

**COURT NO 1**  
**RESERVED**

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

**ORIGINAL APPLICATION No. 675 of 2017**

Tuesday, this the 23<sup>rd</sup> day of April, 2019

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

Ex 13986043-M Sepoy/Ambulance Assistant, Thiyam Tomba Singh, son of Late Thiam Chaoba Singh, Village-Charangpat Maning Leikai PO & Distt-Thoubal-795138 (Manipur).

.....Applicant

Ld. Counsel for the : **Shri Gyan Singh Chauhan,**  
Advocate.  
Applicant

Versus

1. Union of India, through Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi-110011.
3. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.
4. Officer Incharge Army Medical Corps Records, Lucknow Cantt.

.....Respondents

Ld. Counsel for the  
Respondents.

:**Dr. Shailendra Sharma Atal,**  
Central Govt. Standing Counsel

**ORDER**

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

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

- (i) *Issue/pass an order/direction to the respondents of appropriate nature to decide and grant disability pension by Release Medical Board to which he is entitled as a matter of right and the same be rounded off to 50% as a matter of right as provided vide by the Government of India, Ministry of Defence letter No 1(2)/97/D (Pen) dated 31.01.2001 (Annexure No A-3) supported by the legal position held by the Supreme Court.*
- (ii) *Issue/pass an order or direction of appropriate nature to respondents to quash/set aside the Discharge Certificate dated 31.03.2010 and make mention about the above granted disability and also the necessary amendment in Pension Payment Order dated 26.11.2012.*
- (iii) *Issue/pass any other order or direction as the Hon’ble Tribunal may deem fit in the circumstance of the case.*
- (iv) *Allow application to cost.*

2. The brief facts of the case are that the applicant was enrolled in the Indian Army on 02.03.1993 and was discharged from service in low medical category w.e.f. 01.02.2007 by holding RMB on 10.11.2006. The RMB had opined the disability of the applicant to be attributable @ 30% for life. Accordingly the applicant was issued with PPO for service and disability element. After discharge the applicant had filed Writ Petition No 650 (SS) of 2007 against order of discharge in the Hon’ble High Court of Allahabad. The aforesaid case was transferred to this Tribunal and was re-numbered as T.A. No 31 of 2009. This Tribunal vide its order dated 22.02.2010 quashed the discharge

order of the applicant on lines of Hon'ble Apex Court judgment of ***Union of India & Others vs Rajpal Singh***, 2008 (5) ESC 718 (SC) and issued directions to the respondents to re-instate the applicant into service w.e.f. 01.02.2007. Accordingly the applicant was notionally re-instated in service and notionally discharged from service w.e.f. 01.04.2010 (FN) in terms of Rule 13 (3) III (i) of Army Rules, 1954 after completion of his period of engagement. After notional re-instatement the applicant's disability element and service element PPOs were cancelled and the amount of pension paid to him was recovered. After notional discharge the applicant is in receipt of service pension vide PPO dated 26.11.2012, however disability element of pension has not been released to the applicant as yet. It also appears that the Record Office has informed the applicant that he is not eligible for disability pension. Hence the applicant has filed this O.A. for grant of disability pension and its rounding off.

3. Submission of Ld. Counsel for the applicant is that the applicant was granted 30% disability element for life vide RMB dated 10.11.2006 but consequent to notional re-instatement of the applicant, the aforesaid disability element was stopped w.e.f. 01.02.2007 and whatever amount was paid it was recovered back by the respondents. He further pleaded that the disease/disability was first detected on 04.08.2004 while the applicant was posted at Barmer Sector (Rajasthan) and the RMB held in November 2006 had conceded the disability as

attributable to military service @ 30% for life. Ld. Counsel for the applicant further contended that it was obligatory on the part of the respondents that applicant's RMB should have been carried out at the time of notional discharge, however the respondents have not done the same and have deprived the applicant of his disability element in a very high handed manner. He vehemently pleaded that the disability pension and its rounding off be granted to the applicant.

4. On the other hand, Ld. Counsel for the respondents submitted that since the discharge order of the applicant was quashed vide order dated 22.02.2010, hence he is not entitled to disability element as the earlier discharge and the associated RMB has automatically become null and void. He pleaded for the O.A. to be dismissed.

5. We have heard Ld. Counsel for the parties and perused the records.

6. The question which needs to be adjudicated by us is simple and straight i.e. whether the applicant is entitled to disability element even after setting aside of his earlier discharge order and the resultant notional service and notional discharge?

