

COURT NO 1
RESERVED

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

ORIGINAL APPLICATION No. 529 of 2017

Tuesday, this the 26th day of March, 2019

“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal B.B.P. Sinha, Member (A)”

No. 6305201 Ex Sep Devender Singh, son of Sri Bhikam Singh resident of village and post office-Katena, Harsha, District-Firozabad, U.P., Pin-205145.

.....Applicant

Ld. Counsel for the: **Shri V.P. Pandey**, Advocate.
Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff Integrated Head Quarter, New Delhi.
3. Officer-In-Charge, Records, The Signal Corps, PIN-901124, C/O 56 APO.
4. Directorate General for Signal/Signal-4, General Staff Branch, Integrated Headquarters, Ministry of Defence (Army), DHQ, PO-New Delhi-110011.
5. Principal Controller of Defence Account (P), Dropadighat, Allahabad.

.....Respondents

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

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

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:-

- (a) *To summon the rejection order of disability claim dated 08 July, 1968.*
- (b) *To quash/set aside the rejection order of disability claim dated 08 July, 1968.*
- (c) *To direct the respondents to pay the disability pension to the applicant from the date of medically boarded out.*
- (d) *Any other relief as considered proper by this Hon’ble Tribunal be awarded in favour of the applicant.*
- (e) *Cost of the appeal be awarded to the applicant.*

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 15.07.1964 and was discharged from service on 30.09.1968. Prior to discharge from service the applicant was brought before a duly constituted Release Medical Board (RMB) held at Military Hospital, Calcutta on 22.11.1967 which assessed the applicant’s disability ‘Bilateral Flat Feet’ @ 20% for life neither attributable to nor aggravated by military service (NANA). Accordingly the applicant was discharged from service in terms of Rule 13 (3) III (v) of Army Rules, 1954. Disability pension claim was rejected vide order dated

08.07.1968. Representation dated 09.05.2005 submitted by the applicant was replied by the respondents and communicated vide letter dated 04.06.2005. Hence this O.A.

3. Learned Counsel for the applicant submitted that at the time of enrolment, the applicant was examined by the Recruiting Medical Board and was found medically and physically fit for a service in the Indian Army and there was no note, whatsoever, in his service documents that he was suffering from any disease at the time of entry in service, therefore, it must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. Ld. Counsel for the applicant further submitted that the applicant had taken active part in 1965 Indo-Pak war and the disability had never come as a hurdle during the war which ended after five months. He pleaded that since the applicant was enrolled in medically fit condition and discharged from service in medical category CEE (Permt), the applicant is entitled to disability pension.

4. On the other hand, while filing counter affidavit Ld. Counsel for the respondents submitted that the applicant was discharged from service in medical category CEE (Permt) and the RMB held on 22.11.1967 at Alipore,

Calcutta had opined the disability as neither attributable to nor aggravated by military service due to the disability as constitutional in nature. Therefore the disability pension claim was rightly rejected. He pleaded the O.A. to be dismissed.

5. Heard Shri VP Pandey, Ld. Counsel for the applicant and Shri Namit Sharma, Ld. Counsel for the respondents and perused the records. We have also perused the RMB.

6. We have given our anxious consideration to the pleadings of both the counsel and have also scrutinized the RMB proceedings. We find that the applicant was enrolled on 15.07.1964 and was detected to be suffering from 'Bilateral Flat Feet' during January 1965 (page 2 of RMB refers) i.e. within 06 months of enrolment while undergoing basic military training.

7. Submission of Ld. Counsel for the applicant, that the applicant took active part in 1965 Indo-Pak war, is refuted on the point that the applicant was detected to be suffering from 'Bilateral Flat Feet' w.e.f. January 1965 and the conflict between the two countries took place between April 1965 to September 1965. Therefore this submission of Ld. Counsel for the applicant has no substance.

8. Additionally, the remarks endorsed on the condition of the applicant by Maj BB Mukherjee, Graded Surgeon,

Military Hospital, Calcutta are relevant and the same are excerpted below:-

“Clinical Details

C/O pain in both feet specially after exercise and on wearing shoes since 1^{1/2} years.

x x x x x

Opinion of Surgical Specialist

Flat feet bilateral –cannot wear boots. Not improved with remedial exercise. He is permanent placed in CAT (CEE) on treatment.

Present condition

This is case of Bilateral Flat Feet for release in medical category (CEE) permanent. The patient complained of pain in both feet on walking or standing for a long time. Arches not form fully on standing on toes. No body deformity seen in X-Ray. Fit for release in medical category CEE (permanent).

Not attributed/

sd/- x x x x

Aggravated

20%

9. The respondents have submitted that most of the records pertaining to the applicant have been destroyed in accordance with para 592 and 596 of Regulations for the Army, 1987. We are in agreement with the respondents that since the applicant is a non pensioner, his service documents might have been destroyed after expiry of retention period in terms of aforesaid regulations.

10. Bilateral Flat Feet is a constitutional disability and it has obviously been missed out during the recruitment medical board held at the time of enrolment, however, within 06 months of enrolment the medical problems associated with flat foot started surfacing. We therefore go by the opinion of the RMB that the aforesaid disability was existing prior to enrolment.

11. A conceptuous of our observations is that the applicant has not been able to make out a case for grant of disability pension. The O.A. is liable to be rejected. As such O.A. No. 529 of 2017 is **rejected** as being devoid of merit.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

Dated : March, 2019

gsr

(Justice SVS Rathore)
Member (J)