

RESERVED
COURT NO. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 152 of 2019

Tuesday, this the 26th day of March, 2019

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

No. 3165342Y Ex Hav Jaggan Singh, son of Sri Raghunath Singh, resident of Village Dhara Ki Garhi, Post Office Gonda, district Aligarh (UP).

..... Applicant

Counsel for the applicant : Sri KK Mishra, Advocate.

Versus

1. Union of India through its Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Army Headquarters, New Delhi.
3. Officer-in-Charge, Records, the Jat Regiment, Bareilly.
4. PCDA (P) Allahabad.

.....Respondents

Counsel for the Respondents : Ms Anju Singh,
Additional Central Government
Standing Counsel

ORDER**“Per Hon’ble Mr. Justice S.V.S. Rathore, Member (J)”**

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

“(I) To quash PCDA (P) Allahabad letter No. G-3/64/101/5194 dated 11.10.1994 (not on record of O.A.)

(II) to direct the respondents to grant 20% disability pension to the applicant from the date the applicant was discharged from service i.e. 31 March 1996,

(III) to direct the respondents to thereafter round off this percentage of disability to 50% as per the policy on the subject and pay the arrears of disability pension with interest as applicable.

(IV) any other relief which the Hon’ble Tribunal may consider appropriate may be granted in favour of the applicant.

(V) cost of the application be awarded to the applicant.”

2. At the very outset it may be noticed that the issue involved in the present O.A. relates to payment of disability element of disability pension, as such, the delay of 21 years, 06 months and 21 days in filing the O.A. was condoned vide order dated 28.02.2019. Since the learned counsel for the parties submitted that the O.A. can be heard on the basis of pleadings on record, as such, with the consent of learned counsel for the parties, we proceed to hear and dispose of the O.A. at this stage itself.

3. The factual matrix of the case as borne out from the record is that the applicant was enrolled in the Indian Army on 08.07.1974 and was discharged from service on 31.12.1993 in low medical category BEE (Permanent) due to disability ‘NON ULSER DYSPEPSIA’. The Release

Medical Board (RMB) opined the disability 'NON ULSER DYSPEPSIA' as aggravated by military service and assessed it at 20% for 02 years. However, the PCDA (P), Allahabad overruled the opinion of the RMB and rejected claim of disability pension of the applicant vide order dated 11.10.1994. Aggrieved, the applicant preferred representations but to no avail. Hence, the present O.A.

4. Admittedly, the applicant is getting service pension. Learned Counsel for the applicant vehemently argued that during 1989 the applicant was posted in High Altitude Area (Siachin Glacier) during which period he suffered health problems and was admitted in Military Hospital. After medical examination, he was detected to be suffering from the disease 'NON ULSER DYSPEPSIA'. Thereafter, the applicant was transferred to Command Hospital, Chandimandir where he remained admitted for about two months. In the year 1990 applicants Unit was moved to Alwar (Rajasthan). Again on 27 June 1991, the applicant was admitted in Military Hospital, Alwar. In June 1992 Review Medical Board was held and the applicant was upgraded to medical category BEE (P). Submission of learned counsel for the applicant is that since due to the disability "NON ULSER DYSPEPSIA", the applicant was not in a fit state of health to cop up with the requirement of active service, he applied for premature discharge after rendering 19 years 05 months and 23 days of service. He further submitted that the RMB had opined the disability of the applicant to be aggravated by military service and the same has been incorrectly overruled by the PCDA (P) Allahabad. Learned counsel

concluded by pleading for grant of disability element to the applicant @ 20% along with the benefit of rounding off.

5. Refuting arguments of learned counsel for the applicant, learned Counsel for the respondents argued that besides the issue of PCDA (P), the applicant is a case of discharge at own request in the year 1993 and at that time cases of discharge at own request were not eligible for disability pension, hence the claim of the applicant for disability pension has rightly been rejected by the respondents.

6. We have heard both the parties and have perused the medical record and correspondence submitted by the applicant. From the perusal of pleadings on record, the following is clear:-

- (a) The applicant's RMB has assessed his disability "NON ULSER DYSPEPSIA", @20% for two years and further opined it to be aggravated by military service.
- (b) The applicant has proceeded on pre-mature retirement at his own request with effect from 31.12.1993.

7. In the light of above facts the twin questions which we need to answer are:-

- (a) Is the applicant eligible for disability element of disability pension; and
- (b) what is the date from which the applicant is eligible for disability element.

8. Having perused the RMB in detail, we are clear that the applicant is eligible for disability pension in light of the fact that RMB has opined the disability of the applicant to be "aggravated by military service". In

light of the law settled by the Hon'ble Apex Court on the supremacy of the opinion of a Medical Board over and above the opinion of PCDA (P) Allahabad, vide *Ex Sapper Mohinder Singh vs. Union of India* (Civil Appeal No. 104 of 1993, decided on 14.01.1993, we are clear that the applicant is eligible for disability element of disability pension.

9. 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, 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 defence retirees are also eligible for same benefit has been established as a law in the following decisions of Hon'ble the 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 & ors* 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 & ors.* (Hon'ble Principal Bench, AFT); and
- (iii) O.A. No. 336 of 2011 *Maj (Retd) Rajesh Kumar Bhardwaj vs. Union of India & ors* decided on 19.05.2017. (Hon'ble Principal Bench, AFT).

10. Thus, considering all issues we are of the considered opinion that the applicant is eligible for disability element of disability pension after 01.01.2006. However, since his RMB was valid only for 02 years with effect from 1993, hence the respondents will be required to conduct a fresh Re-survey Medical Board (RSMB) on the applicant.

11. In view of the discussion held above, this O.A is hereby **partly allowed**. The respondents are directed to refer the applicant's case to the Re-survey Medical Board for reassessing the medical condition of the applicant. The future entitlement to disability pension will be subject to the outcome of the RSMB. The respondents shall comply with this order within four months from the date of receipt of a certified copy of this order.

No order as to cost.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated : March ,2019.
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