

**Court No.1****ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW****Original Application No. 135 of 2019****Tuesday this the 07<sup>th</sup> day of May, 2019****Hon'ble Mr. Justice S.V.S. Rathore, Member (J)**  
**Hon'ble Air Marshal BBP Sinha, Member (A)**Om Prakash Dubey (No. 13880590W)  
S/o Sri Ram Shankar Dubey  
R/o Village Dubauli  
Post – Ajmalpur  
Distt – Faizabad (UP)**..... Applicant**Ld. Counsel appeared for the Applicant - Shri R. Chandra  
Advocate

Versus

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

**..... Respondents**Ld. Counsel appeared for the Respondents - Dr. Shailendra Sharma Atal  
Central Government Counsel

**ORDER (Oral)**

1. By means of this Original Application filed under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has prayed for the following reliefs :-

*“(I) The Hon’ble Tribunal may be pleased to set aside the order dated 17/10/1986 (Annexure No A-1) and order dated 29/03/1988 (Annexure No A-2).*

*(II) The Hon’ble Tribunal may be pleased to direct the respondents to grant disability pension with effect from 12/08/1994 for two years along with its arrears and interest thereon at the rate of 18% per annum.*

*(III) The Hon’ble Tribunal may be pleased to direct the respondents to organize Re-Survey Medical Board for assessing further disability if any.*

*(IV) The Hon’ble Tribunal may be pleased to direct the respondents to give benefit of rounding of disability pension from 20% to 50%.*

*(V) Any other appropriate order or direction which this Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case including cost of the litigation.”*

2. In brief, the facts of the case are that the applicant was enrolled in the Army on 11.08.1979. On 21.10.1983 the applicant had fallen in the bathroom while serving in field and sustained multiple fractures in the right hand i.e. DIAG-FRACTURE RADIUS ND ULNA (RT) while the applicant was serving with 5133 ASC Bn located in Dam DIM (Field) in Eastern Sector. On 14.01.1984 the applicant was placed in Medical Category CEE (T). On 19.08.1985 the applicant was placed in Low Medical Category CEE (P). On 09.06.1986 the applicant was discharged from service on medical grounds being placed in Medical Category lower than “AYE” under Army Rule 13(III). The RMB opined the disability to be attributable to Military service @ 20% for two years. It appears that the

opinion of the RMB was overruled by the competent authority and the claim of the applicant for disability pension was rejected by the PCDA (P), Allahabad on 24.09.1986. The appeal of the applicant was also rejected by the MoD on 21.03.1988. On 08.08.1989 the applicant preferred Writ Petition No.6693 of 1989 before the Hon'ble High Court, Allahabad at Lucknow Bench, which was transferred to this Tribunal and renumbered as T.A.No.46 of 2013. On 11.04.2014 the said T.A. was partly allowed by the Tribunal, setting aside the impugned orders and the respondents were directed to pay disability pension to the applicant @ 20% w.e.f. 09.06.1986 alongwith 6% p.a. interest for a period of two years and thereafter refer the applicant for RSMB for re-assessing the medical condition of the petitioner and find out whether he would be entitled to disability pension. Against the said order of the Tribunal, the applicant filed a Review Application in 2014 for reinstatement, which was allowed by the Tribunal vide its order dated 26.08.2014 and the review was allowed vide this new order after review, in line with Apex Court judgment in the case of **UOI & others vs Rajpal Singh** (2009 (1) SCC 216) the Tribunal set aside the order of discharge and notionally reinstated the applicant till he is entitled to pensionary benefits. Additionally the Tribunal in this review order once again set aside the orders dated 17.10.1986 and 29.03.1988 which were the rejection letter of disability pension.

3. Thus, the claim of the applicant is that when the applicant was notionally reinstated and notionally discharged w.e.f. 11.08.1994, then his Release Medical Board (IMB)/Re-survey Medical Board (RSMB) ought

to have been conducted because the final Tribunal order was clear that he is entitled to disability pension for two years and the earlier Release Medical Board was effective for the period of two years only. However, the respondents have neither conducted any Release Medical Board nor any Re-Survey Medical Board (RSMB) in pursuance of the final order passed in the T.A. on 26.08.2014.

4. On behalf of the respondents, the facts mentioned above, are admitted. However, though no counter affidavit has been filed by the respondents, there was no satisfactory explanation from them as to why an RMB/RSMB has not been carried out for the applicant after the final order of the Tribunal on 26.08.2014, which resulted in the notional reinstatement and notional discharge of the applicant w.e.f. 11.08.1994.

5. Before proceeding further, we would like to reproduce the operative portion of the earlier T.A. and Review Application. Operative portion of Tribunal order dated 11.04.2014 reads as under:

*“13. Thus in the result, the original Application is partly allowed. The impugned order dated 17.10.1986 and 29.03.1988, passed by the respondents are set aside. The respondents are directed to pay Disability Pension to the applicant @ 20% with effect from 09.06.1986 alongwith interest @ 6% per annum for a period of two years and refer the case to Review Medical Board for re-assessing the medical condition of the petitioner and find out whether at the time of discharge from service he was suffering from a disease which made him unfit to continue in service and whether he would be entitled to Disability Pension.”*

Operative portion of the Tribunal order after review dated 26.08.2014 reads as under:

*“Thus in the result, the transferred Application succeeds and is allowed. The impugned order of discharge and impugned orders dated 17.10.1986 and 29.03.1988 of rejection of disability pension, are set*

*aside. The applicant shall be treated notionally in service till he reaches the service which entitled him to pensionary benefits and thereafter be discharged with all consequential benefits as provided under extant rules.”*

6. Thus, considering all the facts on record and the pleadings on record, we find that it is an open and shut case on the following facts :

(a) The Tribunal though its final order dated 26.08.2014, has notionally reinstated the applicant till he attains pensionable service.

(b) The Tribunal has set aside the letters rejecting the claim of disability pension and has gone alongwith the opinion of RMB which considered the disability of the applicant as attributable.

(c) The respondents have only implemented part of the order i.e. notionally reinstated the applicant and discharged him w.e.f. 11.08.1994. They have also issued the applicant with a service element of pension.

(d) However, the respondents have failed to implement the other part of the final judgment of the Tribunal dated 26.08.2014 which was related to disability pension.

7. Since the original RMB of the applicant was held in 1986 and was valid for two years only, hence considering all issues including the long time gap between the date of notional reinstatement in 1994 and present date, ends of justice will be met if a fresh RSMB is conducted for the applicant to ascertain his entitlement of disability element.

8. In view of the discussions made, herein above, this O.A. deserves to be partly allowed and is hereby **partly allowed**. The respondents are

directed to conduct a fresh RSMB for the applicant to assess his disability within a period of three month from today. The future entitlement of disability element to the applicant shall be subject to out-come of the Re-survey Medical Board.

No order as to costs.

**(Air Marshal BBP Sinha)**  
**Member (A)**

**(Justice SVS Rathore)**  
**Member (J)**

Dated: 07<sup>th</sup> May, 2019  
PKG