

RESERVED
Court No. 1

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

O.A. No. 174 of 2018

Monday, this the 22nd day of October, 2018

Hon'ble Mr. Justice SVS Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

Awanish Kumar Singh (No. 6498570 Ex Rect.) S/o Shri Ram Bahadur Singh, R/o Village Pure Binda Singh, Post Office Rasehata, District Raibareli (Uttar Pradesh).

.... Applicant

Ld. Counsel for the: **Shri Yash Pal Singh**, Advocate.
Applicant

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi
2. Officer-in-Charge Records, Army Service Corps (Animal Transport), Bangalore, PIN-900493 C/O 56 APO.
3. Principal Controller of Defence Accounts (Pension), Allahabad.
4. Director (Claims), Army Group Insurance Fund, AGI Bhawan, Rao Tula Ram Marg, Vasant Vihar New Delhi-110057.
5. Branch Manager, Punjab National Bank, Chauhan Market, Raibareli (U.P.).

...Respondents

Ld. Counsel for the: **Shri Virendra Singh**, Advocate.
Respondents.

ORDER

“(Per Hon’ble Mr Justice SVS Rathore, Member (J))”

1. By means of this O.A. under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has made the following prayers:-

“(a) Issue/pass an order or direction setting aside the recommendation of the Re-Survey Medical Board dated 09.11.2009 as approved by the competent authority insofar as the same assessed the disability of the applicant below 20% for life after summoning the relevant original records; and grant disability element with effect from September 2008 by extending the benefit of rounding off including arrears with interest.

(b) Issue/pass an order directing the respondents to provide the Army Group Insurance Maturity Benefit with interest.

(c) Issue/pass an order directing the respondents to publish D.O. Part II order regarding marriage of the applicant and birth of his daughter.

(d) Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstance of the case.

(e) Allow this Original Application with cost.”

2. In brief the facts giving rise to the instant O.A. may be summarised as under.

The applicant was enrolled in the Indian Army as Sepoy on 02.07.2005 in the medical category SHAPE-1. After his enrolment he reported for Basic Military Training on 04.07.2005 at the Army Service Corps Centre (North), Gaya. He successfully completed

his Basic Military Training and thereafter he was granted 28 days recruits leave. After expiry of said leave he reported back on 23.09.2005 for trade training. During trade training the applicant fell ill in the month of January, 2006. After initial investigation the applicant was diagnosed as suffering with Pulmonary Tuberculosis. He was transferred to the Military Hospital, Namkum, Ranchi where he was treated as an indoor patient from 24.01.2006 to 28.08.2006. An Invaliding Medical Board was held on 25.07.2006 because the applicant was found to be suffering from Pulmonary Tuberculosis. Medical Board on the basis of the specialist opinion recommended for discharge of the applicant from service. The Medical Board proceedings were duly approved by the competent authority on 09.08.2006. The applicant was invalided out of service on 28.08.2006 in low medical category P₅ (Permanent). The Medical Board assessed the disability at 100% for two years. That vide letter dated 31.12.2007 the applicant was informed that his disability of Pulmonary Tuberculosis with which the applicant was suffering has been held by the competent authority as attributable to military service. Thereafter PPO dated 14.10.2008 was issued in favour of the applicant granting him service element for life and disability element for two years with effect from 29.08.2006. Thereafter a Re-survey Medical Board, (herein after referred to as RSMB for short), was held on 09.11.2009 and the applicant was told that the Medical Board has assessed his present disability for Pulmonary Tuberculosis at 15% for life. The disability element of pension of the applicant was

stopped from September, 2008 whereas the applicant is still getting service element but order of stoppage of disability pension was not served on the applicant. The case of the applicant is that the recommendation of RSMB dated 09.11.2009, assessing his disability below 20% is not based on any cogent reasons and therefore deserves to be set aside and the case of applicant for grant of disability element of the disability pension deserves to be considered on humanitarian ground as well as keeping in view the benevolent policies of the Government besides legal aspects. Thus to sum up, the case of the applicant is that the applicant was granted disability pension @100% for two years and after RSMB his disability was found to be less than 20% and therefore the disability element was rejected and the applicant is in receipt of only service element. His prayer is to set aside the report of RSMB and grant him disability element also.

