

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
CIRCUIT BENCH AT NAINITAL****ORIGINAL APPLICATION No. 55 of 2017**Wednesday, this the 30th day of May, 2018**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)**
“Hon’ble Air Marshal BBP Sinha, Member (A)”Jai Prakash Ex Nk/Driver No. 6610105 S/o Sh. Raghubir Dutt, R/o
House No. 2475, Ward No. 7, Vikasnagar Road, Herbertpur, Distt
Dehradun, Uttarakhand.

..... Applicant

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

Versus

1. Union of India, Ministry of Defence through its Secretary,
South Block, New Delhi 110011.
2. C.D.A. (P) Draupadighat, Allahabad, (U.P).
3. Addl Dte Gen Personnel Services, Adjutant General's
Branch, Integrated HQ of MoD (Army) DHQ P.O. New Delhi
110011.
4. Senior Record Officer, ASC Records (South) Bangalore,
560007.

.....Respondents

Ld. Counsel for the: **Shri R.C. Shukla,**
Respondents. Addl. Central Govt. Standing Counsel.

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

1. The instant Original Application has been filed by the applicant filed under Section 14 of the Armed Forces Tribunal Act, 2007 being aggrieved by denial of grant of disability pension with the following prayers:

- (i) A direction to quash the order dated 30.11.1992 and order dated 19.1.2016 passed by respondent no. 4 (contained in Annexure 1 and 3 to this original application), or to,
- (ii) A direction to grant disability pension to the applicant as per disability pension rules 21.12.1968, or to,
- (iii) To summon the entire records of the applicant pertaining to computation of his disability pension.

2. Undisputed factual matrix of the case is that the applicant was enrolled in the Army on 20.12.1962 as Sepoy Driver in ASC (MT) and was discharged from service with clause 'service no longer required' w.e.f. 21.12.1968 i.e. about 6 years and five months' of service. At the time of discharge, the applicant was in low medical category BEE (P). Disability suffered by the applicant was assessed less than 16% by the Release Medical Board. The applicant at the time of discharged was offered sheltered appointment which he refused to accept. The disability pension claim of the applicant was processed by the ASC Records (MT). However, the PCDA (P) vide order dated 26.03.1969 denied the claim of the application for payment of disability pension and the decision was duly communicated to the applicant by ASC Records (MT) on 21.04.1969. It is pleaded in the O.A. that the applicant approached the ASC Records (South) Bangalore on 02.09.1992 after about 24

years of his discharge, by preferring a presentation which was rejected on 30.11.1992. The applicant pleads to have not received said communication of rejection of his representation aforesaid. After an inordinate delay, on 10.10.2015, the applicant again approached the respondents by preferring an appeal, which as per the applicant is still pending. The applicant sent a legal notice to the respondents on 26.12.2015 which was replied that since the documents of the applicant have been destroyed after the mandatory retaining period of retention of 25 years, his case for grant of disability pension cannot be processed.

3. The delay in filing of Original Application has been condoned vide order dated 13.02.2017.

4. Learned counsel for the respondents at the very outset submitted that the applicant was discharged in low medical category on 21.12.1968 in low medical category. The applicant was offered alternative appointment which he refused. Disability pension claim of the applicant was rejected by the PCDA (P) on 26.03.1969 and he was communicated rejection of his claim on 21.04.1969. Learned counsel for the respondents drew our attention to para-7 of the counter affidavit stating that the service documents of the applicant have been destroyed after the mandatory retention period of 25 years in terms of Regulation 595 of the Regulations for the Army, 1987. Learned counsel for the respondents further drew our attention to para 11 of the counter affidavit wherein it has been averred that the applicant did not pursue his cause for a very long period of almost 48 years. We feel it appropriate to reproduce para-7 of the counter affidavit as under:

“That in reply to Para D (4 to 11) it is stated that the averments of the applicant in these paragraphs cannot be substantiated since service documents of the applicant have already been destroyed after mandatory retention period of 25 years, being a non pensioner, in terms of Regulation 595 of Regulations for the Army, 1987. Hence no comments are offered from the respondent’s side with regard to his posting to various units during his lifetime of six years and six months in the Army.”

5. The respondents have annexed along with the counter affidavit copy of the Regimental Long Roll as Annexure-1. From the Regimental Long Roll, only name of the applicant, the rank on which he was enrolled and his date of enrolment can be ascertained. It does not contain necessary entries regarding the nature of disability, its percentage and attributability factor. The applicant has also not brought on record any report of the Release Medical Board from which the percentage, attributability and nature of the disability can be ascertained. At the cost of repetition, it may be reiterated that the respondents have setup a specific case that all relevant service documents relating to the applicant have been destroyed after waiting for the mandatory period of retention under Regulation 595 of the Regulations for the Army, 1987. It goes without saying that in the absence of service documents and the report of the Release Medical Board, the Tribunal cannot pass any order allowing disability pension to the applicant in vacuum. We do not consider it appropriate to proceed on the basis of presumption only.

6. In the premise, the O.A. deserves to be dismissed, and is accordingly **dismissed**.

7. No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

Dated : May, 30 2018
anb

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