

**RESERVED**  
**Court No. 1**

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

**ORIGINAL APPLICATION No. 239 of 2019**

Tuesday, this the 2<sup>nd</sup> day of April, 2019

**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)**  
**Hon’ble Air Marshal B.B.P. Sinha, Member (A)”**

Jai Bir Singh, No 2963991, Ex Lnk, S/O Late Shri Raj Narayan Singh, Village & Post Office - Lauwar, Tehsil – Patti, District – Pratapgarh (UP) – 230135.

..... Applicant

Ld. Counsel for the : **Shri Vijay Kumar Pandey**, Advocate.  
Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence, South Block, R.K. Puram, New Delhi.
2. Officer-In-Charge, Defence Security Corps Records, Barnacherry, PO – Kannur (Kerala)- 670013.
3. Principal Controller of Defence Accounts (Pensions), Draupadi Ghat, Allahabad UP).

.....**Respondents**

Ld. Counsel for the : **Shri Bhanu Pratap Singh**,  
Respondents. Central Govt. Counsel

**ORDER**

**“Per Hon’ble Air Marshal B.B.P. Sinha, Member (A)”**

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

- (i) *That this Hon’ble Tribunal may kindly be pleased to direct the opposite parties to pay the disability pension for life to the applicant @ 30% from 12.09.1987 to 31.12.1995 and rounded off the same from 01.01.1996 for life and grant the interest on the aforesaid delayed amount of disability pension with 18% p.a. since due date to actual date of payment, in the interest of justice.*
- (ii) *That this Hon’ble Tribunal may kindly be pleased to award the cost Rs. 20,00,000/- (Rupees twenty lac) for mental and physical harassment and agony and Rs. 20,000/- (twenty thousand) for financial loss as expenses in filing the instant original application with the interest @ 18% p.a. in the interest of justice.*
- (iii) *That this Hon’ble Tribunal may be pleased to pass any other order or direction which this Hon’ble Court may deem just and proper be passed in favour of the applicant.”*

2. Briefly stated facts of the case are that the applicant was enrolled in the Army on 26.07.1968 and was discharged from service on 29.10.1973 on compassionate grounds at his own request after rendering 05 years and 96 days of service.

Thereafter, he was again enrolled in DSC on 06.08.1974 and opted to count his former service towards DSC service. He was discharged from DSC service on 12.09.1987 in Low Medical Category CEE (Permanent) under the provisions of Rule 13 (3) item III (iv) of Army rule 1954, on compassionate ground at his own request after rendering 13 years and 38 days service. At the time of discharge from service, the Release Medical Board (RMB) assessed his disability "LOW BACK ACHE" as aggravated by military service @ 30% for two years. He has made several representations for grant of disability pension but the same has not been granted to him. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Indian Army and DSC. He further submitted that the RMB has opined his disability to be aggravated by Military service hence the denial of disability pension to the applicant is wrong. He pleaded for grant of disability pension to the applicant.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant i.e. "LOW BACK ACHE" has been conceded as aggravated @ 30% for two years by RMB. However, his claim for grant of disability pension was not allowed on the ground that the applicant has been discharged pre-maturely from service at his own request, on compassionate grounds before

fulfilling the conditions of his enrolment. He further submitted that his claim for disability pension is being processed with the Govt for grant of disability element w.e.f. 01.01.2006. He also contended that as per existing Govt policy the applicant is not eligible for rounding off of disability element.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Release Medical Board proceedings. The questions which need to be answered are of two folds :-

(a) Whether the applicant is entitled for disability pension?

(b) If found eligible for disability pension, what is the date from which applicant would become eligible?

6. This is a case where the RMB had conceded the disease of the applicant as Aggravated by military service @ 30% for two years. However, the respondents have not granted the disability pension to the applicant on the ground of pre-mature discharge on own request.

7. It is a fact that in the year 1987, as per the rules existing at that time, pre-mature discharge at own request made a soldier ineligible for disability pension. However, it is also a fact that with effect from 01.01.2006, as per recommendation of Sixth Central Pay Commission, soldiers who have proceeded on pre-mature discharge have also become eligible for disability pension. This

benefit of Sixth Central Pay Commission given to post 01.10.2006 pre-mature defence retirees has now been extended to pre 01.01.2006 pre-mature retirees by the following decisions of Hon'ble Apex Court and the Principal bench of the Armed Forces Tribunal, New Delhi:-

- (i) Civil Appeals No. 3101-3102 of 2015, **Ex. Lt. Col. R.K. Rai Vs. Union of India and Others**, decided on 16.02.2018 (Hon'ble Apex Court)
- (ii) O.A. No. 139 of 2009 Lt. Col. P.K. Kapoor (Retd.) Vs. Union of India and Others (Hon'ble Principal bench, AFT).
- (iii) O.A. No. 336 of 2011 Maj. (Retd.) Rajesh Kumar Bhardwaj Vs. Union of India and Others, decided on 19.05.2017 (Hon'ble Principal Bench, AFT).

8. Thus in light of the law already settled for pre 2006 pre-mature retirees, claiming disability pension, we are of the considered opinion that the applicant shall be entitled to disability pension from 01.01.2006 subject to the outcome of a fresh RSMB.

9. Since the RMB recommended grant of disability pension to the applicant for two years after discharge i.e. 12.09.1987 to 11.09.1989 and at that time premature retirees were not entitled for disability pension, hence the applicant is not entitled for any disability element for that period. For deciding the further

entitlement of disability element to the applicant, the respondents will have to conduct a fresh RSMB.

10. In view of the above, the **Original Application No. 239 of 2019** deserves to be partly allowed, hence, **partly allowed**.

Respondents are directed to conduct a Re-Survey Medical Board of the applicant to assess his future entitlement of disability element. Respondents are directed to give effect to the order within four months from the date of receipt of a certified copy of this order.

No order as to costs.

**(Air Marshal B.B.P. Sinha)**  
**Member (A)**

Dated: April, 2019

UKT/-

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