

RESERVED
Court No. 1

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

ORIGINAL APPLICATION No. 120 of 2019

Friday, this the 01st day of March, 2019

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

Raghubir Singh Yadav (No. 10404595L-Ex Nk) S/O Late Sultan Singh, R/O Village/Mohalla-Jayanarayan Verma Road, Post-Fatehgarh, Tehsil & District-Farrukhabad-209601.

..... Applicant

Ld. Counsel for the : **Shri O.P. Kushwaha**, Advocate.
Applicant

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, Delhi-110011.
2. The Office Incharge Raksha Suraksha Corps Abhilekh, Defence Security Corps Records (DSC), Mill Road, Burnacherry, post-Kannur, Kerala-670013.
3. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the : **Shri Adesh Kumar Gupta**,
Respondents. Central Govt. Counsel

ORDER**“Per Hon’ble Air Marshal BBP Sinha, Member (A)”**

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

- (i) *This Hon’ble Court may graciously be pleased to direct the respondents to give disability pension along with its arrears and interest to the applicant w.e.f. 31.12.2017 towards his disability ‘PRIMARY HYPERTENSION SHAP2E 30% (Permanent).*
- (ii) *This Hon’ble Court may further be pleased to pass such other and/or further order as deem fit, proper and necessary in the circumstances of this case.*
- (iii) *Award costs to the applicant.*

2. At the very outset it may be observed that the petition for grant of disability pension has been preferred by the applicant with delay of 06 months and 14 days. The delay was condoned vide order dated 27.02.2019.

3. The undisputed facts, as averred by the learned counsel for the applicant are that the applicant was enrolled in the Indian Army (Territorial Army) on 13.01.1983 and was discharged from service after having served for more than 15 years. The applicant was again re-enrolled in Defence Security Corps (DSC) on 05.12.2000 in medically fit condition and discharged from service on 31.12.2017. The applicant is in receipt of DSC pension w.e.f. 01.01.2018 vide PPO No. 194201801908.

The medical board held before discharge considered the disability 'Primary Hypertension' as neither attributable to nor aggravated by military service (NANA) and assessed it as 30% for life.

4. It is seen from the records that the applicant has filed this O.A. without availing alternative remedies which is condition precedent to filing of the Original Application in terms of Section 21 of the AFT ACT, 2007. The aforesaid section, for convenience sake, is reproduced as under:-

"21. Application not to be admitted unless other remedies exhausted.

(1) The Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of the remedies available to him under the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957) or the Air Force Act, 1950 (45 of 1950), as the case may be, and respective rules and regulations made thereunder.

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957) or the Air Force Act, 1950 (45 of 1950), and respective rules and regulations—

(a) if a final order has been made by the Central Government or other authority or officer or other person competent to pass such order under the said Acts, rules and regulations, rejecting any petition preferred or representation made by such person;

(b) where no final order has been made by the Central Government or other authority or officer or other person competent to pass such order with regard to the petition preferred or representation made by such person, if a period of six months from the date on which such petition was preferred or representation was made has expired."

5. In view of the above, the present O.A. is **disposed off**, with directions to the applicant to avail alternative remedy. We further direct the respondents to decide the

representation, if any, filed by the applicant within a period of three months from the date of submission of the representation.

No order as to cost.

**(Air Marshal BBP Sinha
Member (A))**

Dated: March, 2019
gsr

**(Justice SVS Rathore)
Member (J))**