

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****Original Application No. 299 of 2021****Friday, this the 11th day of February, 2022****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

Ex-Rect Surendra Kumar (No. 14224381) Surendra Kumar S/o
Ex Subedar RR Mehta, currently residing at C-628/10,
Sarvoday Nagar, Indira Nagar, Lucknow

.... Applicant

Ld. Counsel for the: **Shri Vinay Pandey**, Advocate.
Applicant

Versus

1. Union of India through Secretary Ministry of Defence,
South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarter, Ministry
of Defence, South Block, New Delhi-110011.
3. Officer-in-Charge, Records and Commandant of 01 Signal
Training Centre, Jabalpur.
4. Principal Controller of Defence Accounts, Draupadi Ghat,
Allahabad.

... Respondents

Ld. Counsel for the : **Dr. Shailendra Sharma Atal**, Advocate
Respondents.

ORDER (Oral)

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/pass an order or direction to the respondents to grant him disability pension as assessed by Re-Survey Medical Board with effect from 13.02.1980 @ 40% till 31.12.1995 in terms of Regulation 173 of Pension Regulations, 1961 (Part-I.

(b) Issue/pass an order or direction to the respondents to grant him disability pension to the extent of 50% as per government of India letter dated 31.01.2001 issued for broad banding of disability pension with effect from 01.01.1996 till first payment made in compliance of Hon'ble AFT judgment order dated 21.11.2017 passed in Original Application No 82 (J)/2017 inre M.A. No. 381 of 2016 titled as Ex-Rect Surendra Kumar vs Union of India and others.

(c) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

(d) Allow this application with costs.

2. Briefly stated facts of the case are that the applicant was enrolled in the Corps of Signals of the Indian Army on 31.07.1975 and was invalided out of service in medical category 'EEE' on 09.10.1977 due to disability 'Immature Personality (ID-301)' under Army Rule 13 (3) (IV) having rendered 02 years and 71 days of service. The Invaliding Medical Board (IMB) held on 07.09.1977 at Military Hospital, Jabalpur had assessed his disability @ 11-14% for 02 years and opined the it as constitutional in nature and not related to military service.

Disability pension claim was rejected vide letter dated 13.02.1978 on the ground of disability being NANA and below 20%. This fact was conveyed to the applicant vide letter dated 04.03.1978 with an advice to prefer an appeal within 06 months which he failed to do. Later, applicant preferred two appeals dated 28.06.2011 and 30.08.2011 which were not considered being time barred. In the year 2016, he filed O.A. No. 82/2017 in AFT, Regional Bench, Jabalpur which was allowed on 21.11.2017 directing the respondents to grant 50% disability pension for two years with further direction to the respondents to hold applicant's RSMB. Accordingly, he was paid disability pension for two years and RSMB was carried out at MH, Jabalpur on 05.06.2018 wherein his medical disability was assessed @ 40% for life and he was granted disability pension to the extent of 50% (duly rounded off) vide PPO No D/002452019 dated 18.12.2019 (Annexure CA-13). Applicant has filed this O.A. for grant of disability pension for the intervening period i.e. 13.02.1980 to 04.06.2018.

3. Learned counsel for the applicant pleaded that at the time of enrolment the applicant was found fit in medical category SHAPE-I. He further submitted that whatever ailment the applicant suffered is due to stress and strain of military service. The learned counsel for the applicant further submitted that applicant's case needs to be adjudicated in terms of para 173 of

Pension Regulations for the Army, 1961 (Part-I), para 423 of Entitlement Rules for Casualty Pensionary Awards, 1982 and Guide to Medical Officers-2008 and he should be granted disability pension for the intervening period.

4. On the other hand, learned counsel for the respondents submitted that initially the applicant was disallowed grant of disability pension as his disability was regarded as constitutional in nature and not related to service condition, however, in compliance of AFT, Jabalpur order dated 21.11.2017 he was granted 50% disability pension for two years. He further submitted that keeping in view that applicant was eligible for disability pension for two years and RSMB being held on 05.06.2018, the applicant is not entitled to disability pension for the intervening period. He pleaded for dismissal of O.A.

5. Heard learned counsel for the parties and perused the material placed on record.

6. It is not in dispute that the applicant was granted disability pension for two years vide AFT, Jabalpur order dated 21.11.2017. The RSMB carried out on 05.06.2018 assessed his disability 'Immature Personality' @ 40% for life which is applicable from the date of RSMB. Accordingly, he is in receipt of 50% disability pension w.e.f. the date on which his RSMB was conducted i.e. 05.06.2018. Applicant's claim is that he is

entitled to disability pension for the intervening period i.e. from 13.02.1980 to 04.06.2018 based on this Tribunal's order dated 25.11.2021 and RSMB dated 05.06.2018.

7. The applicant had filed O.A. in AFT, Jabalpur on 31.01.2016 for grant of disability pension which was allowed on 21.11.2017 and modification order was issued on 26.04.2019. We have gone through the judgment dated 21.11.2017 and modification order dated 26.04.2019 and we find that since the medical board has not assessed degree of his disablement for the intervening period, therefore the applicant is not entitled to disability pension for the period he was not assessed by the medical board.

8. We further observe that in the year 1977 the applicant was invalided out of service with disability element @ 11-14% for two years neither attributable to nor aggravated by military service being the disability constitutional in nature/not related to military service, but the applicant had filed O.A. in the year 2016 after lapse of 39 years which was allowed to the extent of granting him disability pension for two years and holding of RSMB, which when held assessed his disability @ 40% for life w.e.f. 05.06.2018. Accordingly, he was granted disability pension @ 40% for life rounded off to 50% for life which he is in receipt of.

9. The applicant has made reliance of this Tribunal's order dated 25.11.2021 passed in Ex-A/59 of 2021 inre O.A. No. 231 of 2017, ***Kalyan Singh Rawat vs Union of India & Ors.*** We have perused the above order and we find that the aforesaid order was passed in execution application and not in O.A. The applicant has himself approached the Tribunal after a long period for which no one is responsible. Therefore, we are of the view that the O.A. being filed with huge delay could have been dismissed on delay in latches had it not been a recurring cause of action being pensionary matter.

10. Since the applicant has approached the Tribunal in the year 2016 and disability pension was granted thereafter, he is not entitled to disability pension for the intervening period which he is claiming.

11. In view of the above, the O.A. is **dismissed** being devoid of merit.

12. No order as to costs.

13. Pending application(s), if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 11.02.2022
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