

RESERVED
COURT NO.1

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

ORIGINAL APPLICATION No. 224 of 2019

Thursday this the 28th day of March, 2019

Hon'ble Mr. Justice S.V.S.Rathore, Member (J)

Hon'ble Hon'ble Air Marshal B.B.P. Sinha, Member (A)

No. 13923428P Ex Naik/NA Rajendra Singh,
S/o Shri Malkhan Singh, Raut,
R/o Vill & PO Sarurpur Kalan District Baghpat (U.P.).

.....Applicant

Ld. Counsel for :
the Applicant

Shri K.K.Mishra,
Advocate

Versus

1. Union of India through the Secretary,
Ministry of Defence, New Delhi.
2. Chief of Army Staff, Army Headquarters,
New Delhi.
3. Officer In-charge, Army Medical Corps, Records, Lucknow.
4. PCDA (Pension), Allahabad.

.....Respondents

Ld. Counsel for the :
Respondents

Shri Shyam Singh,
Ld. Counsel for the Respondents.

ORDER

Delivered by Hon'ble Mr.Justice SVS Rathore, (Member-J.)

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant for grant of disability pension. The applicant has made the following prayers:

“(I) To direct the respondents to grant 20% disability pension to the applicant as per his entitlement w.e.f. the date of his discharge from the service i.e. 01 Feb 1991.

(II) Thereafter, round of this disability percentage of pension to 50% for the purpose of payment of pension as per the policy on the subject and pay the arrears of pension with interest.

(III) Any other relief which the Hon'ble Tribunal may think just and proper may be granted to the applicant.

(IV) Cost of the case may be awarded in favour of the applicant.

2. The undisputed facts, as averred by the learned counsel for both the parties are that the applicant was enrolled in the Army in EME Corps on 06th January 1971 and proceeded on premature retirement on 01.02.1991. After training at AMC Centre & School, Lucknow, he was granted the rank of Sepoy. At the time of enrolment, the applicant was thoroughly examined by a medical board of officers and was found absolutely fit in all respects. He was in Medical Category SHAPE-1 and he remained in this medical category till May 1989 i.e. for about 18 years of his service, when for the first time, he was placed in low medical category. During his posting to 15 Assam Regiment in 1989, the applicant had some health problem and on examination, he was found to be a case of **Hypertension**. In May 1989, the applicant was admitted in MH, Firozpur, thereafter, he was referred to MH, Jalandhar. In MH, Jalandhar, the applicant was kept for some time and after examination and treatment, his medical board was held and he was placed in Med Cat BEE (T) for 12 months. On expiry of this period, in June 1990, the applicant's RMB was held and he was placed in Medical Category BEE (P).

3. In August 1990, the applicant applied for premature retirement from service. Once the applicant's request for premature retirement was

sanctioned, in December 1990 RMB was held at MH Dimapur. The RMB opined his disability “**ESSENTIAL HYPERTENSION (OLD) V-67 (401)**” @20% for two years to be aggravated by Military service. The applicant was discharged from service on 1st February 1991. However, the PCDA (P), Allahabad declined to grant disability pension to the applicant.

4. As per averments, the applicant moved several representations before the authorities concerned for granting disability pension, but of no avail.

5. It is argued on behalf of the applicant that inspite of the fact that Release Medical Board has held the disability of the applicant to be aggravated by Military service, PCDA (P), Allahabad has rejected the claim of the applicant for grant of disability pension. He pleaded for grant of disability pension to the applicant.

6. Though the respondents have not filed counter affidavit in this case, we have heard both the sides at length and perused the medical records. Following aspects are clear to us :

(a) This is a case of premature discharge at own request by the applicant in 1991.

(b) In the year 1991 and till 31.12.2005, Military personnel proceeding on premature discharge were not eligible for disability pension.

(c) In the VI CPC for the first time, premature retirees become eligible for disability pension w.e.f. 01.01.2006. Through law settled by Judicial orders, all pre 2006 premature retirees become eligible for disability pension w.e.f. 01.01.2006.

(d) This is is not a case of overruling of the opinion of the RMB by the PCDA (P), Allahabad, but denial of disability pension to a premature retirees in 1991.

7. Thus, considering all issues and the fact that the RMB of the applicant was valid for only two years w.e.f. 01.02.1991, it will be in the interest of substantive justice if a fresh RSMB is conducted for the applicant. The

future entitlement of disability element of the applicant will depend on the outcome of the RSMB.

8. Accordingly, this O.A. deserves to be partly allowed and is hereby **partly allowed**. The respondents are directed to conduct a fresh Re-Survey Medical Board of the applicant within a period of four months from today and future entitlement of the disability element of disability pension shall depend on the outcome of the Re-Survey Medical Board. Applicant is already in receipt of service element.

9. No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated: March, 2019
PKG