

Reserved Judgment**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****Original Application No 450 of 2017**

Wednesday, this the 9th day of January 2019

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)

Hon'ble Air Marshal BBP Sinha, Member (A)

No 3182818W Ex Sepoy Suresh Singh, S/o Sri Kanti Singh,
R/o Vill- Kutubpur, Post Office- Jakheta,
Distt – Buland Shahar (U.P.)

.....Applicant

Ld. Counsel for the: **Shri K.K. Misra, Advocate**
Applicant

Verses

1. Union of India, through its Secretary,
Ministry of Defence, New Delhi.
2. Chief of the Army Staff, Army Headquarters, New Delhi.
3. Officer-In-Charge, Records, The Jat Regiment,
PIN – 900496, C/o 56 APO.
4. PCDA (Pension), Allahabad

.....Respondents

Ld. Counsel for the : **Shri A.N. Tripathi,**
Respondents **Central Govt. Counsel**

ORDER

“Per 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. The applicant has claimed the reliefs as under:-

“(i) To direct the respondents to grant 20% disability pension to the applicant from Sep 2005, that is from the date it was stopped by PCDA (P), Allahabad.

(ii) To direct the respondents to round of this disability pension to 50% as per the policy on the subject and thereafter pay arrears of pension with interest.

(iii) Any other relief which the Honble Tribunal may consider appropriate may be granted in favour of the applicant.

(iv) Cost of the application be awarded to the applicant.”

2. The factual matrix of the case is that the applicant was enrolled in the Army on 24.03.1988. He was admitted in Military Hospital and was diagnosed a case of ‘**Pulmonary Tuberculosis**’ and was placed in low medical category ‘CEE’. Due to non availability of sheltered appointment, he was discharged from service on 18.11.1992 under Rule 13 (3) III (v) of the Army Rules, 1954. His disability was considered as attributable to Military Service and was assessed @ 60% for two years from 19.11.1992 to 04.10.1994 by Release Medical

Board (RMB). Subsequently he received service element of pension for life and his disability element of disability pension was based on the recommendation of Review Medical Board. His Review Medical Board was held from time to time and his disability was assessed @ 20% up to September 2005. He was in receipt of disability pension from November 1992 till September 2005. Thereafter the final Review Medical Board held on 12.09.2005 assessed his disability @ 1-5% and his disability pension was thereafter stopped by the respondents w.e.f. 01.10.2005. He preferred statutory appeal which was rejected by the respondents vide order dated 20.09.2016. Being aggrieved, the applicant preferred the present O.A.

3. Learned Counsel for the applicant pleaded that disability of the applicant was originally assessed @ 60% by RMB in the year 1992. Thereafter the applicant has been assessed by periodical Medical Boards from time to time and he has received disability element @ 20% upto 30.09.2005. The final Review Medical Board of the applicant held on 12.09.2005 assessed his disability @ 1-5%. His claim for grant of disability pension thereafter was rejected by the respondents vide letter dated 21.01.2006. He pleaded that the applicant is still suffering from the disease hence he is entitled to disability pension. He further submitted that in similar cases, Hon'ble Apex Court and

various Benches of the Armed Forces Tribunal have granted disability pension, as such the applicant is entitled to disability pension and its rounding off to 50% as per Government Policy dated 31.01.2001

4. **Per Contra**, learned counsel for the respondents submitted that the applicant was downgraded to low Medical Category 'CEE' for diagnosis '**PULMONARY TUBERCULOSIS**' on 07.06.1991 and his disability was considered as attributable to Military Service. Due to non availability of sheltered appointment commensurate to his rank, the applicant was discharged from service on 18.11.1992 under Rule 13 (3) III (v) of the Army Rules, 1954. Prior to discharge, he was brought before RMB and his disability was assessed @ 60% for two years. His disability pension was reduced to 50% by Medical Advisor (Pension) vide Rule 17 and 27 (c) of Entitlement Rules for Casualty Pensionary Awards 1982 and he was granted disability pension consisting of service element and disability element from 19.11.1992 to 04.10.1994 and the applicant is in receipt of service element for life vide PPO No D/002022/1993 dated 20.09.1993. Thereafter as per recommendation of Re-survey Medical Boards, the applicant was granted disability element of pension. Based on RSMB held in the year 2000, he received disability element @ 20% till 30.09.2005. He submitted

that the last periodical RMB assessed the disability of the applicant @ 1-5%, hence the applicant was not granted disability element w.e.f. 01.10.2005 being less than 20%. Thereafter, the applicant preferred appeal dated 14.09.2016 against rejection of disability pension which was rejected vide letter dated 20.09.2016. Further submission of learned counsel for the respondents is that as per Rule 186 (2) of Pension Regulations an individual who was initially granted disability pension but whose disability is re-assessed below 20% subsequently shall cease to draw disability element of disability pension from the date it falls below 20%. Accordingly, he is continuously drawing service element of disability pension for life vide PPO dated 20.09.1993. On the point of rounding off, he submitted that vide Govt of India, Min of Def letter dated 15.09.2014, he can be considered for benefits of broad banding from 01.01.1996 to 30.09.2005. In this regard, the applicant was asked to submit necessary documents for rounding off of his disability pension but he never submitted the same. Since the applicant's disability was assessed at less than 20% from 01.10.2005 by RMB , hence in terms of Rule 186 (2) of Pension Regulations for the Army, 1961 (Part 1), the applicant is not entitled to disability pension. He pleaded that the O.A. be dismissed.

