

RESERVED

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 153 of 2019

Friday, this the 01st day of March, 2019

“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
“Hon’ble Air Marshal BBP Sinha, Member (A)”

No. 15412873-N, Ex-Rect Suresh Kumar Tiwari, Son of Shri Dinesh Kumar Tiwari, resident of Near Akbarpur Rice Mill, Jalalpur Road, PO-Singhouli Akbarpurl, District- Ambedkar Nagar (U.P.)

..... Applicant

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

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi-110011.
2. O.I.C. Records No.2, T.T. Batallion, Army Medical Corps, C&S, Lucknow.
3. The Chief of the Army Staff, Integrated Headquarters MoD, New Delhi.
4. Office In-Charge Records, Army Medical Corps, Pin- 226002, Lucknow.
5. The Principal Controller of Defence Accounts (P), Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the: **Shri Ashish Kumar Singh, Advocate,**
Respondents.

ORDER**(Per Hon'ble SVS Rathore, Member (J))**

1. This O.A. has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant for rounding off of disability pension presently being given to him @ 20%. The applicant has prayed for the following relief:-

(I) To issue/ pass order directing the respondent by summoning the Medical Board proceeding as regard to re-assessment of disability percentage and pay disability pension from the date of discharge i.e. 28.03.2003.

(II) To issue / pass order directing the respondent to continue paying the disability pension as per re-assessment of disability percentage.

(III) Any other relief as considered proper by this Hon'ble Tribunal be awarded in favour of the applicant.

(IV) Cost of the appeal be awarded to the applicant. ”

2. The applicant was enrolled in the Indian Army on 30.09.1982 and was discharged from service on 27.03.2003. The applicant had preferred a writ petition No. 3099 of 2005 before the Hon'ble High Court at Allahabad, which upon constitution of the Armed Forces Tribunal was transferred to this Tribunal and numbered as T.A. No.736 of 2010. This Tribunal vide order dated 24.09.2015 disposed of the same with liberty to the applicant to submit representation for grant of disability pension before the appropriate authority who shall consider applicant's case for grant of disability pension expeditiously, say, within three months from the date of presentation of a certified copy of the order by passing a speaking and reasoned order with due communication to the applicant. In pursuance thereof the applicant preferred an appeal and the said appeal was allowed and the applicant was granted the benefit of disability pension @ 20 % to be rounded of to 50% from the date of filing of the appeal. The claim of the applicant is that he should have been granted disability pension from the date of his discharge and not from the date of preferring the appeal. The date of discharge of the applicant is

27.03.2003. The copy of the PPO has been filed as Annexure to this O.A., which shows that the disability element was sanctioned in favour of the applicant @ 30% rounded off to 50% for life w.e.f. 02.05.2016 i.e. his date of appeal.

3. On behalf of the respondents the prayer of the applicant has been vehemently opposed on the ground that the applicant is claiming said benefit by preferring O.A. in the year 2018 whereas he has been granted disability pension with effect from the date of first appeal i.e. 02.05.2016 which is the normal norm for granting disability pension on appeal.

4. On behalf of the applicant it is submitted that the decision of the respondents to sanction the disability pension from the date of preferring the appeal is erroneous.

5. After going through the submissions of learned counsel for both the parties, we do not find any substance in this submission of the learned counsel for the applicant because the respondents were right in granting the benefit from the date of preferring the first appeal. Apart from it, the PPO was forwarded to the applicant on 17.09.2017 and he was granted the benefit of disability pension w.e.f. 02.05.2016. We do not find any substance in the submission of the learned counsel for the applicant because in this O.A. the applicant is not entitled to the benefit of grant of disability pension from the date of his discharge i.e. 28.03.2003 in view of the settled legal position in the case of **Shiv Dass vs. Union of India**, reported in 2007 (3) SLR 445.

6. In view of observations made herein above, the O.A. lacks merit, deserves to be dismissed and is hereby **dismissed**.

7. No order as to cost.

(Air Marshal BBP Sinha)
Member (A)

Dated : March 01, 2019

JPT

(Justice SVS Rathore)
Member (J)