

RESERVED
Court No. 1

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

Original Application No. 668 of 2017

Monday, this the 15^h day of July, 2019

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

No. 13685854 M Radha Raman Shukla
S/o Late Tulsi Ram Shukla
R/o Village Shankar Mana Patti
Post – Teekar Maafi
Distt – Amethi (earlier Sultanpur)
Presently residing at A-13, Aavas Vikas Colony, Amethi
Distt – Amethi.

.....Applicant

Ld. Counsel for : **Shri Birendra Narain Shukla,**
the Applicant **Advocate**

Versus

1. Union of India, through Secretary,
Ministry of Defence,
New Delhi - 110011.
2. Controller of Defense Account (Pension),
Draupadi Ghat, Allahabad.
3. Officer-in-Charge, Pension Group
Senior Record Officer,
Records Brigade of the Guards Pin 900746, C/o 56 APO.
.....Respondents

Ld. Counsel for the : **Shri Namit Sharma,**
Respondents **Ld. Counsel for Central Govt.**

ORDER

“Per Hon’ble Mr. Justice S.V.S. Rathore, Member (J)”

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) The Hon’ble Tribunal may kindly be pleased to issue an order or direction quashing/setting aside the orders stopping the disability pension of the applicant w.e.f. 27.02.1993 after summoning the same from the opposite parties.*
- (ii) The Hon’ble Tribunal may kindly be pleased to issue an order or direction commanding the opposite parties to make the payment of disability pension to the applicant for the period from 27.02.1993 to 7.1.2008 alongwith interest and to revise the disability pension admissible to the applicant.*
- (iii) The Hon’ble Tribunal may kindly be pleased to issue any other order or direction which may be deemed just and proper under the facts and circumstances of the case.*
- (iv) The Hon’ble Tribunal may kindly be pleased to direct the respondents to pay cost of the O.A.”*

2. The brief facts of the case are that the applicant was enrolled as recruit in the Army on 20.01.1984 in medically fit condition and was invalidated out from service with effect from 07.01.1985 in low medical category EEE by the Medical Board for “**TUBERCULOSIS LYMPHADENITIS**” which considered the disability @ 100% for a period of 2 years. Thereafter, the applicant was brought before Review Medical Boards in the subsequent years in which his disability was assessed 80%, 60% and 20% and thus disability pension continued till 1993. In the year 1993, the applicant was brought before Review Medical Board and the medical board assessed the disability 6-10% (less than 20%) for a period of 10 years and on

the recommendation of medical board, pension sanctioning authority stopped disability pension from 27.02.1993 to 26.02.2003. The next RSMB of the applicant was due on 27.02.2003 but it could not be carried out as the applicant did not report to the medical authority till 07.01.2008 despite repeated reminder by Records. Thereafter, in the year 2008, the medical board held on 08.01.2008 at Base Hospital Lucknow and the disability was assessed @ 20% for life and accordingly, the applicant is in receipt of the disability pension w.e.f. 08.01.2008.

3. Learned counsel for the applicant submitted that since the applicant was enrolled in medically fit condition and thereafter he has been invalided out from service in Low Medical Category, hence he is entitled to disability pension for the period from 27.02.1993 to 07.01.2008 also and thus, action of the respondents stopping the disability pension of the applicant from 27.02.1993 to 07.01.2008 is against the principles of natural justice. Learned counsel for the applicant prayed that the applicant be granted disability pension for the period from 27.02.1993 to 07.01.2008 also.

4. Learned counsel for the respondents submitted that since the disability of the applicant from 13.02.1993 was re-assessed less than 20% for 10 years by pension sanctioning and adjudicating authority i.e. PCDA (P) Allahabad, hence it was stopped and the applicant was informed to prefer an appeal within 06 months from the date of rejection of disability pension but no appeal was preferred against the rejection order of disability pension. Hence, the applicant has not

exhausted the departmental remedies available to him. The next RSMB of the applicant was due on 27.02.2003 but it could not be carried out as the applicant did not report to the medical authority till 07.01.2008 despite repeated reminders by Record Office. The applicant eventually reported at Base Hospital, Lucknow on 08.01.2008 and his Re-Survey Medical Board was thereafter conducted which assessed his disability @ 20% for life and accordingly the applicant is getting disability pension rounded off to 50% for life w.e.f. 08.01.2008 vide PPO dated 13.07.2016. Hence, the applicant is not entitled for arrears of disability pension for the period from 28.02.1993 to 07.01.2008 firstly being less than 20% as per Regulation 173 of Pension Regulations for the Army 1961 (Part-I) and secondly for not taking any initiative to appeal, represent or appear for 2003 RSMB.

5. Heard learned counsel for the parties and perused the record.

6. The applicant has approached this Tribunal on 27.10.2017 by filing this O.A. for grant of disability pension for the period from 28.02.1993 to 07.01.2008. In view of the above, we are of the considered opinion that the applicant is not entitled to arrears of disability pension for the period from 28.02.1993 to 07.01.2008 in view of pronouncement of Hon'ble Apex Court in the case of *Shiv Dass vs. Union of India & Ors* reported in 2007 (3) SLR 445 in which the Hon'ble Apex court has held that arrears of disability pension are restricted to three years prior to filing of the O.A., if the same has been filed belatedly and delay is condoned. Since the

applicant has approached this Tribunal after elapse of more than 11 years, he is not entitled to any arrears at this stage due to law of limitations as settled in the case of *Shiv Dass* (supra).

7. Accordingly, the Original Application lacks merit, deserves to be dismissed and is accordingly **dismissed**.

(Air Marshall BBP Sinha)

Member (A)

Dated: July, 2019

ANB/SB

(Justice SVS Rathore)

Member (J)