

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

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

**ORIGINAL Application No 460 of 2017**

Tuesday, this the 22<sup>nd</sup> day of January 2019

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

Bhagwat Prasad Lal, son of Late Raghunath Prasad Lal,  
resident of Village-Nariyanva, Post-Alawal Pur, P.S.-Poora  
Kalandar, Tehsil-Sadar, District-Faizabad.

.....Applicant

Ld. Counsel for: **Col (Retd) A.K. Srivastava**, Advocate  
the applicant

Versus

1. Union of India through its Secretary, Ministry of  
Defence, South Block, New Delhi-110011.
2. Chief Controller of Defence Accounts (Pension),  
Allahabad, U.P.
3. Incharge Records Officer, Office of Armed Corps  
Abhilekh, Ahamad Nagar, Maharashtra, Pin-900476,  
through 56 A.P.O.
4. Commanding Officer, Armed Core, Ahamad Nagar,  
Maharashtra, care of 56 A.P.O., Pin-900476.

..... Respondents

Ld. Counsel for the : **Shri Ashish Kumar Singh**,  
Respondents Central Govt Counsel.

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

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

- (i) *Issue an order/direction to direct the respondent to release the disability pension to the applicant arising out of discharge from service on 04.11.1966 by the order of Army Commander, Ahmad Nagar, Maharashtra on the ground of physical disability occurred during the army service from the due date within a short reasonable period to be prescribed by this Hon’ble Tribunal along with interest at market rate to be compounded periodically from the due date till the date of actual payment in the interest of justice.*
- (ii) *Direct the respondents to consider and decide the petitioner’s representation to release the disability pension arising out of discharge from service as contained in Annexure No. 1 to this Original Application within a short reasonable period to be prescribed by this Hon’ble Court in the interest of justice.*
- (iii) *To pass any other order or direction which the Hon’ble Tribunal may deem just and proper under the circumstances of the case as also in the interest of justice.*
- (iv) *Allow this original application with costs.*

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 18.10.1965 and invalided out of service w.e.f. 05.11.1966 under Rule 13 (3) (iv) of Army Rules, 1954 on account of disability ‘BRONCHIAL ASTHMA (241)’ after having completed only 01 year and 17 days of service. The records reveal that letter dated 28.04.2016, submitted by the applicant to PCDA (P) Allahabad for grant of disability pension, was replied vide order dated 26.05.2016. It appears that after having slept for over 50 years, the applicant has approached this Tribunal for grant of disability pension in the year 2017. Since payment of disability pension involves recurring cause of action, the delay in filing Original

Application was condoned vide order dated 12.10.2017. Hence this O.A.

3. Ld. Counsel for the applicant pleaded that the applicant was enrolled in the Army in medically and physically fit condition and was invalided out of service in low medical category. It was further pleaded that a member is to be presumed in sound physical and mental condition upon entering service if there is no note or record in his service documents at the time of entry. In the event of his subsequently being discharged from service on medical grounds, any deterioration in his health is to be presumed due to service conditions. He submitted that the disability of the applicant is due to stress of military service and should be accepted as aggravated by military service. He pleaded for disability pension to be granted to the applicant.

4. On the other hand, Ld. Counsel for the respondents submitted that though the medical documents of the petitioner are not available, however, from the records available it appears that the disability pension claim was rejected by PCDA (P) Allahabad vide order dated 21.01.1967 as his disability was regarded as neither attributable to nor aggravated by military service (NANA), therefore the pension sanctioning authority has rightly rejected disability pension claim of the applicant. He further pleaded that para 173 of Pension Regulations for the Army, 1961 (Part I) puts an embargo for grant of disability pension to the applicant as his disability is

NANA in the instant case. Relying upon similarly situated cases the Ld. Counsel for the respondents submitted that O.A. No 95 of 2014 (AFT, Principal Bench), **Smt Dulari Devi widow of Late Swr Rajbir Singh Rana**, O.A. No. 11 of 2010 (AFT, Jaipur Bench), **Smt Nasim Bano widow of Late Swr Usman Ali Khan** and O.A. No. 175 of 2010 (AFT, Jaipur Bench), **Ex Swr Mohd Aslam** were dismissed on account of non availability of RMB/IMB. He pressed for O.A. to be dismissed.

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

6. At the very outset it has been observed that the applicant was invalided out of service on 05.11.1966 on account of suffering from "BRONCHIAL ASTHMA". The personal file of the applicant does not contain medical documents which are necessary for examination of certain factual position of the disease, the opinion of Medical Board for reasons declaring the disease as NANA, as well as percentage of the disability. The counter affidavit filed by the respondents also does not contain the medical documents. The respondents have stated during hearing that the medical documents of the petitioner have been destroyed and are not available. Therefore, neither the applicant nor the respondents have placed on record the medical documents i.e. IMB of the applicant. Thus in the absence of medical documents no order can be passed by this Tribunal in vacuum.

7. In counter affidavit filed by the respondents it has been brought out that since the applicant is not a pensioner, his service documents have been destroyed on completion of its mandatory retention period of 25 years in accordance with Para 592 to 596 of Defence Service Regulations for the Army, 1987 (Revised Edition).

8. In view of the foregoing it is our considered opinion that we are not in a position to accept that the disease of the applicant was either attributable to or aggravated by military service because of following reasons:-

(i) The IMB proceedings are not available and therefore the opinion of the medical board as to why the disease could not be detected at the time of enrolment cannot be scrutinised to decide attributability.

(ii) The delay of over 50 years after discharge in 1966 is the primary reason for destruction and non availability of IMB proceedings.

9. 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)**

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

Dated : January, 2019

gsr