

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 356 of 2021**Tuesday, this the 12<sup>th</sup> day of October, 2021**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Ex. Rect. Vishnu Prashad Gautam (Service No. 13690173), S/o  
Shri Anasuya Prasad Gautam, Ex. Brigade of Guards Centre,  
GRC Kamptee, Permanent Home Address – Village – Pondi, PO  
– Jaldhar, Police Station – Gurh, District Rewa (MP)) 486001.

**..... Applicant**

Ld. Counsel for the: **Shri R. Chandra**, Advocate.  
Applicant **holding brief of Shri Shiv Kant Pandey**,  
Advocate

Versus

1. The Union of India, through the Defence Secretary, Ministry of Defence, Govt. of India, South Block, New Delhi-110010.
2. The Chief of Army Staff, Sena Bhawan, Army HQ, New Delhi-110010.
3. The Principal Controller of Defence Accounts (Pension), PCDA (P), Draupadi Ghat, Allahabad-211014.
4. General Officer Commanding-in-Chief (GOC-IN-C), Headquarters (Army HQ), Southern Command, Pune-411001.
5. General Officer Commanding (GOC), HQ Uttar Maharashtra & Gujarat Sub Area, Pin : 908810, C/o 56 APO.
6. Officer-In-Charge Records, Records the Brigade of the Guards, Kamptee Maharashtra (441001).
7. The Commanding Officer, GRC, Kamptee, Pin – 900746, C/o 56 APO.

**.....Respondents**

Ld. Counsel for the Respondents. : **Shri Namit Sharma**, Advocate  
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 :-

- i. This Hon’ble Tribunal may graciously be pleased to set aside the Impugned Order no. 13690173/LN/C-Cell dated 16.05.2021 issued by Respondent no. 6 (Annexure A-7 to this OA).*
- ii. This Hon’ble Tribunal may graciously be pleased to grant pension to applicant since the date of invalidation 01.08.1989 and for the life.*
- iii. This Hon’ble Tribunal may graciously be pleased to grant disability pension to applicant, since the date of discharge and date of invalidation, wef 01.08.1989 and for life.*
- iv. This Hon’ble Tribunal may graciously be pleased to direct PCDA (P), Allahabad to issue Pension Payment Order to applicant for pension granting pension, since 01.08.1989.*
- v. This Hon’ble Tribunal may graciously be pleased to direct PCDA (P), Allahabad to issue Pension Payment Order (PPO) to applicant for disability pension, granting the disability pension @75% of disability since 01.08.1989.*
- vi. This Hon’ble Tribunal may graciously be pleased to direct PCDA (P), Allahabad to pay the entire arrears*

*which accrued after the grant of pension and disability pension.*

- vii. This Hon'ble Tribunal may grant any other and further relief to applicant as it deem fit, just and proper in the facts and circumstances of the case.*
- viii. This Hon'ble Tribunal may award the cost of petition to applicant.*

2. Briefly stated, applicant was enrolled in the Brigade of the guards Regiment of Indian Army on 30.05.1988 and was invalided out from service on 07.08.1989 in Low Medical Category after rendering 01 year and 70 days of service having been found unfit for further service under Rule 13 (3) Item III (iii) of the Army Rules, 1954. As per Original Application, at the time of invalidation from service, the Invaliding Medical Board assessed his disability @60% for life. The applicant's claim for grant of disability pension was rejected by the respondents. The applicant preferred application which too was rejected vide letter dated 16.05.2021. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned counsel for the applicant submitted that applicant was found fit in all respects at the time of enrolment in the army and there was no note in his primary service documents with regard to any disease/disability. Therefore, whatever disease with which applicant suffered during service is attributable to 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 applicant is also entitled to disability pension and its rounding off to 75%.

5. On the other hand, learned counsel for the respondents submitted that disability pension of the applicant was rejected by the respondents stating that applicant was invalided having been found unfit for further service in the Army. He further submitted that applicant was non pensioner, therefore, his service documents have been destroyed by burning during the year 2015 after expiry of retention period as per para 595 of Regulations for the Army 1987 (Revised Edition). Long Roll in respect of pensioners and non- pensioners are retained for a period of 50 years and 25 years respectively from the date of becoming non-effective. Further submission of learned counsel for the respondents is that since documents relating to applicant have been destroyed on expiry of mandatory retention period of 25 years being a non-pensioner, therefore, degree of disablement cannot be ascertained at this stage. He pleaded the Original Application to be dismissed being devoid of merit.

6. Heard Ld. Counsel of both sides and perused the records and we find that documents relating to ex army person have been destroyed after mandatory retention period in terms of para 595 of Regulations for the Army, 1987. We could have decided the case, had there been related medical documents pertaining to the

applicant and applicant could have been benefitted, but we are unable to impart justice in the absence of requisite medical documents.

8. In view of the above, we are unable to decide the case in vacuum after a prolonged gap of more than 31 years from the date of invaliding out from service. Original Application is devoid of merit and is liable to be dismissed. It is accordingly **dismissed**.

9. Pending misc. applications, if any, are disposed off.

12. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated : 12 October, 2021

AKD/-