

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

O.A. No. 478 of 2019

Ex Sep Ram Niranjana

Applicant

By Legal Practitioner for the Applicant

Versus

Union of India & Others

Respondents

By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>17.03.2021</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>1. Heard Shri Veer Raghav Chaubey, learned counsel for the applicant and Shri Amit Jaiswal, learned counsel for the respondents.</p> <p>2. 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:-</p> <p style="padding-left: 40px;"><i>(i) This Hon'ble Tribunal may kindly be pleased to direct the respondents to grant the disability pension to the applicant w.e.f. 22.09.1968.</i></p> <p style="padding-left: 40px;"><i>(ii) Pass any other order or direction which this Hon'ble Tribunal may deem fit and proper under the circumstances of the case.</i></p> <p>3. Brief facts of the case are that the applicant was enrolled in the Army on 03.11.1965 in terms of engagement of 10 years of colour and 05 years reserve service and was discharged from service after rendering 02 years, 10 months and 26 days of service on 29.09.1968 on medical grounds. Representations for grant of disability pension were submitted by applicant, after lapse of 49 years from the date of discharge on 22.03.2016, 28.03.2016 (Annexure No A-2- 4 to the O.A.). Further, applicant has submitted a petition for grant of disability pension in the year 2016. Applicant's case for grant of</p>

disability pension was examined by ASC Records (South) and certain documents were asked by them for processing case of disability pension but applicant has failed to provide any documents. The present O.A. has been filed by the applicant for grant of disability pension on the basis of data available in the Long Roll and Discharge Book since medical documents have neither been filed by applicant nor by respondents.

4. Ld. Counsel for the applicant pleaded that at the time of enrolment, the applicant was found medically and physically fit for service in the Army and there was no note in his service documents that he was suffering from any disease/disability at the time of enrolment. His further submission is that the disease of applicant was contracted during the service; hence it should be either attributable to or aggravated by Army Services. The Ld. Counsel for the applicant further submitted that since the applicant was enrolled in medical category 'AYE' and was discharged from service on medical grounds which shows that he was discharged from service in lower medical category than 'AYE', he is entitled to disability pension.

5. On the other hand, Ld. Counsel for the respondents submitted that medical documents in respect of the applicant have been destroyed after stipulated period of retention in terms of para 595 of the Regulations for the Army, 1987 (Revised Edition) and only Long Roll having minimum information is available with the respondents. Ld. Counsel for the respondents further submitted that the applicant has filed the instant original application for grant of disability pension after a lapse of 50 years which in fact has not been properly explained in delay condonation application but since the matter relates to grant of disability pension which is a recurring of action, delay has been condoned. He further submitted that the applicant did not complete 15 years of mandatory service for earning service pension and disability pension is granted to an individual consisting of service as well as disability element on account of disability which is attributable to or aggravated by military service in non battle casualty and is assessed @ 20% or above. Further submission of Ld. Counsel

for the respondents is that in absence of medical documents no factual facts can be established at this point of time. He pleaded for dismissal of the O.A.

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

7. In the instant case, it is undisputed fact that the applicant has filed the present O.A. after an inordinate delay of approx 50 years. Though the delay has been condoned on account of recurring cause of action, we proceed to decide the matter on the basis of available records.

8. From the record it transpires that medical documents are neither available with the applicant nor with the respondents and in the absence of requisite medical documents, which are required to ascertain the cause of disability and its percentage and the reasons why the Medical Board considered the disease as neither attributable to nor aggravated by military service (NANA), we are unable to decide the case in absence of the report of Medical Board on this point. It is established fact that the medical documents are destroyed after lapse of mandatory retention period as per rules on the subject, therefore no relief can be granted to the applicant in absence of relevant medical documents. This O.A. cannot be decided in terms of Hon'ble Apex Court judgments on the subject as the relevant medical documents, along with the opinion of Medical Board for declaring the disease as NANA, are not available. Hence relief claimed cannot be granted in vacuum.

9. In view of the above, the O.A. is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

10. No order as to costs.

11. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)