

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION No. 595 OF 2017**

Tuesday, this the 18th day of December 2018

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

No 286193 AC-2 Girja Shanker Yadav (Retd) S/O Late Badri Prasad Yadav, R/O Village & Post-Magrair, Tehsil-Bighapur, Distt-Unnao (UP)-209827.

..... Applicant

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

Versus

1. Union of India, through Secretary, Ministry of Defence (Navy), South Block, New Delhi-110011.
2. Chief of Air Staff, Air HQrs, Vayu Bhawan, New Delhi, Pin-110011.
3. Deputy Director AV-III (Appeals), Air Headquarters, Directorate of Air Veterans, Subroto Parak, New Delhi, PIN-110010.
4. AOC, AFRO, Subroto Park, New Delhi-110010.
5. PCDA (Pension) (AF), Draupadi Ghat, Allahabad (UP)-211014.

.....Respondents

Ld. Counsel for the : **Shri Rajiv Pandey,**
Respondents. Central Govt. Standing Counsel.

ORDER

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

1. The present application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007.

The applicant has sought the following reliefs:-

- (a) *To quash the impugned orders dated 27 Sep 1971 (Annexure A-1), Rejection of First Appeal) and 04 May 1972 (Annexure A-2, Rejection of Second Appeal) wherein claim of the applicant has been denied for grant of disability pension.*
- (b) *To issue suitable orders or directions to the respondents for grant of disability pension to the applicant with effect from 21 Aug 1970 (Date of invalidment from service) in terms of Hon’ble Apex Court judgment of Sukhwinder Singh and Dharamvir Singh.*
- (c) *To issue suitable orders or directions to the respondents for grant of rounding off benefit of his disability element from 50% to 75% with effect from 01 Jan 1996 in terms of Govt of India letters dated 31 Jan 2001, 19 Jan 2010 and 18 Apr 2016 along with Hon’ble Apex Court judgment dated 10 Dec 2014 in Civil Appeal No 418 of 2012 (UoI & Ors vs Ram Avtar).*
- (d) *To pay the arrears of said difference of disability pension along with suitable rate of interest as deemed fit and proper by this Hon’ble Tribunal.*

2. Brief facts of the case are that the petitioner was enrolled in the Indian Air Force (IAF) on 14.03.1968 and medically boarded out from service on 21.08.1970 on the ground “HAVING BEEN FOUND MEDICALLY UNFIT FOR FURTHER SERVICE IN THE IAF”. While posted with No. 2 AMCC, Shillong the applicant was admitted to Military Hospital, Shillong on account of pain in his eyes and on investigation he was found to be suffering from “Pegmentary Disturbance both Eyes Nacula”. The applicant was thereafter medically boarded out of service on

21.08.1970 having rendered 02 years and 161 days of service. Subsequent to rejection of disability pension claim by the respondents, the applicant preferred first and second appeals to the Appellate Authority which were rejected vide order dated 27.09.1971 and 04.05.1972 respectively. Hence this O.A.

3. Ld. Counsel for the applicant submitted that the applicant was enrolled in the IAF in medically and physically fit condition. It was further submitted that a member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged/invalided from service on medical grounds any deterioration in his health is to be presumed due to service. The Ld. Counsel further submitted that the applicant was invalided out in low medical category with disability element @ 50% for life as such he is entitled to disability pension in view of Hon'ble Apex Court judgment in the case of ***Sukhvinder Singh vs. Union of India***, reported in (2014) 14 SCC 364. Ld. Counsel for the applicant further pleaded that the applicant is entitled to rounding off of disability element in terms of Govt of India, Min of Def letter dated 31.01.2001.

4. Per contra, Ld. Counsel for the respondents submitted that the applicant was found unfit for IAF and medically boarded out from service on account of not having mandatory medical standard required for the IAF. He further submitted that medical documents in respect of the applicant have been destroyed after stipulated period of retention and only Long Roll having minimum information is available with the respondents. Ld. Counsel for the respondents further submitted that the applicant has filed the instant original application for grant of disability pension after a lapse of 47 years which in fact has not been properly explained in delay condonation application but since the matter relates to grant of disability pension which is a recurring of action, delay has been condoned.

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

6. In the instant case it is undisputed fact that the applicant has filed the present O.A. after an inordinate delay of 47 years. Though the delay has been condoned on account of recurring cause of action, we proceed to decide the matter.

7. From the record it transpires that medical documents are neither available with the applicant nor with the

respondents and in the absence of requisite medical documents, which are required to ascertain the cause of disability and its percentage and the reasons why the Medical Board considered the disease as neither attributable to nor aggravated by military service (NANA), we are unable to decide the case in absence of the report of Medical Board on this point. It is established fact that the medical documents have been destroyed after elapse of retention period as per Rules on the subject, therefore no relief can be granted to the applicant in the absence of relevant medical documents. This O.A. cannot be decided in terms of judgment of Hon'ble Apex Court in the case of ***Dharamvir Singh vs Union of India & Ors***, reported in (2013) 7 Supreme Court Cases 316 because the relevant medical documents along with the opinion of Medical Board for declaring the disease as NANA are not available. Hence relief claimed cannot be granted in vacuum.

8. In view of the above, the O.A. is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

Dated: December, 2018
gsr

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

