

**Court No 1 (B)**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW**

**Original Application No. 190 of 2015**

Thursday, this the 29<sup>th</sup> day of June 2017

**Hon'ble Mr. Justice D.P. Singh, Member (J)**

**Hon'ble Air Marshal Anil Chopra, Member (A)**

Ex. Rect. Sajid Ali (Service No 1541648), S/o Late Ramjan Ali,  
R/o Village - Palpur Sidhiyawan, P.O. - Jagdishpur,  
Tehsil – Musafirkhana, P.S. - Jagdishpur, Distt – Amethi, U.P.)

.....Applicant

Ld. Counsel for the : **Shri V.K Pandey, Advocate**  
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence,  
R.K. Puram, New Delhi.
2. Commandant, Bombay Engineer Regiment,  
Kirkee, Pune – 411003.
3. Commanding Officer, Bombay Engineer Regiment,  
Kirkee, Pune - 411003
4. OIC Records, Bombay Engineer Group, Kirkee, Pune – 411003.
5. PCDA Pension, Draupadi Ghat, Allahabad, U.P.
6. Commandant Military Hospital, Kirkee, Pune.

.....Respondents

Ld. Counsel for the : **Dr. Shailendra Sharma Atal,**  
Respondents **Ld. Counsel for the Respondents.**

**ORDER (ORAL)**

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 being aggrieved with the denial of grant of disability pension.

2. The factual matrix on record is that the applicant was enrolled in the Indian Army on 12.08.1971. After 01 month and 04 days of service, he was discharged from service with effect from 16.09.1971 due to unlikely to become an efficient soldier under Rule 13 (3) IV of Army Rules, 1954. He preferred this Original Application for grant of disability pension after approximately 41 years of discharge. The delay in filing the Original Application has been condoned on the ground that grant of pension is recurring cause of action but the burden to prove the ground for grant of disability pension lies on the applicant.

3. We have heard Shri V.K. Pandey, learned counsel for the applicant and Dr. Shailendra Sharma Atal, learned counsel for the respondents duly assisted Maj Salen Xaxa, Departmental Representative for the respondents and perused the record.

4. Learned counsel for the respondents while filing Counter Affidavit has pleaded that Service documents of soldiers are preserved in the Army for 50 years in respect of pensioners and 25 years in respect of non-pensioners. Since the petitioner was a non pensioner, his service documents were preserved for 25 years and thereafter were destroyed by burning in July 2005 by Board of Officers in accordance with Para 595 of Regulations

for the Army (Revised Edition) 1987 Vol – II. The applicant was not discharged from service on medical grounds but was discharged under para 13 (3) IV of Army Rules 1954. Moreover the applicant has served only for 01 month and 04 days and he does not fulfill the primary condition for grant of service pension and disability pension as contemplated in para 132 and 173 of the Pension Regulation for the Army 1961. His claim for grant of disability pension has correctly been denied.

5. Learned counsel for the applicant submitted that since the applicant was enrolled in the Army in a fit medical condition and he sustained injury in training hence he is entitled for disability pension but he could not produce any material on record which indicates that the applicant suffered disability while in service. The onus to establish the fact that the applicant was discharged on medical ground rests on the applicant.

6. In the present case the applicant was discharged from service due to unlikely to become an efficient soldier under Rule 13 (3) IV of Army Rules, 1954. For convenience Rule 13 (3) IV is reproduced as under:-

<u>Category</u>	<u>Ground of discharge</u>	<u>Competent authority to authorise discharge</u>	<u>Manner of discharge</u>
Persons Enrolled Under the Act but Not attested	IV. All classes of discharge.	Commanding Officer or Officer Commanding Recruit reception Camp, or a Recruiting or Deputy Technical Recruiting Officer.	In the case of persons requesting to be discharged before fulfilling the conditions of their enrolment, the Commanding Officers will exercise this power only where he is satisfied as to the desirability of sanctioning the application that the strength of the unit will not be thereby be unduly reduced. Recruits who are considered unlikely to become efficient soldiers will be dealt with under this item.

7. The aforesaid provision of the Rule indicates that the applicant was not attested and was discharged as unlikely to become efficient soldier and he was not discharged on medical ground. In the absence of any evidence

on record which may indicate that the applicant was suffering from any disability at the time of discharge, he cannot be granted disability pension.

Applicant has to establish that he was discharged on medical grounds.

8. In view of the above, we do not find any reason to grant disability pension to the applicant. The application lacks merit and is accordingly rejected.

No order as to cost.

**(Air Marshal Anil Chopra)**  
**Member (A)**

Dated: June, 2017

ukt/-

**(Justice D.P. Singh)**  
**Member (J)**