

RESERVED
Court No.1

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

Original Application No. 299 of 2017

Friday, this the 07th day of December 2018

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

Ex-Craftsman (Vehicle Mechanic) (No. 14562176M)
Rajesh Kumar Awasthi, son of Shri Pratap Narayan
Awasthi, resident of Village-Tilokpur, Post-Usmanpur
Trilokpur, Police Station-Loni Katara, District-Barabanki.

..... Applicant

Ld. Counsel for the: **Shri Virat Anand Singh,**
Applicant Advocate

Versus

1. Union of India through Secretary of Ministry of Defence, New Delhi.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi-110011.
3. Officer-in-Charge Record Office EME Records Secunderabad.
4. Commanding Officer, 601 EME Battalion, C/O 56 APO.
5. Commanding Officer 120 Armoured Field Workshop, C/O 56 APO.

..... Respondents

Ld. Counsel for the
Respondents

:Shri Namit Sharma
Central Govt Counsel.

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

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

- (a) *Issue a writ, order or direction to the respondents to grant him disability pension with effect from 18.12.1995 after his discharge from service on 17.12.1995 in terms of Regulation 179 of Pension Regulations for Army 1961 after summoning all relevant records including the Medical Board Proceedings held in the year 1993 and also Release Medical Board held at the time of his discharge from service.*
- (b) *Issue and order/direction to summon all relevant records pertaining to the grant of disability pension.*
- (c) *Issue any such other order or direction which this Hon’ble Tribunal may deem fit and just in the facts and circumstances of the case in favour of the applicant.*
- (d) *Allow the Original Application with cost in favour of the applicant.*

2. Brief facts of the case in nut shell are that the applicant was enrolled in the Army (Corps of EME) on 22.12.1983 as Craftsman (Mechanic) and discharged from service on 17.12.1995 in terms of Rule 13 (III) (v) of

Army Rules, 1954 being undesirable/inefficient soldier. The applicant was in low medical category due to disability "Primary Hypertension" and rendered approx 12 years of service at the time of discharge. Release Medical Board (RMB) of the applicant could not be carried out at the time of discharge as the applicant allegedly did not sign medical papers required for RMB. After discharge the applicant filed Writ Petition No 3948 of 1996 in the High Court of Judicature at Allahabad which on transfer to this Tribunal was re-numbered as T.A. No. 01 of 2009. The said T.A. was dismissed vide order dated 02.09.2013 and its review also met with the same fate vide order dated 12.09.2014. Earlier the applicant submitted a petition dated 26.10.2010 to EME Records for grant of disability pension which was replied vide letter dated 30.12.2010 mentioning therein that 'on scrutiny of service record and medical documents it is found that the applicant was discharged from service on disciplinary grounds due to red ink entries earned by him and RMB could not be carried out at the time of discharge as the applicant expressed his unwillingness to sign the requisite medical documents.' On 23.09.2013 legal notice was sent by the applicant through his Counsel to respondent No 3 for grant of disability pension. A reminder to this effect was issued on 28.05.2014 which was replied by the

respondents vide letter dated 26.06.2014 intimating that disability pension claim of the applicant could not be processed in the absence of RMB. Hence this O.A.

3. Ld. Counsel for the applicant submitted that the applicant was in medical category lower than SHAPE-I at the time of discharge and also since the onset of 'primary hypertension' took place while he was posted at High Altitude Area during February 1993, he is entitled to disability pension. The Ld. Counsel further contended that when respondent No 3 was contacted for disability pension it was informed that it can only be decided on finalization of pending court case.

4. On the other hand, Ld. Counsel for the respondents submitted that the applicant was discharged from service locally being undesirable/inefficient soldier in pursuance to order dated 28.12.1988 as his services were no longer required. It was also stated that the applicant had earned six red ink entries during his service tenure for various offences committed under the different sections of Army Act. Ld. Counsel further stated that the applicant did not sign medical papers required for RMB and hence RMB could not be carried out prior to his discharge from service. Since no RMB was carried out, the applicant's degree of disability could not be ascertained at that time. He further stressed that a certificate dated 16.12.1995 is

on record which shows that the applicant refused to sign RMB proceedings before discharge. In light of the above, the applicant is not entitled to disability pension. It is argued that the O.A. deserves to be dismissed.

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

6. From the aforesaid pleadings and the documents placed on record it is not disputed that the applicant suffered 'mild hypertension' while posted in High Altitude Area (2 Field Regiment). Applicant's medical ailment was reviewed by the doctors from time to time and the last re-categorization medical board held on 17.02.1995 recommended the applicant to be placed in medical category BEE (Temp) for 6/12 years. No doubt in one of the re-categorization medical boards held on 17.02.1993 the medical board had recommended the applicant's disability as aggravated by military service which has also been conceded by the respondents in para 9 of the counter affidavit, but the fact remains that the applicant has not completed the formalities required for completion of RMB. The fact that he was discharged as undesirable soldier does not stop his entitlement of disability pension. Admittedly, the applicant had refused to sign the medical papers which is a pre-requisite necessity for conduct and completion of RMB.

7. In view of the above, we are of the considered opinion that ends of justice will be met if the applicant's Re-survey Medical Board (RSMB) is conducted by the respondents afresh. The applicant's disability pension will be subject to the outcome of RSMB. The entire exercise shall be completed by the respondents within a period of three months from the date of this order.

The O.A. is **disposed of** accordingly.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated : December, 2018

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