

Court No.1**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****O.A. No. 423 of 2017**Monday, the 11th day of February, 2019**Hon'ble Mr. Justice SVS Rathore, Member (J)**
Hon'ble Lt Gen N.B. Singh, Member (A)

No.7119230 Ex Cfn Shiv Kumar Mishra, Son of late Siddhi Nath Mishra, Resident of 16/14 Swadesh House, Civil Lines, Kanpur- 208001

.....Applicant

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

Versus

1. Central Government Appellate Committee through Union of India through Secretary, Ministry of Defence, DHQPO, New Delhi- 110011.
2. Chief of the Army Staff, DHQPO, New Delhi
3. Commandant cum Chief Records Officer, EME Centre and Records, Secunderbad.
4. Principal Controller of Defence Accounts (Pensions), Draupadighat, Allahabad.

.....Respondents

Ld. Counsel for Respondents: **Ms Appoli Srivastava, Advocate****ORDER (Oral)**

1. By means of this O.A. filed under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has made the following prayers:

“(a) Direct the respondent no.1 to decide the statutory appeal of the applicant dated 31 Aug 2016 within a time frame to be fixed by this Hon’ble Tribunal preferably two months.

ALTERNATIVELY

(b) In case if the Record Officer letter no. 7119230/Pen dated 10 Apr 2017 (Annexure A-2 refers) is taken as disposal of the Statutory appeal dated 31 Aug 2016 by the addressee in that event the same be adjudicated by this Hon’ble Tribunal and all the consequential benefits granted to the applicant with effect from 12 Aug 1976, the date on which the applicant was medically boarded out of at-least effective from 16 Jan 1993.

(c) To issue any other or direction considered expedient and in the interest of justice and equity.

(d) Award cost of the petition.”

During the pendency of instant O.A. applicant filed second supplementary affidavit on 05.12.2018 whereby in Paragraph-1 the applicant has pleaded that this O.A. has been filed for the grant of disability pension to the applicant for the intervening period i.e. 12.08.1976/16.01.1993 till 31.08.2005 which was denied by the respondents.

2. In brief the facts necessary for the purpose of instant O.A. may be summarized as under:

The applicant was enrolled in the Indian Army on 28.03.1972. He was discharged from service w.e.f. 18.08.1976. In the year 1974-1975 while the applicant was posted under 740 Tpt Workshop, the ailment of the applicant aggravated due to hostile climatic weather conditions, which had resulted into

the admission of the applicant in Army Base Hospital and the applicant had to remain under treatment in the Army Base Hospital for about four months. The applicant was found to be suffering from 'Anxiety Neurosis' and he was placed under Low Medical Category 'EEE (Permanent)', which had resulted into discharge of the applicant from service on medical ground. The claim of the applicant for grant of disability pension was rejected by the PCDA (P), Allahabad as the disability of the applicant was opined to be neither attributable to nor aggravated by Military Service. The applicant preferred representations and applications to the higher authorities for the grant of disability pension but of no avail.

3. In the counter affidavit it has been pleaded that in the year 1996 after lapse of more than 20 years from his invalidment, the applicant filed W.P.No.26958 of 1996 in the Hon'ble Allahabad High Court for the grant of disability pension which was dismissed by the Hon'ble High Court on the ground of delay and laches on 21.08.1996. Thereafter the applicant had submitted an appeal dated 02.02.1999 which was carefully considered by PCDA (P) Allahabad and turned down the same. The applicant had again filed W.P. No. 4410 of 1999 in the Hon'ble Allahabad High Court. The said writ petition was also dismissed by the Hon'ble High Court on 23.08.1999. Thereafter the applicant had filed W.P. No. 55835 of 2000 in the Hon'ble Allahabad High Court for grant of disability pension and to decide the appeal dated 02.02.1999 preferred by him. The said

writ petition was disposed of at the initial stage vide order dated 03.01.2001 with directions to the appellate authority to dispose of the appeal preferred by the applicant dated 02.02.1999 expeditiously, preferably within four months.

4. In compliance of the aforementioned order of the Court dated 03.01.2001 the appeal preferred by the applicant was disposed of and was rejected. Aggrieved by the said order the applicant again filed Writ Petition No. 53231 of 2002 before Hon'ble Allahabad High Court which was transferred to the Armed Forces Tribunal, Regional Bench, Lucknow and was re-numbered as T.A. No. 74 of 2011. While the said T.A. was pending before this Tribunal, the applicant submitted statutory appeal dated 31.08.2008 against the rejection of his disability pension claim. The said T.A. No. 74 of 2011 was disposed of vide order dated 10.10.2012 with directions to the competent authority to dispose of the statutory appeal of the petitioner dated 31.08.2008 by speaking and reasoned order. In compliance of the said Court order the second appeal dated 31.08.2008 was carefully examined and Government sanction was accorded considering the disability of the applicant as attributable to Military Service with degree of disablement @ 30% for two years, restricting the arrears to 3 years prior to the date of second appeal i.e. w.e.f. 31.08.2005. Further the competent authority had directed to bring the applicant before one time reassessment medical board and continue to award

disability pension on the basis of assessment of RAMB alongwith rounding off benefits w.e.f. 01.07.2009.

5. Now the claim of the applicant is that he should be granted the arrears of disability pension from the date of discharge till the date the disability pension was sanctioned to him. During the course of arguments, we asked the learned counsel for the applicant that even if the entire claim of the applicant is admitted even then the applicant would be entitled for arrears only from a date three years prior to filing of this petition in view of the decisions of Hon'ble Apex Court in the cases of **Union of India vs. Tarsen Singh** reported in 2008(8) SCC 648 and **Shiv Dass vs. Union of India** reported in 2007(3) SLR 445.

6. Learned counsel for the applicant has tried to argue that since the applicant was pursuing his claim therefore he must be granted the relief claimed. On behalf of the respondents it is submitted that the hearing of this O.A. would be a futile exercise because even if the entire claim of the applicant is admitted, which has been filed in the year 2017, the only direction which can be issued in this O.A. would be to pay the arrears to the applicant for preceding three years of filing the O.A. The date of filing this O.A. is 03.10.2017 i.e. the applicant would be entitled to the arrears from 04.10.2014. But the applicant is claiming arrears from 12.08.1976 to 31.08.2005, therefore, we find substance in the submission of the learned

counsel for the respondents that the claim of the applicant is barred by time as he has approached this Tribunal in 2017 and in view of the earlier litigation the disability pension was granted to him from a date that was three years prior to the filing of representation.

7. In view of the aforesaid discussion, we find no substance in this O.A. and the same deserves to be dismissed. Accordingly this O.A. is hereby **dismissed**.

No order as to costs.

(Lt Gen N.B. Singh)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated : February 11, 2019

JPT