of earlier representation with regard to Resurvey Medical Board was pending with the respondents, whereas the applicant by that time had not moved the respondents for Resurvey Medical Board in which regard the representation was made by him only on 31.10.2016. He states that the said statement of fact may not

be read by the Tribunal for the purposes of adjudicating the instant matter. The prayer made at the Bar is acceded to as it does not change the fate of matter.

5. The applicant now seeks quashing of the order dated 18.11.2016 (Annexure A1), whereby his appeal/representation for conducting Resurvey Medical Board is declined primarily on the ground that he has already availed the relief of broad banding for disablement to 50% for disability of COMPLEX PARTIAL SEIZURES and SENSORY NEURAL HEARING LOSS (BOTH EARS) (NOISE INDUCED) vide order dated 12.2.2016. The relevant para of the order reads: -

*"The petitioner on completion of his tenure had retired on 26.12.2006. On the date of release, the Release Medical Board found the petitioner suffering from disability of Complex Partial Seizure and Sensory Neural Hearing loss both ears and held the same to be attributable to the military service @ 20%. His grievance is that in view of the Apex Court judgment dated 10.12.2014 passed in Civil Appeal No. 418 of 2012 in Union of India & Ors. Vs. Ram Avtar, the petitioner will be entitled to rounding off upto 50% and he also requested for conduct of a re-survey medical board for assessment of his present disability which he withdrew at the time of pleading. The request of the petitioner for withdrawal of the said prayer is allowed. The only grievance now involved in this application is of rounding off of disability pension."*

6. Mr. Kadian states that no doubt when the earlier OA No. 863 of 2015 was disposed of by the Coordinate Bench vide order dated 12.2.2016, he on behalf of the applicant had made a statement of withdrawing his prayer for conducting of Resurvey Medical Board for assessment. While same was allowed, it is thereafter only the applicant

moved the respondents on 31.10.2016 which was well within 10 years of his discharge from service i.e. 26.12.2006 praying for conducting Resurvey Medical Board which was on the strength of the letter issued by the Ministry of Defence on 7.2.2001 (Annexure A5), para 7 refers. He submits that there appears to be no reason much less any valid reason for rejecting the request/appeal of the applicant for conducting Resurvey Medical Board taking the plea of disposal of earlier O.A. whereby the applicant already got the relief of broad banding of his disability from 20% to 50% only.

7. Learned counsel submits that withdrawing the prayer for conducting Resurvey Medical Board at the time of filing of the earlier application in any case would not snatch the right of the applicant for making a prayer for the same relief once again by adopting the proper route that too within the stipulated period. He submitted that the order, therefore, passed by the respondents rejecting the prayer of the applicant for conducting Resurvey Medical Board for reassessing the disability of the applicant is not sustainable, as such deserves to be granted.

8. Mr. Kadian further submitted that if on the basis of the Resurvey Medical Board, the disability now assessed will also give the applicant a fresh cause of action to move the appropriate forum for further relief, if admissible in accordance with law.

9. Mr. J.S. Yadav, learned counsel for the respondents, feels himself in a difficult position to controvert the submissions made by Mr. Kadian at the Bar, rightly so and fairly also. We are also of the considered view that in the present set of circumstances as indicated herein above, the impugned order dated 18.11.2016 rejecting the appeal/prayer of the applicant for conducting Resurvey Medical Board, snatches this right of the applicant which, in any case was available to him, within ten years of his discharge even without order of the Tribunal. What would be the effect of the reassessment cannot be made subject matter of discussion at this

stage at least. Thus the impugned order deserves to be quashed.  
Ordered accordingly.

10. Resultantly the instant OA is allowed as prayed for with direction to the respondents to conduct the Resurvey Medical Board of the applicant for the disability (COMPLEX PARTIAL SEIZURES and SENSORY NEURAL HEARING LOSS (BOTH EARS) (NOISE INDUCED) already held to be attributable to military service and assessed at 20% which is already broad banded to 50%. Let this exercise be carried out within four months from the date, copy of the order is conveyed to the concerned which shall be the responsibility of Col. Ajay Yadav, who is assisting learned counsel for the respondents.

11. Needless to say that the applicant shall be put to notice well in advance enabling him to make himself present before the Resurvey Medical Board on a particular date to avoid further delay.

12. OA stands disposed of.

**(VIRENDER SINGH)  
CHAIRPERSON**

**(SANJIV LANGER)  
MEMBER (A)**