

**Court No. 1 (E. Court)**

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

**ORIGINAL APPLICATION No. 143 of 2022**

Monday , this the 23<sup>rd</sup> day of May, 2022

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 14666545L Ex Rect Uttasm Kumar, Resident of Village-  
Tdwa, Post- Pehara, District- Lakhimpur- 262701.

..... Applicant

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

Versus

1. Union of India, through Secretary Ministry of Defence,(Army) DHQ PO- New Delhi – 11.
2. The Chief of Army Staff, Army headquarters, Sena Bhawan, New Delhi.
3. The officer in charge, Records, The EME Records, PIN-900493, C/o 56 APO.
4. Principal Controller of Defence Accounts, Draupadi Ghat- Allahabad, (U.P.).

.....Respondents

Ld. Counsel for the : **Shri Vipin Kumar Singh,**  
Respondents. **Central Govt. Counsel**

**ORDER**

**“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

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

- “(a) Issue/ pass an order or direction of appropriate nature to finalize and to grant the disability pension claim in respect of applicant which is pending and under consideration before the competent authority since year 2005 as per the communications of EME Records invalidated out wef 16.06.2005.*
- (b) Issue/ pass an order or directions of appropriate in nature to grant the benefit of rounding off of disability pension as per the Govt of India letter No 1 (2)/97/1/D(Pen C) dated 31.01.2001.*
- (c) Issue/ pass an order or direction of appropriate nature to the respondents to make the payment of arrears along with interest accrued to the applicant due to revision of his pension and continue to pay regular pension to the applicant in the revised rate.*
- (d) Issue/ pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*
- (e) Allow this application with costs.*

2. Counter affidavit is taken on record.

3. Briefly stated, applicant was enrolled in Indian Army on 25.11.2003 and was invalided out of service on 18.06.2005 in Low Medical Category P5 (Permanent). At the time of retirement from service, the Invaliding Medical Board (IMB) held at HQ MG & G Area on 12.05.2005 assessed his disability 'PULMOMARY TUBERCULOSIS' @ 100% for one year and opined as attributable to military service being infection contracted while in service/ training. The applicant preferred application for grant of disability pension but the same was not granted. It is in this perspective that the applicant has preferred the present O.A.

4. 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 and considered as 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. He further

submitted that in similar cases, Hon'ble Apex Court and various Benches of the Armed Forces Tribunals have granted disability pension, as such the applicant is entitled to disability pension @ 100% as assessed by IMB.

5. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant was regarded as 100% for one year and found as attributable to and aggravated by military service. Claim of the applicant for grant of disability pension is pending with Army Headquarters for want of clarification. Applicant shall be granted disability pension @ 100% for one year on confirmation from Army Headquarters.

6. 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.

7. The question before us to decide is whether applicant is entitled for grant of disability pension or not?

8. In the instant case, applicant was invalided out from service on 18.06.2005 in Low Medical Category P5 (Permanent). IMB held at the time of discharge assessed his disability @ 100% for one year and considered as attributable to and aggravated by military service being infection contracted

while in service/ training. Applicant is running from pillar to post from the date of discharge for grant of disability pension. 17 years have been elapsed but neither the respondents have denied for grant of disability pension not they have granted. Respondents have filed counter affidavit on 12.05.2022. In para 8 of counter affidavit, further it has been stated that “Disability pension will be granted to the applicant on receipt of decision of the competent authority.” It is a matter of great concern, that in spite of disability being assessed @ 100% and considered as attributable to and aggravated by military service, no justice has been done with a poor soldier.

9. Concept that matter is under consideration with higher authority’ is a mandatory requirement of the procedural law but delaying disability pension to a soldier for 17 years after discharge whose disability was assessed @ 100% for one year and considered as attributable to military has no logic.

10. It is noted with concern that a soldier suffered from 100% disability during performance of military duty which was declared attributable to military service but since 15 years he is fighting for his legitimate rights and nothing has been done so far. Depriving disability pension to such a soldier who suffered

disability and discharged from service on account of military duties is against the policy. If such a practice is persisted it may deter soldiers from undertaking hazardous tasks during training/service in difficult areas and there shall be an apprehension that if they sustain injury due to some accident, they may be discharged from service without disability pension, even if the injury is attributable to military service. Such an apprehension in the mind of soldiers would be against organizational interests of the Army. It is settled law that in case the authorities want to do certain things, then that should be done in the manner provided in the Act of statutory provisions and not otherwise as held in ***Nazir Ahmed Vs. King Emperor***, AIR 1936 PC 253; ***Deep Chand Versus State of Rajasthan***, AIR 1961 SC 1527.

11. Since the applicant's IMB was valid for one year, hence the respondents will now have to conduct a fresh RSMB to decide his future eligibility to disability pension.

12. In view of the above, the **Original Application** deserves to be allowed, hence, **allowed**. The respondents are directed to grant disability pension to the applicant @ 100% for one year from the next date of discharge. The respondents are further

directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement of disability pension. Respondents are further directed to give effect to the order within four months from the date of receipt of a certified copy of this order failing which the respondents shall have to pay interest @ 8% per annum till the date of actual payment.

13. No order as to costs.

**(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)**  
**Member (A) Member (J)**

Dated : 23 May, 2022

Ukt/-