3. On behalf of the respondents it is argued that the applicant had earlier filed a T.A. before the Hon'ble High Court, which was transferred to this Tribunal and was registered as T.A. No. 57 of 2010 and has been dismissed vide order dated 11.11.2011. This fact has been mentioned by the applicant in his O.A. and the copy of the judgment so passed has also been filed, which shows that in the said T.A. the applicant had challenged his discharge order and had not claimed the disability pension. It is submitted on behalf of the applicant that the applicant has challenged the order so passed by the Armed Forces Tribunal by filing the writ petition

before the Hon'ble High Court and the said writ is still pending. The learned counsel for the applicant has fairly conceded that the writ petition is pending but in view of the provisions of the Armed Forces Tribunal Act, 2007 and the case laws on the point the appeal against the final order passed by the Armed Forces Tribunal is not maintainable before the Hon'ble High Court. It has also been argued on behalf of the applicant that in the T.A. there was no prayer for grant of disability pension and therefore the submission of the respondents has no substance.

4. Learned counsel for the respondents has also argued that when the disability of the applicant was assessed less than 20%, the respondents have rightly stopped the disability element of the pension and only service element is being paid to the applicant.

5. After hearing learned counsel for the parties and from a perusal of the material brought on record we are of the view that the learned counsel for the applicant has not brought to our notice any document or medical paper, authority showing that the assessment of the disability of the applicant by the RSMB below 20% was incorrect and is violative of the policy prescribed for that purpose. Thus, the only point that remains to be considered is whether the stoppage of the disability element of the pension by the respondents was legal or not. This point has been considered by the Hon'ble Apex Court in the case of **Balbir Singh vs. Union of India & others** in Civil Appeal No. 3086 of 2012 decided on 08.04.2016 wherein a similar question was involved. We would

like to quote the relevant part of the judgment, which reads as under :-

“ It is not in dispute that the appellant was discharged from service/invalidated out of service on account of 100% permanent disability suffered by him during the course of service. It is also not in dispute that the said disability was held to be attributable to military service. That the disability was subsequently reduced to fall below 20% is also common ground. Inasmuch as the authorities stopped the disability pension, they committed no wrong. Stoppage of the disability pension did not however mean that the service element of the pension could also be stopped. That is evident from the provisions of Regulation 186 which reads as follows:-

“186 (1) An individual who is invalided out of service with a disability attributable to or aggravated by service but assessed at below 20 per cent shall be entitled to service element only.

(2) An individual who was initially granted disability pension but whose disability is re-assessed at below 20% subsequently shall ceased to draw disability element of disability pension from the date it falls below 20 per cent. He shall however continue to draw the service element of disability pension.”

The Tribunal was therefore justified in restoring the service element of the pension in favour of the appellant.”

(under lined by us)

Therefore, in view of Regulation 186 mentioned above and keeping in view the judgment of Hon’ble Apex Court, we do not find any illegality or irregularity in the order passed by the respondents stopping the disability pension of the applicant.

6. In view of the above, O.A. lacks merit, which is liable to be **dismissed** and is hereby dismissed.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

Dated: October 22, 2018
JPT

(Justice SVS Rathore)
Member (J)

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

COURT

NO. 1

O.A. No. 174 of 2018

Awanish Kumar Singh

-Applicant

By Legal Practitioner for the Applicant
Vs

Union of India & Ors

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Respondents

By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>22.10.2018</u></p> <p><u>Hon'ble Mr. Justice S.V.S Rathore, Member (J)</u> <u>Hon'ble Air Marshal B.B.P. Sinha, Member (A)</u></p> <p>Judgment pronounced. O.A. is dismissed. For orders, see our judgment and order of date passed on separate sheets.</p> <p>Miscellaneous application(s) pending, if any shall be treated to have been disposed of.</p> <p style="text-align: center;"> (Air Marshal B.B.P. Sinha) (Justice S.V.S. Rathore) Member (A) Member (J) </p> <p>JPT</p>