

E-Court No. 1
RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 484 of 2020

Friday, this the 04th day of June, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No. 11933 Rfn Govind Singh Rawat (Retd) son of late Shri Ratan Singh Rawat, resident of vill-Gurundi Patty-Khatsyym, PO-Chonrkhal, Distt-Pauri Garhwal (UK) residing now at C/O Capt Gamal Singh Rawat, Uttranchal Enclave, Sect-I, H. No. 07, PO-Haripur Nawada, Distt-Dehradun (UK)-248005.

.... Applicant

Ld. Counsel for the: **Shri Virat Anand Singh, Advocate**
Applicant

Versus

1. Union of India and others through The Secretary Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated HQ of MoD (Army) DHQ, PO-New Delhi-110011.
3. Officer Incharge, Records, The Garhwal Regimental Centre, Lansdowne, UK.
4. Officer Incharge, Disability pension, PCDA, Draupadi Ghat, Allahabad (UP).

... Respondents

Ld. Counsel for the: **Dr. Shailendra Sharma Atal,**
Respondents **Sr. Central Govt Counsel.**

ORDER

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:-

(i) To issue order or directions to the respondents to grant War Injury Pension to the applicant for the disability he had, with effect from 07.05.1947 (date of discharge : 06.04.1947) with all consequential benefits including balance of arrears till date of payment.

(ii) Any other relief as considered proper by the Hon'ble Tribunal be awarded in favour of the applicant.

(iii) Allow this application with cost of Rs 50,000/-.

2. The brief facts necessary for disposal of the case are that the applicant was enrolled in the Third Royal Garhwal Battalion of British Army on 06.09.1941 and was injured in a battle in Italy during World War-II. Consequently, he was invalided out from service on 06.04.1947 and granted disability pension w.e.f. 07.04.1947 for life vide pension order No. 7 Pt IV SL No 6055 dated 25.12.1947 which was revised subsequently. The applicant is in receipt of disability pension for the disability 'Splinter Wound (HE) of the right knee' as brought out in the Invaliding Medical Board (IMB) dated 31.01.1947 (Annexure A-I to the O.A.). The applicant is claiming war injury pension instead of disability pension. Hence this O.A.

3. Learned counsel for the applicant pleaded that disability of the applicant occurred on 03.10.1944 in Italy during World War-II, therefore he is entitled to war injury pension in place of disability

pension as per various judgments pronounced by Armed Forces Tribunals.

4. On the other hand, learned counsel for the respondents contended that the applicant is not entitled to war injury pension in terms of Ministry of Defence letter dated 24.02.1972 which stipulates that policy is applicable to disabled veterans wounded during wars and operations of 1971, 1965 and 1947-48. He further submitted that since applicant has sustained injury during World War-II, i.e. pre-independence, he is not entitled to war injury pension. Respondents learned counsel further pleaded that the present case pertains to pre-Independence and medical documents related to applicant have already been destroyed after holding for fifty years, therefore, in the absence of relevant medical documents the case cannot be decided at this stage. He pleaded for dismissal of the O.A.

5. We have heard Ld. Counsel for the parties and perused the records.

6. This is a case where an Infantry Army soldier (3rd Royal Garhwal Rifles of the British Army) took active part in World War-II in Italy during 1944 and suffered disability leading to invaliding out from service in 1947. We have perused medical records produced by applicant which clearly show that applicant was invalided out from service due to splinter wound injury in his right leg knee and the medical board had recommended him to be invalided out in category 'E'. In this regard we have perused the opinion

expressed by Surgical Specialist which clearly indicates that since the applicant had become unfit to serve in the army, therefore, he was recommended to be invalided out from service in category 'E'. For convenience sake, opinion of the surgical specialist (though not completely legible) is excerpted as under:-

“Patient sustained a S.W. (H.E.) of the right knee fracture of the femur and skull on 03 Oct 44.

Fracture of the femur was a comminuted fracture at the end of the bone involving the joint.....and sequestrum were removed.

x x x x x x x x x x

He is unlikely to be left in the service.

I advise cat E”.

7. From the aforesaid opinion and material available on record, it appears that the disability suffered by the applicant during World War-II (during 1944 in Italy) is war injury, therefore he is entitled to receive war injury pension as the IMB has assessed his disability as attributable to military service in field area.

8. We would like to further add that the respondents have tried to justify non grant of war injury pension to applicant by quoting an old Govt letter but this justification is just for the sake of justification and facts are so apparent to us that it clearly shows non application of mind on the subject matter as huge correspondence is on the record which created confusion at all levels. We hold that injury received on 03.10.1944 was caused on

RESERVED**Form No. 4****{See rule 11(1)}****ORDER SHEET****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****O.A. No. 484 of 2020****Rfn Govind Singh Rawat (Retd)**
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><u>04.06.2021</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p>Heard Shri Virat Anand Singh, learned counsel for the applicant Dr. Shailendra Sharma Atal, learned counsel for the respondents.</p> <p>Original Application is allowed.</p> <p>For order, see our judgment passed on separate sheets.</p> <p>Misc. Applications, pending if any, shall be treated as disposed accordingly.</p> <p>(Vice Admiral Abhay Raghunath Karve) Member (A)</p> <p>(Justice Umesh Chandra Srivastava) Member (J)</p> <p>rathore</p>