

RESERVED
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 321 of 2018

Wednesday, this the 27th 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. 14241123-F, Mohammad Yasin Son of Late Gaributtah,
Resident of Village Chapiya Cnitoma, PO Salepur, District – Sant
Kabir Nagar, PIN-272178.

..... Applicant

Ld. Counsel for the : **Shri Pushp Raj Singh**, Advocate.
Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence,
New Delhi.
2. The Chief of Army Staff, Integrated Head Quarters of
Ministry of Defence, South Block, New Delhi-110001.
3. Officer-In-Charge Records, Signal Records, Jabalpur
(M.P.).
4. Principal Controller of Defence Accounts (Pensions),
Draupadi Ghat, Allahabad.

.....**Respondents**

Ld. Counsel for the : **Shri D.K. Pandey**,
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:-

- “(I) To issue and direction to the respondents for grant of disability pension as per provision Govt. of India letter dated 31.01.2001 w.e.f. 31.10.2000 with interest.*
- “(II) To issue order or direction to respondents to summon the record of the medical proceedings.*
- “(III) Any other relief as considered proper by this Hon’ble Tribunal be awarded in favour of the applicant.*
- “(IV) Cost of the appeal be awarded to the applicant.”*

2. Briefly stated facts of the case are that the applicant was enrolled in Corps of Signals in Indian Army on 17.12.1980 and was discharged on 31.10.2000 in Low Medical Category CEE (Permanent) on fulfilling the conditions of his enrolment at his own request on compassionate ground under Rule 13(3)III(iv) of the Army Rules, 1954. At the time of retirement from service, the Release Medical Board (RMB) held at 158 Base Hospital, C/o 99 APO on 09.09.2000 assessed his disability ‘**LUMBAR CANAL STENOSIS WITH PROLAPSE DISC L4-5, L5-S1 (OPTD) 722 (C)**’ @ 20% for five years and opined the disability to be aggravated by military service. The initial claim of disability pension was rejected by the Principal Controller of Defence Accounts (Pensions),

Allahabad vide letter 10.09.2001 on the ground that the applicant has been discharged from service at his own request, on compassionate grounds, before fulfilling the conditions of his enrolment. The applicant preferred petitions for grant of disability pension and its rounding off but the respondents did not grant the disability pension. 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 enrolment, the applicant was found mentally and physically fit for service in the Indian Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. The disease of the applicant was contacted during the service, hence it is attributable to and aggravated by Military Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension as well as arrears thereof, as such the applicant is entitled to disability pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant i.e. **'LUMBAR CANAL STENOSIS WITH PROLAPSE DISC L4-5, L5-S1 (OPTD) 722 (C)'** has been conceded as aggravated @20% for five years by RMB. However, his claim for grant of disability pension was rejected on the ground that the applicant has been discharged pre-maturely

from service at his own request, on compassionate grounds before fulfilling the conditions of his enrolment. He pleaded for dismissal of the Original Application.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Invaliding Medical Board proceedings. The questions which need to be answered are of two folds :-

(a) Whether the applicant is entitled for disability pension?

(b) If found eligible for disability pension, what is the date from which applicant would become eligible?

6. This is a case where the RMB had conceded the disease of the applicant as Aggravated by military service @ 20% for five years. However, the Principal Controller of Defence Accounts (Pensions) Allahabad has rejected the disability pension claim of applicant on the ground of pre-mature discharge on own request.

7. It is a fact that in the year 1993, as per the rules existing at that time, pre-mature discharge at own request made a soldier ineligible for disability pension. However, it is also a fact that with effect from 01.01.2006, as per recommendation of Sixth Central Pay Commission, soldiers proceeding on pre-mature discharge are also eligible for disability pension. This aspect that pre 2006 pre-mature defence retirees, are also eligible for same benefits of disability pension as has been extended to post 01.01.2006 pre-

mature retirees has been settled by the following decisions of Hon'ble Apex Court and the Principal bench of the Armed Forces Tribunal, New Delhi:-

- (i) Civil Appeals No. 3101-3102 of 2015, **Ex. Lt. Col. R.K. Rai Vs. Union of India and Others**, decided on 16.02.2018 (Hon'ble Apex Court)
- (ii) O.A. No. 139 of 2009 Lt. Col. P.K. Kapoor (Retd.) Vs. Union of India and Others (Hon'ble Principal bench, AFT).
- (iii) O.A. No. 336 of 2011 Maj. (Retd.) Rajesh Kumar Bhardwaj Vs. Union of India and Others, decided on 19.05.2017 (Hon'ble Principal Bench, AFT).

8. Thus in light of the law already settled for pre-mature retirees claiming disability pension, we set aside the order dated 10.09.2001 of Principal Controller of Defence Accounts (Pensions), Allahabad by means of which the claim of the disability pension was rejected and are of the considered opinion that the applicant is entitled to disability pension after 01.01.2006 subject to the outcome of a fresh Re-Survey Medical Board.

9. On the issue of rounding off of disability pension, we are of the opinion that the case is squarely covered by the decision of **K.J.S. Buttar Vs. Union of India and Others**, reported in (2011) 11 SCC 429 and Review Petition (C) No. 2688 of 2013 in Civil

Appeal No. 5591/2006, ***U.O.I. & Anr. Vs. K.J.S. Buttar, Sukhvinder Singh Vs. Union of India & Others***, reported in (2014) STPL (WEB) 468 SC and ***Union of India Vs. Ram Avtar & Others*** (Civil Appeal No. 418 of 2012, decided on 10 December, 2014).

10. It is well settled that the claim for pension is based on continuing wrong and the relief can be granted if such continuing wrong creates a continuing source of injury. In the case of ***Shiv Dass Vs. Union of India***, reported in 2007 (3) SLR 445 the law settled by the Hon'ble Apex Court is that if a petition for pension (disability pension in this case) is filed beyond a reasonable period, the relief prayed for may be restricted to a reasonable period of three years.

11. Since the applicant's RMB was valid for five years after discharge i.e. 01.11.2000 to 31.10.2005, hence, the respondents will now have to conduct a fresh RSMB for him to decide his future eligibility to Disability Pension.

12. In view of the above, the **Original Application No. 321 of 2018** deserves to be partly allowed, hence, **partly allowed**. The order dated 10.09.2001 passed by the Principal Controller of Defence Accounts (Pensions), Allahabad, enclosed as Annexure No. CA-3 (R-3) of the Counter Affidavit, is set aside. The respondents are directed to conduct a Re-Survey Medical Board for the applicant to assess his future entitlement of disability

element. Respondents are directed to give effect to the order within four months from the date of receipt of a certified copy of this order.

No order as to costs.

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

Dated: March, 2019

AKD/-

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