

RESERVED
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 215 of 2018

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)”

Ex. Sgt. Abhinesh Kumar Singh (service No. 790559-R), S/o Shri Shyam Kishor Singh, R/o c/o Madan Pandey Twaripur Nayi Basti, near Mobile Tower, Post Office – Kotwa, Lucknow, U.P.

..... Applicant

Ld. Counsel for the : **Shri S.K. Pandey**, Advocate.
Applicant

Versus

1. The Defence Secretary, Ministry of Defence, Government of India, South Block, New Delhi-110010.
2. The Chief of Air Staff, Air HQ Vayu Bhawan, Rafi Marg, New Delhi-110106.
3. Deputy Controller of Defence Accounts (Air Force), Suboroto Park, New Delhi-110010.
4. The Director, Directorate of Air Veteran, Air HQ, Suboroto Park, New Delhi.

.....**Respondents**

Ld. Counsel for the : **Shri Yogesh Kesarwani**,
Respondents. Central Govt. Counsel

ORDER**“Per Hon’ble Air Marshal B.B.P. 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.

- a. *This Hon’ble Tribunal may graciously be pleased to set aside part V of the Release Medical Board dated 29.07.2016, to the extent where the board held that disability is not attributable to service.*
- b. *This Hon’ble Tribunal may graciously be pleased to set aside the order dated 14.09.2017 passed by respondent no. 4 (annexure – 4).*
- c. *This Hon’ble Tribubla may graciously be pleased to direct respondents to grant disability pension to the applicant, for disability 50% since the date of discharge and for life.*
- d. *This Hon’ble Tribunal may graciously be pleased to direct respondents to Issue PPO to applicant for disability pension for disability 50% since the date fo discharge and for life.*
- e. *This Ho’ble Tribunal may grant any other and further relief to applicant as it deem fit, just and proper in the facts and circumstances of the case.*
- f. *This Hon’ble Tribunal may award the cost of petition to applicant.*

2. Briefly stated facts of the case are that the applicant was enrolled in the Indian Air Force on 17.03.1997 and was discharged on 31.03.2017 in Low Medical Category on fulfilling the conditions of his enrolment. At the time of retirement from service, the

Release Medical Board (RMB) held at Air Force Station, Bakshi Ka Talab, Lucknow on 29.07.2016 assessed his disability '**L5-S1 SPONDYLOSIS (M 54.5 Z09.0)**' @ 30% for life and opined the disability to be aggravated by service. The applicant preferred representation dated 04.08.2017 to the respondents for grant of disability pension and its rounding off but the respondents have given a vague reply stating that his eligibility to disability pension is yet to be ascertained vide order dated 14.09.2017. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that at the time of retirement of the applicant, the RMB has assessed his disability as aggravated by military service @30% for life. He however pleaded that despite representation, the respondents are denying him disability pension. He vehemently pleaded for early release of his disability pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents admitted that disability of the applicant has been opined as aggravated @30% for life by the RMB. He further submitted that the applicant has basically applied for the rounding off of the disability element and admitted that the applicant is eligible for disability element as well as its rounding off.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the

Release Medical Board proceedings as well as the records. We are intrigued by the fact that while applicant is pleading for the disability pension and benefit of its rounding off to 50% and the respondents are admitting to his eligibility for the same, therefore, we fail to understand as to why the P.P.O. for disability element with benefit of Broad Banding has not yet been issued by respondents after a lapse of about two years of retirement of applicant. We find that either in the Counter Affidavit or during hearing, the respondents have not commented on this delay in issuance of disability element P.P.O.

6. In view of the above, the **Original Application No. 215 of 2018** deserves to be allowed, hence **allowed**. The respondents are directed to grant disability element of pension to the applicant @30% for life which would stand rounded off to 50% for life w.e.f. the date of discharge of the applicant i.e. 01.04.2017. The respondents are directed to give effect to this order within a period of three months from the date of receipt of a certified copy of this order. Default will invite interest @ 9% per annum till actual payment.

No order as to costs.

(Air Marshal B.B.P. Sinha)
Member (A)

(Justice S.V.S. Rathore)
Member (J)

Dated: March, 2019
AKD/-