

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

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

**Original Application No. 275 of 2017**

Tuesday, this the 27<sup>th</sup> day of February, 2018

**Hon'ble Mr. Justice S.V.S. Rathore, Member (J)**  
**Hon'ble Lt Gen Gyan Bhushan, Member (A)**

No. 14510875-H Ex-CFN Ram Bahadur Singh, son of Shri Ram Adhar Singh, Village: Boghi, Post: Viswanathganj, District : Pratapgarh (UP)-230 404

.....Applicant

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

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-III, New Delhi – 110011.
3. Directorate General of EME (EME Pers), Master General of Ordnance Branch, IHQ of MoD (Army), DHQ, New Delhi- 110 105
4. OIC Records, EME Records, PIN: 900453, C/O 56 APO
5. PCDA (Pension) Army), Draupadi Ghat, New Camp, Allahabad (UP)-212014

.....Respondents

Ld. Counsel for the : **Shri Sunil Sharma,**  
Respondents **Ld. Counsel for Central Govt.**

**ORDER**

**“Hon’ble Lt Gen Gyan Bhushan, Member (A)”**

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has claimed following reliefs :-

*“(A) To summon the Govt of India, Ministry of Defence letter dated 04 Jun 1985 (Rejection of Second Appeal) and quash or set aside the same alongwith Respondent No. 4 letter dated 30 Jun 2016 (Annexure A-1 & Impugned Order) being arbitrary and bad in the eye of law.*

*(B) To direct the respondents to grant Service element of disability pension to the applicant wef 19 Sept 1979 for life and to pay the arrears of same alongwith suitable rate of interest as deem fit and proper by this Hon’ble Tribunal.*

*(C) To direct the respondents to grant Disability element of disability pension to the applicant three years prior to filing of instant Original Application and thereafter for life alongwith suitable rate of interest on arrears as deem 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. The undisputed facts, as averred by learned counsel for both the parties, are that the applicant was enrolled in the Indian Army (Corps of EME) as Sepoy on 23.10.1972 in medically fit condition and was discharged from service with effect from 19.09.1979 under Army Rule 13 (3) III (v) after completion of 06 years 10 months and 27 days of service. The Medical Board held before discharge considered the disability due to ISCHAEMIC HEART DISEASE, as neither attributable to nor aggravated by military service and assessed it as 40% for

two years. The case for disability pension was rejected by the PCDA (P) Allahabad vide letter dated 19.08.1980. The applicant preferred first appeal to Government of India, Ministry of Defence against the said rejection, which was rejected vide letter/order dated 24.02.1984. The applicant preferred second appeal against the said rejection, which too was rejected by the Govt of India, Ministry of Defence vide letter/order dated 04.06.1985. Thereafter he preferred a fresh petition on 07.02.1993 for reconsideration of his case, but the same was rejected by the Government of India, Ministry of Defence vide letter/order dated 02.02.1993. A representation preferred by the applicant on 06.04.2016 for reconsideration of the matter also met the same fate on 30.06.2016. Aggrieved by denial for grant of disability pension, the applicant has filed this Original Application. The delay in filing of Original Application has been condoned vide order dated 31.07.2017.

3. We have heard Shri Shailendra Kumar Singh, learned counsel for the applicant and Shri Sunil Sharma, learned counsel for the respondents assisted by Maj Piyush Thakran, OIC Legal Cell and perused the record.

4. Learned counsel for the applicant submitted that since the applicant was enrolled in medically fit condition and discharged in Low Medical Category, his disability should be considered as attributable to and aggravated by military service and he should be granted disability pension. He also submitted that the applicant is entitled to benefit of rounding off as per policy letter

dated 31.01.2001. He further submitted that in large number of similar cases, various Benches of the Armed Forces Tribunal have granted disability pension and also given the benefit of rounding off.

5. While filing counter affidavit, the respondents have not disputed that the applicant suffered disability to the extent of 40% for two years, but submitted that the disability due to the disease of "ISCHAEMIC HEART" was considered as neither attributable to nor aggravated by military service, as such, in terms of Para 173 of Pension Regulations, his claim has correctly been rejected. Though initially, learned counsel for the respondents opposed but subsequently he conceded that in view of various judgments of Hon'ble Supreme Court and Armed Forces Tribunal, the applicant is entitled to grant of disability pension.

6. The applicant was enrolled in a medically fit condition but discharged after completion of 06 years 10 months and 27 days of service in low medical category. The respondents have not produced any documents on record to prove that the disability/disease existed at the time of enrolment, the disability has to be considered as attributable to and aggravated by military service in terms of judgment of ***Dharamvir Singh vs. Union of India and others***, reported in (2013)7 SCC 316, ***Sukhvinder Singh vs. Union of India***, reported in (2014) 14 SCC 364, ***Union of India and others vs. Angad Singh Titaria***,

reported in (2015) 12 SCC 257 and ***Union of India and others*** vs. ***Rajbir Singh***, reported in (2015) 12 SCC 264 and the applicant is considered entitled for grant of disability pension.

7. Since the medical board has assessed the disability as 40% for two years, as such keeping in view the judgment of ***Veer Pal Singh vs Ministry of Defence***, reported in (2013) 8 SCC 83, we feel that the case of the applicant should be recommended for Re-survey Medical Board to reassess further entitlement of disability pension, if any.

8. On the issue of rounding off of disability pension, we are of the opinion that the case is squarely covered by the decision of ***Union of India vs. Ram Avtar & Others***, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014).

9. In view of the above the Original Application deserves to be allowed.

10. Accordingly the **O.A. No. 275 of 2017** is **allowed**. The impugned orders passed by the respondents are set aside. The respondents are directed to grant disability pension to the applicant @ 40%, which would stand rounded off to 50% for two years. The respondents are also directed to refer the applicant's case to Re-Survey Medical Board for further entitlement of disability pension, if any. The respondents are further directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. In case the respondents fail to give effect to this order within the

stipulated time, they will have to pay interest @ 9% on the amount accrued from due date till the date of actual payment.

No order as to costs.

**(Lt Gen Gyan Bhushan)  
Member (A)**

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

Dated: Feb , 2018  
LN/-

**Form No. 4**  
**{See rule 11(1)}**  
**ORDER SHEET**  
**ARMED FORCES TRIBUNAL, REGIONAL BENCH,**  
**LUCKNOW**

**Court No.1**

**O.A.No. 275 of 2017**

**Ram Bahadur Singh**  
 By Legal Practitioner for the Applicant

Applicant

Versus

**Union of India & Others**  
 By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><b><u>27.02.2018</u></b>  <b><u>Hon'ble Mr. Justice S.V.S. Rathore, Member (J)</u></b>  <b><u>Hon'ble Lt Gen Gyan Bhushan, Member (A)</u></b></p> <p style="text-align: center;">Judgment pronounced.            O.A. is <b>allowed</b>.</p> <p style="text-align: center;">For orders, see our judgment and order of date passed on separate sheets.</p> <p style="text-align: center;"> <b>(Lt Gen Gyan Bhushan)</b>      <b>(Justice S.V.S Rathore)</b>  <b>Member (A)</b>                      <b>Member (J)</b> </p> <p>LN/-</p>