

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

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

**Original Application No. 305 of 2016**

Monday, this the 3<sup>rd</sup> day of December 2018

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

No. 3402216-W Ex Rect Harinder Singh, S/O Shri Vayant Singh, R/O Village-Dandia Nyamatganj, Post-Bilaspur, Distt-Rampur (UP)-244921. .... Applicant

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

Versus

1. Union of India through Secretary, Ministry of Defence (Army), South Block, New Delhi.
2. Chief of Army Staff, Integrated Headquarters, Ministry of Defence, South Block-III, New Delhi-110011.
3. OIC Records, Records The SIKH Regiment, PIN: 908762, C/O 56 APO.
4. PCDA (Pension) Draupadi Ghat, Allahabad (UP)-211014. .... Respondents

Ld. Counsel for the  
Respondents

**:Ms Deepti Prasad Bajpai**  
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) *To quash the impugned order dated 08 Aug 2003 (Annexure A-1 of instant OA) and 27 Nov 2009 (Annexure A-10 of instant OA) wherein claim of the applicant has been denied for grant of disability element pension.*
- (b) *To issue suitable orders or directions to the respondents for grant of disability element of disability pension from date of its discontinuance (11.01.2001).*
- (c) *To pay the arrears of said difference of disability element alongwith suitable rate of interest as deemed fit and proper by this Hon’ble Tribunal.*
- (d) *Any other relief as considered proper by the Hon’ble Tribunal be awarded in favour of the applicant.*

2. Brief facts of the case are that the applicant was enrolled in the Army on 30.11.1999 as Infantry soldier and invalided out of service on 19.06.2000 in terms of Rule 13 (3) iv of Army Rules, 1954 in low medical category ‘EEE’ having rendered only six months and nineteen days of service due to disability “PULMONARY TUBERCULOSIS-011”. The applicant’s disability was assessed @ 100% for one year and was conceded as attributable to military service. Accordingly he was granted service element for life and disability element for one year i.e. up to 10.05.2001 vide PPO No

D/010386/2002. CDA (P) Allahabad discontinued his disability element w.e.f. 11.05.2001. Later after some delay due to various reasons applicant's Re-Survey Medical Board (RSMB) was conducted at Military Hospital (MH), Bareilly on 10.01.2003 which assessed his disability as NIL% for life with an endorsement in the RSMB proceedings "The disease is completely cured." Vide letter dated 08.08.2003, Records the SIKH Regiment while intimating the applicant for rejection of disability pension claim by CDA (P) Allahabad, erroneously mentioned the disability element at less than 20% which in fact is being used as a ground for the applicant to claim disability pension. Hence this O.A.

3. Submission of Ld. Counsel for the applicant is that since the disability element of the applicant has been assessed at less than 20% for life, the applicant is entitled to disability pension. Relying upon the Hon'ble Apex Court judgments in the case of ***Dharamvir Singh vs. Union of India & Ors***, (2013) 7 SCC 316 and ***Sukhwinder Singh vs. Union of India & Ors***, (2014) STPL (WEB) 468 SC, Ld. Counsel for the applicant pleaded that the applicant rightly deserves to be paid disability pension.

4. On the other hand Ld. Counsel for the respondents submitted that the applicant was granted service element

@ Rs 1275/- p.m. for life w.e.f. 19.06.2000 and disability element @ Rs 1550/- p.m. w.e.f. 11.05.2000 to 10.05.2001. Therefore CDA (P), Allahabad has rightly discontinued the disability element w.e.f. 11.05.2001. He further submitted that on re-categorization i.e. after holding RSMB of the applicant on 10.01.2003 at MH Bareilly his disease was found cured and the disability element was assessed as NIL%. Therefore the applicant is not entitled to disability element. He pleaded the O.A. to be dismissed.

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

6. On careful perusal of IMB and RSMB, it is crystal clear that the IMB at the time of discharge of the applicant, assessed his disability @ 100% for one year starting from 10.05.2000 and the RSMB held in the year 2003, assessed applicant's disability @ NIL% w.e.f. 11.05.2001.

7. It is understood that despite medical advancement, the cure of Tuberculosis is not 100% guaranteed and hence whether a disease of Tuberculosis is getting cured or not will depend on lot of factors as a result of which the patient in some cases can have full cure and in some cases some patient can lose their life also. In this particular case the RSMB of 2003 is very categorical in

opining that the disease is completely cured, Nil % disability. Hence RSMB being primary medical document, the letter from other sources informing that disability is less than 20% has no legal relevance.

8. Apropos the above, since the RSMB has assessed NIL% disability of the applicant, therefore he is not entitled to any disability pension. Wrong endorsement made by Records The Sikh Regiment with regard to disability percentage (**Annexure A-1 of O.A.**) does not entitle the applicant for grant of disability pension.

9. In view of the above, O.A. lacks merit and deserves to be dismissed.

10. It is accordingly **dismissed**.

No order as to costs.

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

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

Dated : December, 2018

gsr