

**Court No. 1**  
**Reserved Judgment**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW  
ORIGINAL APPLICATION NO. 175 of 2017**

Tuesday, this the 17<sup>th</sup> day of April, 2018

**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)  
Hon’ble Air Marshal BBP Sinha, Member (A)”**

No. 13872928X, Ex. Sep. Kamakhya Harijan, s/o Late Sri Ganga Ram, Resident of Village – Baghamou Kakahra Pura, Post - Office - Malysia Mau, Shahidpath, Chinhat, Lucknow (U.P.) – 227105  
**....Applicant**

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

**Verses**

1. Union of India through Secretary, Ministry of Defence, South Block, R.K. Puram, New Delhi.
2. Adjutant General Branch, Addl Dte Gen Personnel Service, Plot No. 108 (W), Brassey Avenue Church Road, New Delhi - 110001.
3. Principal Controller of Defence Accounts (P), Draupadi Ghat, Allahabad (U.P.).
4. OIC Records, Records The Bihar Regiment Danapur, Pin – 801503 (Bihar)

**.....Respondents**

Ld. Counsel for the Respondents : **Shri A.K. Sahu,  
Advocate, Addl. Central  
Govt Standing Counsel.**

Assisted by : Maj Salen Xaxa, OIC Legal Cell.

**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) Respondents be directed to pay the disability pension w.e.f. 31.10.1979 with interest on aforesaid delayed amount @ 18% per annum till date of actual payment.”*

2. The case as projected by the applicant is not very clear because the respondents have claimed that the service documents of the applicant have been destroyed after 25 years.

3. The facts of the case are that the applicant was enrolled in the Indian Army in 9 BIHAR at Danapur on 14.12.1973. In 1976 the applicant’s right leg got fractured in parade drill and he was admitted in Army Hospital at Meerut. In 1977, the applicant was referred to Command Hospital Lucknow for further treatment from where he was sent back to his unit i.e. 9 BIHAR. In the meantime the applicant’s unit shifted from Danapur to Assam and the authorities concerned directed him to report at Danapur Centre. On 31.10.1979, the applicant was discharged after

rendering six years and 18 days service. It is alleged that the applicant preferred several representations which were not acted upon. Thereafter he filed appeals on 09.11.2015 and 24.02.2016 which is said to be pending as yet. It is in the above perspective that the present O.A has come to be filed.

4. Learned Counsel for the applicant submits that the applicant was discharged under Army Rule 13 (3) III (iv) and that he was not provided copy of medical board. He further submits that at the time of discharge, his disability was assessed as 40% for life but copy of the medical board was not supplied to him. It is also submitted that the Release Medical Board had opined that the disability of the applicant was attributable to and aggravated by military service.

5. **Per Contra** respondents have averred that the applicant's service documents have been destroyed during the year 2006 after completion of 25 years of its retention period being non- pensioner as per para 595 of Regulations for the Army 1987 (Revised). It is also submitted by the respondents that the applicant has enclosed a medical certificate issued with regard to treatment of the son of the applicant by Chief Medical Officer, Lucknow dated 27.05.2015 (Annexure -II of O.A.) which does not have any relevance to the alleged disability of the applicant. Based on

the limited records maintained by Board of Officers before destroying the service documents, the respondents have contended that the applicant was in fact discharged on his own request on compassionate ground and he was not discharged on medical grounds as claimed by him. However, there is limited correspondence in records which indicate that his claim for Disability Pension was rejected by CDA (P) Allahabad for being neither attributable to nor aggravated by military service. Hence the respondents feel that the applicant is trying to capitalise on the issue after destruction of documents.

6. In vindication of his stand, the applicant has not brought on record any document which may vouch for the fact that he was discharged on account of injury suffered by him in his leg and not on compassionate ground. Even in the discharge book issued to the applicant, it is clearly mentioned that he was discharged on his own request. This fact finds mention in the letter dated 17.07.2015 addressed to the Commandant, Bihar Regiment Training Centre Danapur by the applicant. The letter is annexed to the O.A as Annexure no 4. The para 2 of the said letter being relevant is quoted below.

*"2. However, I had completed 6 years and 17 days service. The intimation regarding rejection of medical board has not been received so far. Whereas, the*

*cause of discharge mentioned in my discharge book is AT HIS OWN REQUEST which is not understood."*

7. The Applicant was discharged from service in the year 1979 and he woke up to claim disability pension in the year 2014 in which he made the first representation. In the year 2015 and 2016 respectively, he preferred appeals which are said to be still pending.

8. The substance of the contentions of learned counsel for the respondents is that the entire record pertaining to the applicant has been destroyed on completion of 25 years and there is nothing available to vouch for the assertions of the applicant. It is further submitted that the case of the Applicant cannot be considered at this belated stage in the absence of service documents as these have already been destroyed on expiry of their retention period. Due to absence of Release Medical Board, details about the disease and the extent of disability due to it along with attributability aspects are not available. No other information in this respect is available as his service documents have already been destroyed on completion of its retention period of 25 years in accordance with Para 595 of Regulations for army 1987 (Revised).

9. Once the primary medical record (IMB/RMB) is not available after 25 years and the primary evidence of the cause of discharge has been destroyed as per procedures

then the Long Rolls is not conclusive to return a finding that the discharge of Armed Forces personnel was either attributable to or aggravated by military service. It has an entry made from another document though in regular course of working but the same is not primary evidence. It could not be treated to be secondary evidence as well because it was only an abstract and could not lead to conclusive opinion for the reason of discharge. Therefore, the long silence for not lodging a claim of disability pension in the past 37 years can be said to bar the remedy.

10. In view of the above, we find that except the statement of the petitioner that he was invalided out, there is no material to show that firstly the applicant was invalided out and secondly that such invalidation was due to such disability, which was attributable to or aggravated by military service.

11. In this view of the matter, we are of the opinion that the Applicant has failed to prove his case that he is entitled to get disability element of pension.

12. The Applicant was discharged on 31.10.1979 and he waited for above 37 years to approach the Tribunal. In the meantime the record has been destroyed after 25 years of discharge. The Applicant could not get any premium for his inaction in the matter during this period. The Apex Court in the case State of **Tripura and others Vs. Arabinda**

**Chakraborty and others (2014) 6 SCC 460** has held that where the termination order was challenged after 13 years, in the meantime the record was destroyed, no harm should be caused to the employer because the employer should not keep the record pertaining to termination of the employee forever. The above principle will be fully applicable to the facts of the present case.

13. In view of the above, the O.A. is liable to be dismissed.

It is accordingly **dismissed**.

14. No order as to cost.

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

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

**Dated: April, 17 , 2018**

MH/-