

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BENCH, NAINITAL)**

Original Application No 179 of 2021

Wednesday, this the 4th day of August, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No. 4175508M Rect Darpan Singh (Retd)
S/o Soban Singh,
R/o Village - Madalkiya, PO – Girgao
Tehsil – Munsyari, District – Pithoragarh

..... Applicant

Ld. Counsel for the Applicant: **Shri Kishore Rai**, Advocate

Versus

1. Union of India, Ministry of Defence through its Secretary, South Block, New Delhi-110011.
2. PCDA (P), Draupadi Ghat, Allahabad, (UP).
3. Senior Record Officer, Kumaon Regiment, Ranikhet, District Almora, PIN-900473, C/o 56 APO.

..... Respondents

Ld. Counsel for the Respondents : **Ms. Pushpa Bhatt**,
Central Govt Counsel.

ORDER

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

- i. A direction to quash the order dated 16.12.2020 passed by respondent no. 4 (contained as Annexure No. 3 to this original application) or to
- ii. A direction to grant the disability pension to the applicant w.e.f. 29.12.1981 or to
- iii. To summon the entire records of the applicant pertaining to computation of his disability pension.

iv. Any other relief to which the applicant is found entitled may also very kindly be granted to the applicant.”

2. Brief facts of the case are that applicant was enrolled in the Army on 05.11.1980 and was invalided out from service on 29.12.1981 in low medical category after rendering 01 year and 01 month of service being medically unfit for further service. This O.A. has been filed for grant of disability pension after a gap of more than 38 years from the date of invaliding out from service.

3. Learned counsel for the applicant submitted that applicant was found fit in all respects at the time of enrolment in the Army and there was no note in his primary service documents with regard to any disease/disability. Therefore, whatever disease with which applicant suffered during service is attributable to military service. The applicant sustained injuries in his mouth while performing bonafide duty which resulted loss of eye sight and thereafter invalided out from service. He further submitted that documents pertaining to his service record held in his possession have been lost from his house in a land slide disaster occurred on 08.08.2009. Learned counsel for the applicant also relied upon judgment of the Hon'ble Apex Court in the case of **Sukhvinder Singh vs. Union of India**, (Civil appeal No. 5605 of 2010 decided on 25.06.2014), **Dharamvir Singh vs Union of India**, Case No. 4949 of 2013, decided on 02.07.2013, **Union of India and Ors vs. Ram Avtar & ors**, Civil Appeal No 418 of 2012, dated 10th December 2014 and pleaded that disability pension be granted to the applicant.

4. On the other hand, learned counsel for the respondents submitted that as per records available in Long Roll, the applicant has not been granted any type of pensionary award. She further submitted that applicant was non pensioner, therefore, his medical documents including constituents thereof have been destroyed by burning after expiry of retention period as per para 595 of Regulations for the Army 1987 (Revised Edition). Sheet roll in respect of pensioners and non- pensioners are retained for a period of 50 years and 25 years respectively from the date of becoming non-effective. Further submission of learned counsel for the respondents is that since documents relating to applicant have been destroyed on expiry of mandatory retention period of 25 years being a non-pensioner, therefore, degree of disablement and its percentage cannot be ascertained at this stage. She pleaded the O.A. to be dismissed being devoid of merit.

5. We have perused the records and we find that documents relating to ex army person have been destroyed after mandatory retention period in terms of para 595 of Regulations for the Army, 1987. Further, Extract of Long Roll, attached to counter affidavit which has also been provided to applicant, reveals that he was recommended to be invalided out from service in low medical category on the recommendations of medical specialist. We could have decided the case, had there been related medical documents pertaining to the applicant and applicant could have been benefitted, but we are unable to impart justice in the absence of requisite medical documents.

6. In view of the above, we are unable to decide the case in vacuum after a prolonged gap of more than 38 years from the date of invaliding out from service. O.A. is devoid of merit and is liable to be dismissed. It is accordingly dismissed.

7. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated : 4th August, 2021

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