

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BENCH AT NAINITAL)****ORIGINAL APPLICATION No. 279 of 2018**Friday, this the 1st day of June, 2018**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal BBP Sinha, Member (A)”**

Ex Havildar No. 7090340H Kharak Singh Bhandari, Son of Bahadur Singh, R/o Village Nayakgoth, P.O. Tanakpur, District- Champawat- 262309

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

Versus

1. Union of India, Minsitry of Defence through its Secretary, South Block, New Delhi 110011.
2. P.C.D.A (P) Allahabad, Uttar Pradesh.
3. Appellate Committee on First Appeals Dir PS-4, AG’s Branch, Army HQs DHQ PO, New Delhi- 110011
4. EME Records, Sikandrabad, Hyderabad.

.....RespondentsLd. Counsel for the Respondents. : **Shri Bhanu Pratap Singh,
Addl. Central Govt. Standing Counsel****ORDER****“Per Hon’ble Air Marshal BBP Sinha, Member (A)”**

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs.

“(i) A direction to quash the order dated 17.10.2016 passed by respondent no.4 (contained as Annexure No.8 to this original application) or to

(ii) A direction to grant disability pension to the applicant as per disability pension rules, or to

(iii) To summon the entire records of the applicant pertaining to computation of his disability pension

(iv) Any other relief to which the applicant is found entitled may also very kindly be granted to the applicant.”

2. As per office report, there is a delay of 29 years, 09 months and 20 days in filing this OA. Since the applicant by means of this OA has prayed for payment of disability pension, which involves a recurring cause of action, the delay in filing the OA is condoned and the OA is admitted for hearing.

3. We have heard learned counsel for the parties and perused the record.

4. In brief, the facts necessary for adjudication of this case, as averred in the OA. are that the applicant was enrolled in the Indian Army as Sepoy on 29.10.1964 after having been found medically fit in all respect. He had undergone the detailed medical examination as well as the rigorous physical test successfully before the said enrolment. He served for about more than 24 years and was discharged in the rank of Havildar on 13.10.1988 in low medical category of BEE (P). The Release Medical Board has opined the disability to be 10 to 15% disability and further opined that the disability suffered by the applicant was aggravated by Military Service. However, his claim for disability pension was rejected by Respondent No. 2 PCDA (P) Allahabad because they overruled the opinion of Release Medical Board and declared the disease of the applicant as neither attributable to nor aggravated by Military Service. The applicant made

several representations to the authorities concerned to redress his grievance, but no heed was paid to them. Ultimately, he preferred an appeal on 18.12.2017 before respondent No. 3, but that too was dismissed vide order dated 16.01.2018 being barred by time.

5. The respondents have denied the claim of the applicant on the ground that since the disability of the applicant was assessed as neither attributable to nor aggravated by military service by PCDA (P), Allahabad, he was not entitled to the disability pension.

6. We have heard learned counsel for the Applicant as also learned counsel for the respondents. We have also perused the material on record.

7. The proposition of law with regard to primacy of Medical Board is well established by the Hon'ble Supreme Court and is no more a *res integra*. Hence we set aside the decision of PCDA (P), Allahabad by means of which the findings of Release Medical Board were overruled without any physical medical examination of the applicant.

8. In view of the above proposition, we consider that as per the opinion of Release Medical Board, the disease of the applicant is to be considered as aggravated by Military Service.

9. In view of above, this OA deserves to be allowed and is hereby **allowed**. Since the concept of rounding off has come with effect from 01.01.1996, hence the disability of the applicant at the rate of 10-15% for two years cannot be rounded off, hence he will be entitled to only service element during this period. The respondents are thereafter directed to conduct Re-Survey Medical Board for re-assessing the present medical

condition of the applicant. Further entitlement of disability element of pension shall be subject to the outcome of Re-Survey Medical Board. The respondents are required to comply with the order within four months from the date of receipt of a certified copy of this order, failing which the respondents shall be liable to pay interest at the rates of 9% per annum to the applicant on the amount accrued till the date of actual payment.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

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

Dated: June 01 , 2018
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