

**RESERVED**  
**Court No.1**

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

**Original Application No. 113 of 2017**

Tuesday, this the 18<sup>th</sup> day of December 2018

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

No. 13942401 Ex Hav Sukhraj Singh, Son of Sri Bhagwat Prasad Singh, Resident of House No 9B, Patel Nagar, Behind Sector-9, Indira Nagar, Lucknow.

..... Applicant

Ld. Counsel for the: **Shri Rohit Kumar,**  
Applicant Advocate

Versus

1. Chief of Army Staff, Army Headquarters, DHQPO, New Delhi.
2. Commandant cum Chief Records Officer, AMC Centre and School, Lucknow
3. Principal Controller of Defence Accounts (Pensions), Draupadighat, Allahabad.

..... Respondents

Ld. Counsel for the  
Respondents

:**Ms Deepti Prasad Bajpai**  
Central Govt Counsel.

**ORDER****“Per Hon’ble Air Marshal BBP Sinha, Member (A)”**

1. Being aggrieved with denial of disability element for the period 01.04.1998 to 18.08.2016, the applicant has filed the present Original Application under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-

- (a) *Order the respondents to pay arrears of disability pension with effect from the date of discontinuance of the disability pension with effect from 01 Apr 1998 to 16 Aug 2016 with all the consequential benefits to the applicant.*
- (b) *Order the respondents to grant the benefits of broad banding in terms of the judgment of Ram Avtar (the Board having assessed percentage of disability as 40%, the applicant is entitled to get 50%) with all the consequential benefits to the applicant including exemplary compensation.*
- (c) *To issue any other order or direction considered expedient and in the interest of Justice and equality.*
- (d) *Award cost of the petition.*

2. Brief facts of the case are that the applicant was enrolled in the Army Medical Corps (AMC) on 30.03.1976 and discharged from service on 01.04.1998 (AN) before completion of his engagement period in terms of Rule 13 (3) (III) (i) of Army Rules, 1954 having rendered 22 years and 02 days of service. Prior to discharge the applicant was brought before Release Medical Board (RMB) which was carried out at Command Hospital, Central Command, Lucknow on 22.10.1997. The duly

constituted RMB assessed his disability "SPONDYLOLISTHESIS" @ 30% for two years neither attributable to nor aggravated (NANA) by military service. Disability pension claim preferred by the applicant was re-assessed by CDA (P), Allahabad but the disability element was reduced to 15-19% for two years and the same was rejected vide order dated 09.09.1998 on the ground of disability being less than 20% and NANA. On 09.03.2000 applicant's Re-survey Medical Board (RSMB) was conducted at Base Hospital, Lucknow which assessed his disability @ 15-19% (i.e. less than 20%) for two years. Disability pension claim was thereafter submitted to CDA (P), Allahabad which rejected the disability claim with the observations that the disability is assessed @ 15-19% for 10 years and that it is conceded as aggravated by military service vide order dated 28.07.2000. Thereafter, on receipt of the new policy for life time assessment of disability, the applicant was brought before a fresh RSMB at Base Hospital, Lucknow on 22.04.2002 which again assessed applicant's disability @ 15-19% (i.e. less than 20%) for life. Disability pension claim was again rejected by PCDA (P), Allahabad vide order dated 30.04.2003 on the ground of disability being below 20%. The applicant submitted first appeal to the Appellate Authority on 21.12.2011 which was rejected vide order dated

03.02.2013. After that second appeal was preferred by the applicant on 31.03.2013 but during pendency of second appeal, the applicant filed O.A. No. 289 of 2013 in Armed Forces Tribunal, Regional Bench, Lucknow to decide his second appeal. The aforesaid O.A. was disposed off vide order dated 09.03.2015 with directions to the respondents to decide applicant's second appeal dated 31.03.2013 within a period of four months from the date of Tribunal's order by speaking and reasoned order. On the directions of the Court, second appeal of the applicant was adjudicated by Appellate Medical Authority (AMA) which recommended applicant's Review Medical Board. Accordingly a Review Medical Board was held at Army Hospital (Research and Referral) on 19.08.2016. The duly constituted Review Medical Board assessed the applicant's disability @ 30% for life w.e.f. 19.08.2016 and opined as under:-