5. We have heard learned counsel for the parties and perused the material placed on record.

6. This is a case where the RSMB had initially assessed the disability of the applicant @ 60% for two years from 19.11.1992 to 04.10.1994 and considered it as attributable to Military Service. The disability percentage of the applicant kept reducing in subsequent periodical RSMBs and the RSMB held in the year 2000 assessed his disability @ 20% for four years. Hence he has received disability element till 30.09.2005. His last RSMB held on 12.09.2005 assessed his disability @ 1-5% from 01.10.2005. Accordingly, disability element was stopped.

7. Thus the issues before us are simple and straight forward i.e.

(a) Is the applicant entitled to rounding off of his disability element till 2005.

(b) Is the applicant entitled to disability element assessed @ 1-5% by RSMB held on 12.09.2005.

8. The law on the point of grant of disability pension and its rounding off is no more res integra and the law on this matter has been well settled by Hon'ble Apex Court in the case of ***Union of India and Ors vs Ram Avtar & ors (Civil appeal No***

418 of 2012 dated 10th December 2014). However, the law on limitations is also well settled as per judgment of Hon'ble Apex Court in the case of **Shiv Dass vs. Union of India** reported in 2007 (3) SLR 445 which has observed that claim for pension is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. In para 9 of the judgment, Hon'ble Apex Court has held as under:-

"In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone."

9. Additionally the Hon'ble Supreme Court vide order dated 13.07.2018 passed in Civil Appeal Diary No 21811 of 2018, **Union of India through its Secretary & ors vs. Sgt. Girish Kumar** has stayed the decision of the Larger Bench of Armed Forces Tribunal, Principal Bench, New Delhi, in the case of **Ex Sergeant Girish Kumar (supra)** on the matter of extending the benefits

of rounding off from 1996. For convenience sake, order dated 13.07.2018 is excerpted as under:-

*"Leave to appeal granted.
Delay condoned.
Issue notice.
In the meanwhile, there shall be a stay of operation of the impugned judgment and order passed by the Armed Forces Tribunal. However, learned Additional Solicitor General says that he will advise the Union of India to release the disability pension for a period of three years prior to the date of filing the original application before the Tribunal or the date of retirement as may be applicable."*

10. Thus in the final analysis and in the light of above judgment the applicant is not entitled to the benefit of rounding off of his disability element retrospectively from 1996 to 2005. As far as post 2005 disability is concerned, it has been reduced to 1-5% by RSMB, hence it is relevant to mention Rule 186 of Pension Regulation for the Army, 1961 (Part- 1) which reads as under:-

"186 (1) An individual who is invalided out of service with a disability attributable to or aggravated by service but assessed at below 20 per cent shall be entitled to service element only.

(2) An individual who was initially granted disability pension but whose disability is re-assessed at below 20% subsequently shall cease to draw disability element of disability pension from the date it falls below 20 per cent. He shall however continue to draw the service element of disability pension."

(emphasis supplied)

11. In view of the above, we are of the considered opinion that since the last periodical RSMB has assessed the disability

of the applicant at less than 20% i.e. 1-5%, the applicant therefore has no claim to disability element beyond 01.10.2005 as upheld by Hon'ble Apex Court in the case of **Balbir Singh Vs UOI & Others** in Civil Appeal No 3086 of 2012 ,decided on 08.04.2016. The Hon'ble Aapex Court has held that “ *it is not in dispute that the appellant was discharged from service/invalided out of service on account of 100% permanent disability suffered by him during the course of service. It is also not in dispute that the said disability was held to be attributable to military service. That the disability was subsequently reduced to fall below 20% is also common ground. In as much as the authorities stopped the disability pension, they committed no wrong. Stoppage of the disability pension did not however mean that the service element of the pension could also be stopped.*”

12. Thus the law is clear that if the disability percentage reduces below 20% in Review Medical Board then the disability element of disability pension can be stopped. However, the service element of disability pension shall continue for life. A conceptuous of our observations made hereinabove is that the applicant has failed to make out a case in his favour for granting disability element of disability pension beyond 01.10.2005. Hence we don't find anything wrong or illegal in the rejection of his disability element of disability pension beyond 01.10.2005.

13. Accordingly, the Original Application No. 450 of 2017 having no force is hereby **dismissed**.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

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

Dated: January, 2019
ukt/-

Original Application No 450 of 2017,
No 3182818W, Sepoy Suresh Singh

Date of enrolment -24.03.1988
Date of discharge -18.11.1992 under Rule 13 (3) III (v) of Army Rules 1954.

Disease - **PULMONARY TUBERCULOSIS**,
Considered as attributable to Military Service.

Medical Category & - CEE (Permanent), RMB Assessed the disability @60% for two years from 19.11.1992 to 04.10.1994. However The same was reduced to 50% by Medical Advisor, PCDA (Pension).
Further Periodical RSMB assessed the disability as under:-

<u>Recommended By Med Board</u>	<u>Recommended by PCDA</u>	<u>Period</u>
30%	30%	05.10.1994 to 02.06.1997.
30%	20%	03.06.1997 to 19.02.1999.
30%	20%	20.02.1999 to 19.01.2001.
20%	20%	20.01.2001 to 30.09.2005. (RSMB assessed disability @ 20% for 5 yrs. gtd dis pen for 4 yrs only).

Period Reassessment Medical Board Held on 12.09.2005 assessed the disability @ 1-5% from 01.10.2005 for life. Claim for Disability Pension was rejected by the respondents vide order dated 21.01.2006 being less than 20%. The applicant is receipt of service element of disability pension for life vide PPO dated 20.09.1993.

