

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 505 of 2021**Wednesday, this the 13th day of July, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Ex. 694601 AC Delip Kumar Dixit

S/o Late Shri B.L. Dixit

R/o IG-06 Single Story Colony, Barra-06, Kanpur – 208027

..... Applicant

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

Versus

1. Union of India, through Secretary, Ministry of Defence (Air Force), South Block, New Delhi.
2. Chief of the Air Staff, Air Headquarters, Vayu Bhawan, New Delhi – 110106.
3. Director, Directorate of Air Veterans, Air Headquarters, Subroto Park, New Delhi – 110010.
4. Jt CDA (AF), C/o AFCAO, Subroto Park, New Delhi – 110010.

..... Respondents

Ld. Counsel for the Respondents : **Mrs. Deepti P Bajpai**,
Central Govt Counsel**ORDER (Oral)**

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- “(A) To quash or set aside the finding of the medical board whereby for not recommending applicant disability for Disability Pension.
- (B) To issue order or directions to the respondents to grant disability pension to the applicant for the disability he had, with effect from 14 Apr 1986 with all consequential

benefits including rounding off benefit from 20% to 50% in terms of Govt of India letter dated 31 Jan 2001 and judgment passed by Hon'ble Apex Court in case of Ram Avtar vs. UOI & Others.

- (C) To direct respondents to pay Ex-gratia payment to applicant @ 100% disability from 14/04/1986 with 09% bank interest till date of actual payment also to pay him attendant allowances as applicable with as being 100% disabled when invalided out from service with 9% bank interest till date of actual payment.
- (D) Any other relief as considered proper by the Hon'ble Tribunal be awarded in favour of the applicant.
- (E) Allow this application with cost.”

2. Brief facts of the case are that applicant was enrolled in the Indian Air Force on 24.01.1985 and was discharged from service 14.04.1986. The applicant was medically boarded out and his disability “TUBERCLOSIS” was assessed @ 100% for two years. The applicant's Review Medical Board was held in the year 1988 and his disability was further assessed @ 80%. The next Re-survey Medical Board was held in the year 1991 wherein his disability was assessed @ 50%. The next Re-survey Medical Board was held in the year 1993 wherein his disability was assessed below 20% and applicant's disability pension was stopped. The applicant submitted many applications to the respondents which have not yet been replied. This O.A. has been filed for grant of disability pension and Ex-gratia after a gap of more than 35 years from the date of discharge from service.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Indian Air Force on 24.01.1985. In the year 1986, applicant was diagnosed for 'TUBERCLOSIS'. The applicant was medically boarded out by IMB and his disability was assessed @ 100% for two years. The applicant was discharged from service on 14.04.1986. The applicant's Review Medical Board was held in the year 1988 and his disability was further assessed @ 80%. The next Re-survey Medical Board was held in the year 1991 wherein his disability was assessed @ 50%. The next Re-survey Medical Board was held in the year 1993 wherein his disability was assessed below 20% and applicant's disability pension was stopped. The applicant submitted many applications to the respondents which have not yet been replied.

4. Learned counsel for the applicant further submitted that applicant's case is covered with the judgment of the Hon'ble Supreme Court in the Civil Appeal No. 5605 of 2010, **Sukhvinder Singh vs. Union of India and Others**, decided on 25.06.2014, **Dharamveer Singh vs. Union of India and Others** (2013) 7 SCC 316 and **Union of India & Others vs. Manjeet Singh**, Civil Appeal No. 4357-4358/2015 SC and pleaded that applicant be granted 20% disability pension duly rounded off to 50% in view of Govt. of India letter dated 31.01.2001. .

5. On the other hand, learned counsel for the respondents submitted that Original Application has been filed after a gap of 35 years and service records of the applicant have been weeded out in accordance with rules and only minimum information is available in

the form of single page of 'Long Roll'. The applicant was enrolled in Indian Air Force on 29.01.1985 and was discharged from service on 14.04.1986 having been found medically unfit. The applicant is in receipt of service element and has been granted disability element w.e.f. 15.04.1986 to 12.02.1988 and further from 14.09.1990 to 13.09.1992 as mentioned in the Long Roll. Since the disability element of the applicant has been decreased and assessed below 20% by the subsequent RSMB, therefore, under the provisions of Rule 153 of Pension Regulations for the Air Force, 1961 (Part-1), applicant is not entitled to disability element. She further submitted that since service records of the applicant have also been destroyed, his prayer with regard to disability element and Ex-gratia at this belated stage is liable to be dismissed.

6. We have perused the records and we find that documents relating to the applicant have been destroyed after mandatory retention period in terms of Regulations for the Army, 1987. Further, Long Roll, attached to counter affidavit reveals that applicant was discharged from service 'Having been found medically unfit for further service in IAF'.

7. We also find from the averments made by the applicant and respondents that applicant is in receipt of service element. The applicant has also been paid disability element as per recommendations of Medical Board assessing his disability @ 100% for two years at the time of discharge from service, thereafter @ 80% for two years, 50% for two years and finally disability element was

stopped on assessment of applicant's disability @ 19%, i.e. below 20% by the RSMB.

8. In view of the above, we are of the view that applicant has been denied disability element as per rules after falling below 20%. We are also unable to examine/authenticate the details of service/medical documents being destroyed as per rules, hence, the applicant is unable to make out the case after a prolonged gap of more than 35 years from the date of discharge from service. Original Application is liable to be dismissed. It is accordingly **dismissed**.

9. No order as to costs.

10. Pending Misc. Application(s), if any, shall stand disposed off.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: July, 2022
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