

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

**T.A.No. 03 of 2015**

Tuesday, the 31<sup>st</sup> day of October, 2017

**Hon'ble Mr. Justice D.P.Singh, Member (J)**

**Hon'ble Air Marshal BBP Sinha, Member (A)**

Nawal Kishore Bajpai, son of late Sunder Lal Bajpai, resident of House No. 577, Sector No. 2, Near Mahaveer Mandir, Aliganj, Lucknow.

..... Petitioner

By Legal Practitioner Shri Sudhir Kumar Singh, Advocate, Learned counsel for the petitioner.

Versus

1. Union of India through Secretary of Defence, Ministry of Defence, New Delhi.
2. Chief of the Army Staff, New Delhi.
3. C.C.D.A. (Pension) G3 (RA Section) Drupadi Ghat, Allahabad (U.P.)
4. Record Officer, Dogra Regiment, Faizabad, U.P.
5. Area Commandant, Central Command through GOC Incharge, Central Command, Lucknow.

..... Respondents

By Legal Practitioner Shri Amit Jaiswal, Learned Counsel for the Respondents, assisted by Col Hemant Kakar, OIC Legal Cell

**ORDER (Oral)**

1. Heard Shri Sudhir Kumar Singh, learned counsel for the petitioner and Shri Amit Jaiswal, learned counsel for the respondents, assisted by Col Hemant Kakar, OIC Legal Cell and perused the record.
2. The petitioner's father late Sunder Lal Bajpai, an ex-army personnel, had served the Indian Army from 1942 to 1946. Thereafter

he was discharged as Low Medical Category CEE Permanent due to disability Chronic SOM Right Ear. After discharge, his disability was assessed as 20% and attributable to military service by the Medical Board held at Military Hospital, Jalandhar and he was granted disability pension of Rs.15/- for the period 24.09.1946 to 24.09.1948. On 28.07.1948, Re-Survey Medical Board was held and his disability was assessed less than 20% with effect from 24.09.1948 and communicated accordingly. The father of the petitioner approached the Office of Records, Dogra Regiment for his reinstatement on the ground that his disability was assessed less than 20%. Subsequently, he was informed by a letter dated 11.10.1951 that he cannot be reinstated in service as he was board out being found medically unfit for military services. On 12.10.1993, the father of the applicant approached the Office of Records, Dogra Regiment stating that his disability has increased. The Office of Records, Dogra Regiment asked him to produce a certificate about his disability issued by Chief Medical Officer, to arrange a Re-Survey Medical Board, which was produced on 12.04.1994. On 28.05.1994, the Re-Survey Medical Board assessed the disability at 30% from 24.09.1998 to 28.05.1994. The disability claim was sent to PCDA(P) Allahabad on 30.06.1994. On 15.02.1995, the PCDA(P) Allahabad accepted the disability and granted disability at 40% for two years. He was granted pension at the rate of Rs.180/- per month. The petitioner's father died on 09.08.2011.

3. The petitioner filed a Regular Suit in the court of Civil Judge (Junior Division), Lucknow, praying for the following reliefs:-

*“A. Through a decree of declaration the father of plaintiff 1/1 be declared to be entitled to receive the pension from period 25<sup>th</sup> of September 1948 till 27 May, 1994;*

*B. Through a decree of mandatory injunction, defendants be directed to settle and calculate the pension of the father of the plaintiff 1/1 from the period of 25<sup>th</sup> of September 1948 till 27 May, 1994.”*

In pursuance to the power conferred under Section 34 of the Armed Forces Tribunal Act, 2007, the said Regular Suit has been transferred to this Tribunal for adjudication and now registered as T.A.No. 30 of 2012.

4. A plain reading of the reliefs prayed for in the petition shows that the petitioner wants to claim pension from 25.09.1948 to 27.05.1994 and he has also prayed for a mandatory injunction directing the respondents to settle and calculate the pension of his father from 25.09.1948 to 27.05.1994.

5. At the face of record, the suit was filed in the year 1998 i.e. after four years from the date the cause of action to file a suit accrued; it should have been filed within a period of three years. The record shows that no application for condonation of delay was filed. The regular suit has been transferred to this Tribunal with the same status. Since no prayer has been made for condonation of delay, the suit seems to be time-barred.

6. Accordingly, this T.A is dismissed as not maintainable.

**(Air Marshal BBP Sinha)**  
**Member (A)**

**(Justice D.P.Singh)**  
**Member (J)**

Dated : Oct 31, 2017

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