*"The assessment for the intervening period i.e. w.e.f. date of last RSMB is also 30% (THIRTY PERCENT) as the ID was underassessed at RSMB. The admissibility of claim for the intervening period is however to be decided by administrative authorities."*

3. Disability pension claim of the applicant was processed to PCDA (P), Allahabad which granted disability element to the applicant @ 30% w.e.f. 19.08.2016 vide PPO dated 30.09.2016. As per remarks endorsed in the final Review Medical Board, the applicant submitted an

application dated 19.11.2016 for grant of disability element for the intervening period i.e. w.e.f. 01.04.1998 to 18.08.2016 but AMC Records denied disability element for the period 01.04.1998 to 18.08.2016 on the ground that it was not assessed by the Review Medical Board and it is to be decided by the administrative authorities. Hence this O.A.

4. It is submitted that this Original Application No. 113 of 2017 filed to this Tribunal was admitted after condonation of delay vide order dated 12.05.2017.

5. Ld. Counsel for the applicant pleaded that the applicant is entitled to disability element w.e.f. 01.04.1998 i.e. w.e.f. the date of discharge on the ground that the disability has been conceded as aggravated to military service @ 30% by PCDA (P) Allahabad after RSMB at Army Hospital (Research and Referral) on 19.08.2016. The RSMB has also commented that the earlier RSMB had under assessed the disability hence the grant of disability element @ 30% w.e.f. 19.08.2016 by the respondents is unfair and he should be granted disability element from date of discharge i.e. 01.04.1998.

6. Per contra the Ld. Counsel for the the respondents has conceded (para 19 of the counter affidavit) that the disability suffered by the applicant is aggravated by military service and has been assessed @ 30% but has

submitted that as per existing Govt policy on the broad banding the applicant is entitled to broad banding w.e.f. 2016 only, and since his RSMB was conducted at Army Hospital (Research and Referral) on 19.08.2016 hence the respondents have correctly decided to grant disability element to the applicant along with benefit of rounding off w.e.f. 19.08.2016. He pleaded for O.A. to be dismissed.

7. We have heard Ld. Counsel for the parties and perused the material placed on record.

8. In the present case, the judgment of Hon'ble Apex Court in the case of ***Shiv Dass vs. Union of India***, reported in 2007 (3) SLR 445, para-9 being relevant is appended below:-

*"In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same **or restrict the relief which could be granted to a reasonable period of about three years**. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone."*

9. In the facts of the present case the issue as to from which date the applicant is entitled to receive arrears of disability pension, needs adjudication. It is admitted that the applicant had earlier approached this Tribunal by filing O.A. No. 289 of 2013 with the prayer for a direction to the

respondents to dispose of his pending Second Appeal for grant of disability pension and its rounding off. The said O.A. was disposed of vide order dated 09.03.2015 with direction to the respondents to decide the Second Appeal of the applicant for grant of disability pension. It is also admitted fact that the respondents as a follow up to second appeal have granted disability pension to the applicant suo motu with effect from 19.08.2016. Having given our thoughtful consideration to this issue, we converge to the opinion that in light of observations of RSMB conducted by Army Hospital (R&R) and also the fact that since the applicant had raised his grievance about non disposal of second appeal before this Tribunal by filing O.A. No 289 of 2013, as such, he is entitled to receive arrears of disability pension from the date of his second appeal i.e. 31.03.2013.

10. Additionally, in view of the law settled by the Hon'ble Apex Court in the case of ***Union of India and Ors vs. Ram Avtar & ors***, Civil Appeal No 418 of 2012 dated 10<sup>th</sup> December 2014), we are of the considered view that benefit of rounding off of disability pension @ 30% for life to be rounded off to 50% for life may be made applicable to the applicant from the date of his second appeal i.e. w.e.f. 31.03.2013.

11. In view of above, the O.A. succeeds and is hereby **allowed**. The respondents are directed to grant disability pension to the applicant @ 30% for life which shall be rounded off to 50% for life from the date of his second appeal i.e. 31.03.2013. This order shall be complied with by the respondents within four months from the date of presentation of a certified copy of this order failing which the applicant shall be further entitled to interest at the rate of 9% per annum from the due date, till date of actual payment.

No order as to costs.

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

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

Dated : December, 2018

gsr