

Court No. 1
Reserved Judgment

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

ORIGINAL APPLICATION NO. 305 of 2018

Monday, this the 23rd day of July, 2018

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

No. 1422653 Ex Spr Ram Raj Singh S/o Shri Deo Narain Singh R/o Village Bhagwanpur PO: Chaksunderpur Sant Ravi Das Nagar (Bhadohi)

....Applicant

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

Versus

1. Union of India, through Secretary, Ministry of Defence, DHQPO, New Delhi.
2. Commandant cum Chief Records Officer Bengal Engineer Group Centre and Records Roorkee.
3. Commanding Officer Military Hospital, Lucknow.
4. Principal Controller of Defence Accounts (Pension) DraupadiGhat, Allahabad.

...Respondents

Ld. Counsel for the Respondents : **Shri Namit Sharma**
Advocate

ORDER

"Per Hon'ble Air Marshal BBP 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:-

(a) Quash impugned order of discontinuance of Disability Pension indicated in Bengal Engineer Group Records Letter No. 1422653/DP/RTI/R dated 18 Sep 2015 with all the consequential benefits to the applicant.

(b) Issue any other order or direction considered expedient and in the interest of Justice & equity.

(c) Award cost and if considered appropriate award compensation relying upon the judgment of Hon'ble Delhi High Court in re Union of India versus Gurnam Singh.

2. The facts of the case in brief are that the applicant was enrolled in the Indian Army on 18.11.1958 and earmarked to the Corps of Engineers (Bengal Sapper). He was invalided out of service on 18.06.1961 i.e. after 02 years and 07 months' service. While in service, the applicant was placed in low medical category for "PLANTAR WARTS BOTH FEET". His disability was assessed as 20% and aggravated by Military service. His disability was reviewed from time to time by Invalid Medical Board (IMB) held at Military Hospital Jullundhar for two years and the applicant was found to be having 20% disability effective from his discharge till 21.10.1971. His disability pension was stopped by PCDA (P) Allahabad w.e.f. 22.10.1971 on the ground that his disability in the last RSMB was below 20% for a period of ten years.

3. The learned counsel for the applicant has vehemently put up his case stating that even if disability percentage of disease had gone down below 20%, the service element of disability pension cannot be stopped. However, in

this case the complete disability pension consisting of service element as well as disability element has been stopped.

4. The respondents have filed their counter affidavit denying the claim of the applicant. It has been pleaded by the respondents that the applicant is not eligible for disability element but he is eligible for grant of service element as per provisions of Govt of India, Ministry of Defence letter No.12 (28)12010-D(Pen/Pol) dated 10.02.2014 subject to submission of relevant documents. Accordingly, the applicant was asked by BEG Records vide letter dated 25.05.2015 to submit requisite documents for processing his case to Pension Sanctioning authority i.e. PCDA (P) Allahabad. However, the same is still awaited and instead of submitting documents, applicant has moved this O.A. It has been finally pleaded by the respondents that the petition is devoid of merit and is therefore liable to be dismissed.

5. The delay in filing the instant application has been condoned vide order dated 03.07.2018.

6. The only ground put forth by the respondents for denial of service element of disability pension is that since the applicant was asked by BEG Records vide letter dated 25.05.2015 to submit requisite documents for processing his case to Pension Sanctioning authority i.e. PCDA (P) Allahabad and he has not submitted the same, he is not entitled to

disability pension and his petition deserves to be dismissed. However, it has been admitted by the respondents that the applicant is eligible for grant of service element as per provisions of Govt of India, Ministry of Defence letter No.12 (28)12010-D(Pen/Pol) dated 10.02.2014 subject to submission of relevant documents.

7. We have heard learned counsel for the applicant as also learned counsel for the respondents. We have also perused the relevant materials on record.

8. In view of the facts and pleadings before us the question which needs to be answered is whether the applicant is entitled to service element even after his disability element stopped in 1971 as the percentage of disability was reported to be below 20%.

9. The law on entitlement of both components i.e. the the service element and the disability element of disability pension is well settled. Regulation 186 of the Pension Regulations for the Army, 1961 defines the entitlement as follows:-

“Regulation 186-(1) An individual who is invalided out of service with a disability attributable to or aggravated by service but assessed at below 20 per cent shall be entitled to service element only.

(2) An individual who was initially granted disability pension but whose disability is re-assessed at below 20% subsequently shall cease to draw disability element of disability pension from the date it falls below 20 per

cent. He shall, however, continue to draw the service element of disability pension.”

Thus in the light of the law emerging out of Regulation 186 of Pension Regulations, the applicant was ab initio entitled to service element of pension and disability element of pension after his discharge. This fact has been re-enforced by Armed Forces Tribunal, Regional Bench Chandigarh in T.A. No. 674 of 2010 **Balbir Singh vs. Union of India and others** vide its judgment and order dated 14.12.2010 and it has been further upheld and amplified vide Hon'ble Supreme Court in Civil Appeal No. 3086 of 2012 **Balbir Singh vs. Union of India and others** vide its judgment dated 08.04.2016 that in such cases relief of providing service element of pension need not be restricted to three years from filing of O.A. but the entitlement will extend right from the date of discharge.

10. In view of the above, it is clear that this matter is squarely covered by the aforesaid judgment of the Hon'ble Supreme Court and accordingly the O.A. deserves to be allowed.

11. As a result of foregoing discussions, the O.A is allowed. The impugned order as communicated to the applicant vide letter dated 18.09.2015, contained in Annexure A-1 to the O.A. is set aside. The applicant is held entitled to service element of the pension with effect from his date of

discharge i.e. 18.06.1961 subject to adjustment of "service element" if any already paid to the applicant. Accordingly, he shall be paid arrears of service element of the pension till date and thereafter every month. The order is to be implemented within four months of receiving a certified copy of this order. For default, the applicant shall be entitled to interest at the rate of 9% on the arrears aforesaid till the date of actual payment.

12. No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

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

Dated: July 23, 2018
JPT