

RESERVED
Court No 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 543 of 2017

Monday this the 18th day of February, 2019

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)

Hon'ble Air Marshal BBP Sinha, Member (A)

Faquir Baksh Singh (No. 13817653 Ex Sepoy) son of Late Shri Suraj Pal Singh, resident of village-Barai Khurd, Post Office-Baragaon, District-Faizabad (Uttar Pradesh) (Since dead)

1/1. Anand Pratap Singh son of Shri Devi Prasad Singh, resident of Village-Barai Khurd, Post Office-Baragaon, District-Faizabad (Uttar Pradesh).

.....Applicant

Ld. Counsel for the Applicant : **Shri Yash Pal Singh**, Advocate.

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi.
2. Director General of Supplies and Transport (ST-12), Quartermaster General's Branch, Room No 320, Integrated Headquarters of Ministry of Defence (Army), 'A' Wing, DHQ Post Office-New Delhi-110105.
3. Officer-in-Charge, ASC Records (MT), Bangalore-560007.
4. Principal Controller of Defence Accounts (Pension), Allahabad.

.....Respondents

Ld. Counsel for the Respondents. : **Shri A.K. Sahu**,
Central Govt Counsel.

ORDER

“Per Hon’ble Mr Justice SVS Rathore, Member (J)”

1. In this Original Application, the following prayers have been made by the applicant :

- “(a) *Issuing/passing of an order or direction to the respondents setting aside the order dated 15.04.1968 passed by the Chief Controller of Defence Accounts (Pension), Allahabad as communicated by the Chief Record Officer, ASC Records vide letter dated 06.05.1968 (Annexure No 1 to the Original Application) rejecting the claim of the applicant for disability pension, after summoning the relevant original records; and grant disability pension to the applicant from the due date including arrears thereof with interest, and also the other consequential benefits of ex-serviceman.*
- “(b) *Issuing/passing of any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*
- “(c) *Allowing this Application with cost.*”

2. Initially the O.A. was filed by Faquir Baksh Singh, who was aged about 78 years on the date of filing the O.A.. During the pendency of this O.A., he died and at present his grandson, namely Anand Pratap Singh has been substituted as the legal heir.

3. As per report of the Registry, there was delay of more than 44 years in filing this O.A. The delay in filing this O.A. was condoned vide order dated 17.11.2017.

4. In brief, the necessary facts for the purpose of this O.A. may be summarised as under:

Faquir Baksh Singh was enrolled in the Army on 26.03.1963 and he was discharged from service on 04.03.1968 on medical ground under Rule 13(3) Item III (iii) of the Army Rules, 1954. It is pleaded in the O.A. that while in service, Faquir Baksh Singh developed pain and swelling in his right thigh following an injury while doing PT/parade when he was posted in the G.T. Company, ASC, Trivandrum, Kerala. The Categorization Medical Board was held on 14.08.1964 at Military Hospital, Lucknow for

the disability “Leomyo Sarcoma Right Thigh” and the applicant was placed in category CEE (Temporary) for six months fixing 14.02.1965 for the next Medical Board. On 11.11.1967 an Invaliding Medical Board was held at the Military Hospital, Bareilly. On account of the said disability, the claim of Faquir Baksh Singh for grant of disability pension was rejected as the same was neither attributable to nor aggravated by military service.

5. It is submitted on behalf of the applicant that the Officer Commanding has assessed disability of Faquir Baksh Singh as attributable to the military service and so the claim of Faquir Baksh Singh for disability pension has been illegally denied.

6. The respondents have not filed counter affidavit, but it has been pleaded on their behalf that all the documents relating to this case were destroyed after expiry of the period of retention i.e. 25 years and Faquir Baksh Singh has approached this Tribunal after a huge delay of more than 44 years.

7. Learned counsel for the applicant has drawn our attention towards Annexure-6 to the O.A., but the said document does not bear the signature of any person which is dated 11th November 1967 and it was held at Shahjahanpur and not at Bareilly, as pleaded by the applicant.

8. On behalf of the respondents, it is argued that in absence of any medical report, it is not possible to give any specific finding whether the disease due to which Faquir Baksh Singh was discharged from service as neither attributable to or aggravated by the military service and what was the percentage and duration of the said disability and in absence of this, it would not be appropriate to grant the relief claimed by the applicant only on the basis of presumptions and inferences after such a huge delay of 44 years.

9. It is pleaded that the applicant was suffering from disease “Leomyo Sarcoma Right Thigh”, which cannot be treated to attributable to or aggravated by military service.

