

RESERVED
COURT NO 1

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

ORIGINAL APPLICATION No 33 of 2018

Thursday, this the 28th day of February, 2019

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

No. 2973153P Hony Nb Sub Yogendra Singh son of Shiv Mangal Singh, resident of Village and Post-Kharasara, District-Ballia, U.P.-277302.

...Applicant

Counsel for the applicant: **Shri V.P. Pandey, Advocate**

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi-110011.
2. The Chief of Army Staff, Integrated Head Quarter, Ministry of Defence (Army), South Block, New Delhi 110011.
3. Officer Incharge, Records, the Rajput Regiment Fatehgarh, U.P.
4. Principal Controller of Defence Account (Pension), Dropadi Ghat, Allahabad.

.... Respondents

Counsel for the : **Mohd Zafar Khan,**
Respondents Addl. Central Government Counsel

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

1. The present O.A. has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 praying for the following reliefs:

- (a) *To pass an order or direction to the respondents to provide copy of Release Medical Board and rejection order of disability pension, if any.*
- (b) *To pass an order or direction to the respondents to grant disability pension to the applicant wef 30 Nov 2002 if the same has been rejected by Respondent No 4.*
- (c) *Any other relief as considered proper by this Hon’ble Tribunal be awarded in favour of the applicant.*
- (d) *Cost of the O.A. be awarded to the applicant.*

2. Brief facts of the case are that the applicant was enrolled in the Rajput Regiment of Indian Army on 29.11.1976 and discharged from service in low medical category P2 (permt) on 30.11.2002 in terms Army Rule 13 (3) III (i) of Army Rules, 1954 on fulfilling of terms of engagement and is in receipt of service pension vide PPO No. S/033837/2002 (Army) dated 20.09.2002. Grievance of the applicant is that since he was in low medical category P2 (permt) at the time of superannuation, he is entitled to disability pension and its rounding off. The applicant submitted his representation on 25.08.2016 asking for copy of Release Medical Board (RMB) and rejection letter of disability pension after 14 years of retirement and the same was replied by the competent authority vide letter dated 13.02.2017 that RMB is not available. The records show that the disability had first started

on 03.05.2002 for which he was hospitalized for the period from 29.05.2002 to 04.06.2002 and after discharge from hospital he was placed in low medical category P2 (permt) w.e.f. 09.07.2002. The records also indicate that the applicant in all probability did not undergo RMB at the time of his discharge and therefore RMB proceedings are not available with any of the agency.

3. Ld. Counsel for the applicant pleaded that the applicant was enrolled in the Army in medically and physically fit condition. It was further pleaded that a member is to be presumed in sound physical and mental condition upon entering service if there is no note or record to the contrary at the time of entry. In the event of his subsequently being discharged from service in low medical category (LMC), any deterioration in his health is to be presumed due to service conditions. He pleaded that the disability of the applicant is due to stress and strain of military service, therefore, it should be accepted as aggravated by military service.

4. On the other hand, Ld. Counsel for the respondents admitted that the applicant proceeded on retirement in low medical category but submitted that as per Army Order 3/89 the applicant was required to appear before RMB before superannuation at Military Hospital, Fatehgarh which in all probability he has failed to do so and therefore RMB proceedings are not traceable with any of the agencies.

5. We have heard Ld. Counsel for the both the counsels and perused the material placed on record.

6. After thorough scrutiny of the documents it is clear that the Release Medical Board (RMB) of the applicant prior to discharge from service has not been done. Since conduct of RMB is a mandatory requirement before discharge, in the interest of substantive justice it is desirable that respondents conduct a fresh RMB for the applicant. At this stage we will refrain from commenting as to non conduct of RMB was the fault of applicant or respondents.

7. In view of the above this O.A. deserves to be partly allowed and is hereby **partly allowed**. The respondents are directed to hold applicant's Re-survey Medical Board within a period of three months from today. Further entitlement of disability element of pension shall be subject to the outcome of the RSMB.

8. With the aforesaid directions, the present O.A. is **disposed off**.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated : February 2019
gsr