

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BENCH AT NAINITAL)**

ORIGINAL APPLICATION No.171 of 2021

Tuesday, this the 16th day of November, 2021

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 4177728 Ex. Sep. Mohan Singh, S/o Late Shri Khadak Singh,
R/o Village – Kul, Post Office – Pyura, Tehsil – Kosya Kutoli,
District Nainital.

..... **Applicant**

Ld. Counsel for the: **Shri Prem Prakash Bhatt**, Advocate.
Applicant Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, Government of India, New Delhi.
2. Controller of Defence Accounts (Pension), PCDA (P), Allahabad.
3. Senior Record Officer, Records, The Kumaon Regimental Centre, Ranikhet, Almora.
4. Appellate Authority/Under Secretary to Government of India, Ministry of Defence (Pen-A), New Delhi.

..... **Respondents**

Ld. Counsel for the: **Shri Rajesh Sharma**, Advocate
Respondents. Central Govt. Counsel

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

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

- I. *to set aside the impugned order dated which is passed in reply to the legal notice 17.02.2020 and subsequent decision of appellate authorities communicated vide letters dated 03.03.2020 and 16.03.2020 as reflected in aforesaid communication letters issued by respondent No. 1 and 3 to applicant and son of applicant whereby the claim of the applicant seeking disability pension has been rejected.*
- II. *to direct the respondents to sanction and release disability pension to the applicant from the date of his discharge i.e. 04.10.1986 along with its arrears with penal rate of interest till the payment of arrears is made and to continue to pay the disability pension in future in accordance with law.*
- III. *to pass any other suitable order as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.*
- IV. *to allow the claim petition with cost.*

2. Briefly stated, applicant was enrolled in the Kumaon Regiment of Indian Army on 28.07.1982 and was invalided out from service on 04.10.1986 in Low Medical Category EEE under Rule 13 (3) Item III (iii) of the Army Rules, 1954. As per Original Application, at the time of invalidation from service, the Invaliding Medical Board assessed his disability '**SCHIZOPHRENIA-295**' more than 20% for life. The applicant's claim for grant of disability pension was rejected by the respondents. The applicant preferred several representations but of no avail. The applicant preferred an

application dated 14.07.2019 and a legal notice dated 27.01.2020. The legal notice was replied by the respondents vide letter dated 17.02.2020 informing the applicant that all service documents have been destroyed after exceeding its stipulated period i.e. 25 years from the date of invalidation. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned counsel for the applicant submitted that applicant was found fit in all respects at the time of enrolment in the army and there was no note in his primary service documents with regard to any disease/disability. Therefore, whatever disease with which applicant suffered during service is attributable to military service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension as well as arrears thereof, as applicant is also entitled to disability pension.

4. On the other hand, learned counsel for the respondents submitted that applicant was non pensioner, therefore, his service documents have been destroyed by burning during the year 2016 after expiry of retention period as per para 595 of Regulations for the Army 1987 (Revised Edition). Long Roll in respect of pensioners and non-pensioners are retained for a period of 50 years and 25 years respectively from the date of becoming non-effective. Further submission of learned counsel for the respondents is that since documents relating to applicant have

been destroyed on expiry of mandatory retention period of 25 years being a non-pensioner, therefore, degree of disablement cannot be ascertained at this stage. He pleaded the Original Application to be dismissed being devoid of merit.

5. Heard Ld. Counsel of both sides and perused the records and we find that documents relating to ex-army person have been destroyed after mandatory retention period in terms of para 595 of Regulations for the Army, 1987. We could have decided the case, had there been related medical documents pertaining to the applicant and applicant could have been benefitted, but we are unable to impart justice in the absence of requisite medical documents.

6. In view of the above, we are unable to decide the case in vacuum after a prolonged gap of more than 33 years from the date of invaliding out from service. Original Application is devoid of merit and is liable to be dismissed. It is accordingly **dismissed**.

7. Pending misc. applications, if any, are disposed off.

8. No order as to costs.

(Vice Admiral AbhayRaghunathKarve) (Justice Umesh Chandra
Srivastava)Member (A) Member (J)

Dated : 16November, 2021

AKD/-