10. Ld. Counsel for the respondents submitted that though the medical documents of the petitioner are not available, however, from the records available it appears that the disability pension claim was rejected by PCDA (P) Allahabad as his disability was regarded as neither attributable to nor aggravated by military service (NANA), therefore the pension sanctioning authority has rightly rejected disability pension claim of the applicant’s husband. He further pleaded that Para 173 of Pension Regulations for the Army, 1961 (Part I) puts an embargo for grant of disability pension to the applicant’s grand father as his disability is NANA in the instant case. Relying upon similarly situated cases the Ld. Counsel for the respondents submitted that O.A. No 95 of 2014 (AFT, Principal Bench), *Smt Dulari Devi widow of Late Swr Rajbir Singh Rana*, O.A. No. 11 of 2010 (AFT, Jaipur Bench), *Smt Nasim Bano widow of Late Swr Usman Ali Khan* and O.A. No. 175 of 2010 (AFT, Jaipur Bench), *Ex Swr Mohd Aslam* were dismissed on account of non availability of RMB/IMB. He pressed for O.A. to be dismissed.

11. Same view has also been taken by this Tribunal in the case of **Bhagwat Prasad Lal vs Union of India & others** (O.A.No.460 of 2017) decided on 22.01.2019.

12. The applicant has not filed any medical documents pertaining to this case, which are necessary for ascertaining certain factual position of the disease, the opinion of Medical Board, reasons and correctness declaring the disease as NANA, as well as percentage and duration of the disability. The respondents have stated during hearing that the medical documents of the applicant’s grand father have been destroyed as per due process of law and are not available. Therefore, neither the applicant nor the respondents were in a position to place on record the medical documents of the applicant’s

grand father. Thus in the absence of medical documents, no order can be passed by this Tribunal in vacuum.

13. This point involved in this case has also been considered by the Armed Forces Tribunal, Regional Bench, Chennai in the case of **Ex Sep K. Muniyandi vs. Union of India & others** (O.A.No.145 of 2013) decided on 08th January, 2014, in which Hon'ble the Regional Bench has held in Para 11 as under :

“11. When the documents related to the service and medical disability of the applicant are not available, the Judgement of Hon'ble Delhi High Court 14 made in C.M. No.2063 of 1993 and C.W. No.1267 of 1993 in between Hans Ram Vs. Union of India and Others dated 31.7.1995, is found squarely applicable to the present case. The relevant portion would be as follows :-

“The respondents have stated on oath that the service record of the petitioner is not available to verify the correct facts and place the same before the Court. It is also submitted that if such petitions are entertained it would tantamount to opening a pandora's box creating serious financial and other complications.

It is true that ordinarily in matters relating to pension the writ courts do not deny the relief on account of delay merely. A sympathetic and liberal view is always taken. Indulgence is invariably shown. In the case of Bachan Kaur Vs. Union of India (W.P.621/89) decided on 13.4.85, a Division Bench of this Court has taken the view that a writ petition claiming pension if the claim be otherwise just and legal may be entertained and allowed limiting the same to a period of three years before the date of filing of the petition. In the present case the petitioner has on account of culpable delay and laches extending over a period of 25 years himself created a situation which disentitles him to any relief. The service record of the petitioner is not available. It is not known as to why and in what circumstances the petitioner was paid merely the gratuity and yet felt satisfied therewith though no pension was allowed. If only the petitioner would have approached the Court within a reasonable time, the respondents could have been directed to search and produce the relevant service record of the petitioner enabling a just decision of the petitioner's claim, which is not possible in the present case. The entire fault is of the petitioner. However sympathetic we may be with the petitioner, sitting as a writ court, we cannot grant relief of pension to the petitioner merely as a charity or bounty in the absence of

relevant facts being determinable and relevant comments available. For the foregoing reasons the petition is dismissed though without any order as to costs.”

14. In view of the foregoing discussions, it is our considered opinion that we are not in a position to accept that the disease of the applicant's husband was either attributable to or aggravated by military service because of following reasons:-

(i) The Medical Board proceedings are not available and therefore the opinion of the Medical Board as to why the disease could not be detected at the time of enrolment cannot be scrutinised to decide attributability.

(ii) The delay of more than 44 years in raising the claim for pension after discharge in 1968 is the primary reason for destruction and non availability of Medical Board proceedings

15. Accordingly, this Original Application has no substance, deserves to be dismissed and is hereby **dismissed**.

(Air Marshal BBP Sinha)
Member (A)

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

Dated : February , 2019.
PKG