

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION No. 590 of 2018**Tuesday, this the 14th day of May 2019**"Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)"**

No 6389014W Ex Recruit Surendar Prasad, son of Shri Sharda Ram, Resident of C/O Dr. Lal Ji Kushwaha, Kushwaha Katra, LOT No 1, Mughalsarai, Varanasi (UP).

..... Applicant

Ld. Counsel for the : **Shri R. Chandra**, Advocate.
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi-11.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), DHQ, Post Office-New Delhi-11.
3. The Officer-in-Charge, ASC Records (South), Bangalore-560007.
4. The Chief Controller Defence Accounts, Draupadi Ghat, Allahabad (UP).

.....Respondents

Ld. Counsel for the : **Mrs Anju Singh**,
Respondents. 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:-

(a) *Hon’ble Tribunal may be pleased to set aside the order dated 31.01.1998 (Annexure No A-1).*

(b) *Hon’ble Tribunal may be pleased to direct the respondents to continue the disability element w.e.f. 14.09.1998 (from date of discontinued) in the light of Govt policy dated 31.01.2001 for life along with the interest at the rate of 18% per annum.*

Or alternate

Hon’ble Tribunal may be pleased to direct the respondents to organize the Re-Survey Medical Board which was due on 13.08.2002.

(c) *Any other appropriate order or direction which the Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case.*

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 26.10.1990 and was invalidated out from service after rendering 01 year and 76 days of service on 10.01.1992 in low medical category ‘EEE’ in terms of Rule 13 (3) III (iii) of Army Rules, 1954. Prior to discharge from service the applicant was brought before Invalidating Medical Board (IMB) which opined the applicant to be invalidated out of service with disability element @ 100% for two years aggravated by military service due to disability **‘Tubercular Pleural Effusion (Old) 012 (b) V-67’**. The PCDA (P), Allahabad had accepted the claim and accordingly granted

service element and disability element vide PPO No D/005999/92. Thereafter Re-survey Medical Boards (RSMB) were held at regular intervals and the applicant was granted disability element with reduced percentage. On 13.08.1997 last RSMB of the applicant was held at Air Force Hospital, Gorakhpur. The Medical Board opined applicant's disability to be @ 30% for five years i.e. 14.09.1997 to 12.08.2002. However, PCDA (P), Allahabad overruled the opinion of RSMB and reduced the disability percentage to 11-14%. Thereafter the disability element of the applicant was stopped and this fact was intimated to the applicant vide letter dated 31.01.1998 with an advice to prefer an appeal to the First Appellate Authority against rejection of disability element. The applicant however did nothing and has been slumbering over his right for last 20 years and has now filed this O.A. for grant of disability element.

3. Submission of Ld. Counsel for the applicant is that RSMB held on 13.08.1997 had assessed the applicant's disability element @ 30% for five years but it was reduced to 11-14% for five years by the Medical Advisor (Pensions) attached with PCDA (P), Allahabad. Further submission of Ld. Counsel for the applicant is that the applicant's normal RSMB as well as RSMB for life was due on 13.08.2002 but the respondents have failed to conduct the same which had caused great financial loss to

the applicant. He pleaded that RSMB of the applicant be conducted afresh w.e.f. 2002 to decide his entitlements.

4. Per contra, Ld. Counsel for the respondents submitted that after reduction of disability element by the PCDA (P), Allahabad, the applicant was informed about rejection of disability pension claim vide letter dated 31.01.1998 with an advice to prefer an appeal within six months but the applicant did not do so and kept silent over the past 20 years and filed the present O.A. without availing any statutory right by way of filing an appeal against the decision of the PCDA (P), Allahabad. Ld. Counsel for the respondents further submitted that Hon'ble Punjab & Haryana High Court had dismissed Civil Writ Petition No 14096 of 1995 related to disability pension in the case of **Sardar Ram Singh vs UOI and Others** on the grounds of laches because the petitioner had failed to represent his cause within the stipulated period and could not explain the delay of five years. He pleaded that the applicant had reconciled to rejection of his disability element in 1998 and never represented his cause for another RSMB in last about 20 years. He pleaded for the O.A. to be dismissed.

5. Heard learned counsel for the parties and perused the material placed on record.

6. After hearing both the parties we find that the Ld. Counsel for the applicant is putting the entire blame on respondents for

non conduct of the RSMB. However we tend to agree with respondents that normally RSMB is not conducted for rejected cases of disability pension unless there is an appeal against rejection or specific request for conduct of RSMB is made. Thus we are of the opinion that the applicant cannot put the entire blame on respondents for non conduct of RSMB after 1998 because he has taken no meaningful action to challenge his rejection of disability element in 1998 or raised any demand for normal RSMB/life time RSMB in 2002.

7. Thus considering all issues, we are of the opinion that ends of justice will be met, if a fresh RSMB is conducted for the applicant.

8. In view of the above, the respondents are directed to hold applicant's Re-survey Medical Board (RSMB) for re-assessing the present medical condition of the applicant within a period of three months from the date of receipt of a certified copy of this order. Further entitlement of disability element of pension shall be subject to the outcome of the RSMB.

9. With the aforesaid directions, the present O.A. is **partly allowed**.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated : May, 2019

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