7. The following facts of this case are absolutely clear to us i.e. :-

(a) That the applicant was discharged from service through Release Medical Board (RMB) due to low medical category and hence due to technical reasons his

discharge was considered invalid and he was re-instated in service by order of this Tribunal in line with the judgment of ***Union of India & Others vs Rajpal Singh***, 2008 (5) ESC 718 (SC).

(b) As a result of the re-instatement order of AFT, Lucknow dated 22.02.2010, the applicant was notionally re-instated w.e.f. 01.02.2007 and notionally discharged on completion of his terms of engagement on 01.04.2010.

(c) That the applicant after his initial discharge in 2007 was in receipt of service element as well as disability element @ 30% for life. However, after his notional discharge on 01.04.2010 he was issued with PPO for service element only, however he was not issued with any PPO for disability element.

(d) In Para 12 of counter affidavit the respondents have taken a stand that since the applicant was re-instated on the orders of the Tribunal after quashing his discharge order of 2007 hence his RMB and low medical category also stands quashed and he is not entitled to any disability element after his notional discharge.

8. We are in a state of shock and surprise at the bizarre stand of respondents. It appears that the concerned Record Office of the respondents wants to operate outside the realm of the settled law on disability pension. We fail to understand as to how the Record Office has reached such bizarre conclusions

on the validity of low medical category when the issue was a different one i.e. procedural technicalities of discharge on medical grounds. Since RMB is a mandatory requirement before discharge of every soldier in low medical category hence, we fail to understand as to what stopped the respondents from conducting another RMB in 2010. Thus on one hand the respondents are very quick to misinterpret the law and quash the RMB held in 2006 which was valid for life and deny disability pension to the applicant, however on the other hand they have taken no initiative to meet an obligatory legal requirement i.e. conduct another RMB at the time of his notional discharge in 2010. It is really surprising that despite all efforts by the applicant to resolve the matter, the respondents have failed to conduct a fresh RMB for the applicant at the time of his notional discharge.

9. Thus considering all issues and in the interest of substantive justice, we quash the AMC Record Office letter dated 31.12.2015 (Annexure R-10 to counter affidavit). We are also of the opinion that the Record Office has shown a mischievous intention beyond the realms of law to deny disability pension to the applicant on the ground that his LMC as per RMB has been quashed by the Tribunal. We want to clarify that this Tribunal's order of 22.02.2010 has quashed the discharge order and re-instated the applicant due to procedural lapses in discharge. The order at no stage has quashed the RMB of the applicant held in the year 2006. Additionally, we

are of the opinion that since RMB of the applicant held in 2006 (R-1 to the counter affidavit) is valid for life and hence in the peculiar circumstances where respondents have failed to conduct another RMB in last 09 years, for the applicant, it will be in the interest of justice to treat his RMB conducted in 2006, which is valid for life, as the valid RMB for his notional discharge in 2010. Hence we are of the opinion that the applicant's RMB of November 2006 is for life and hence it is valid for the purpose of grant of disability element to the applicant after his notional discharge w.e.f. 01.04.2010.

10. We have also given a thoughtful consideration to the date from which the applicant should receive his disability pension after his notional discharge on 01.04.2010. For arriving at a decision we have considered the fact that the applicant was in receipt of disability pension from 2007 till 2010, which was recovered from him after his notional re-instatement and also the fact that the applicant has been unfairly and in a very bizarre manner denied disability pension after his notional discharge from 01.04.2010. Thus considering all issues we are of the opinion that the applicant is entitled for disability element @ 30% for life from the date of his notional discharge i.e. 01.04.2010 for his disability 'Chronic HBV Hepatitis-B-17'. However due to law of limitations, the benefit of rounding off of disability element from 30% for life to 50% for life can be granted to the applicant w.e.f. three years prior to filing of this O.A.

11. Thus in the result, the Original Application succeeds and is **Partly Allowed**. In the interest of substantive justice the applicant is held entitled to disability element @ 30% for life w.e.f. his date of notional discharge i.e. 01.04.2010 till 23.12.2013. However due to law of limitations the applicant shall receive disability element @ 30% for life rounded off to 50% for life from 03 years before filing of this O.A. i.e. from 24.12.2013. The date of filing of this O.A. is 24.12.2016. The whole exercise shall be completed within four months from the date of receipt of a certified copy of this order. Default will invite interest @ 9% per annum.

No order as to costs.

**(Air Marshal BBP Sinha)**  
**Member (A)**

Dated: April, 2019  
gsr

**(Justice S.V.S. Rathore)**  
**Member (J)**