

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 567 of 2018**

Monday, this the 30th day of September, 2019

**“Hon’ble Mr. Justice Virendra Singh, Chairperson
Hon’ble Air Marshal BBP Sinha, Member (A)”**

No. 621093 Ex-AC Bishwajeet Banerjee, son of Late R.N. Banerjee, resident of House No. 393/110, Mansoor Nagar Hasan Puriya, Behind Kashmiri Mohalla, Police Chowki, Post-Chowk, District-Lucknow (U.P.).

..... Applicant

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

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Air Staff, Air Headquarters, New Delhi-110011.
3. Officer-in-Charge Records, Subroto Park, New Delhi-110010.
4. Principal Controller of Defence Accounts, Draupadi Ghat, Allahabad-211014.

.....Respondents

Ld. Counsel for the Respondents. : **Shri Amit Jaiswal,**
Central Govt Counsel.

ORDER**“Per Hon’ble Air Marshal BBP Sinha, Member (A)”**

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

(a) Issue/pass an order or direction of appropriate nature to the respondents to summon the rejection order of PCDA (P) dated 24.09.1983 and same may be set aside/quashed.

(b) Issue/pass an order or direction of appropriate nature to the respondents directing to grant disability pension from the date of discharge i.e. 20.06.1983 for life.

(c) Issue/pass an order or direction to the respondents to round off the disability pension from 30% for life to 50% for life.

(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 exemplary costs.

2. At the very outset it may be observed that the petition for grant of disability pension has been preferred by the applicant with delay of 33 years, 11 months and 10 days. Since payment of disability pension involves recurring cause of action, the delay was condoned vide order dated 27.11.2018.

3. Brief facts of the case are that the applicant was enrolled in the Indian Air Force (IAF) on 19.02.1977 and was invalided out from service on 20.06.1983 under the clause ‘having been found medically unfit’ after rendering total 06 years and 122 days of regular service. Disability pension claim was rejected by CDA (P), Allahabad vide letter dated 24.09.1983. Appeal against rejection of disability pension claim was forwarded vide letter dated 09.03.1984 which seems to have not been decided till date as there is no record in either the O.A. or the Counter Affidavit. The applicant is a non pensioner, his records have

been destroyed after keeping them for a mandatory period of retention and only long roll is available with minimum details. The applicant has approached this Tribunal for adjudication of his disability pension which was rejected by the pension sanctioning authority approx 36 years ago.

4. Ld. Counsel for the applicant pleaded that the applicant was enrolled in the IAF in medically and physically fit condition. It was further pleaded that a member is to be presumed in sound physical and mental condition upon entering service if there is no note or record to the contrary at the time of entry. In the event of his subsequently being invalided out from service on medical grounds, any deterioration in his health is to be presumed due to service conditions. He pleaded that the applicant was under stress and strains due to rigors of service conditions which may have led to occurrence of the disability. The Ld. Counsel pleaded for disability pension to be granted to the applicant.

5. Rebutting arguments advanced by Ld. Counsel for the applicant, Ld. Counsel for the respondents submitted that the applicant has rendered only 06 years of service in the IAF and is not eligible for grant of service pension. He further averred that as per prevailing norms the minimum period of qualifying service (without weightage) actually rendered and required, for earning service pension should be 15 years. Therefore, the the applicant is not entitled for service pension. Ld. Counsel for the respondents further submitted that the applicant was invalided out from service in low medical category and he was not granted disability pension at the time of invalidment since his disability was apparently regarded as neither attributable to nor

aggravated by military service (NANA). The Ld. Counsel for the respondents further submitted that all service and medical documents in respect of the applicant have been destroyed by a Board of Officers after stipulated period of retention and only minimum information in the form of Long Roll is available which is insufficient to establish the case related to disability pension. He pleaded for dismissal of the O.A.

6. We have heard Ld. Counsel for the parties and perused the records.

7. The arguments of the learned counsel for the applicant for grant of disability pension is misconceived for the reason that the statutory provision contained in Pension Regulations for the IAF is mandatory and cannot be overlooked while deciding the controversy. Applicant was required to produce the Invaliding Medical Board's opinion to indicate that the disability from which he was suffering, was attributable to or aggravated by military service. It has been rightly submitted by learned counsel for the respondents that Long Roll mentions only the reason for discharge. It is not substantive evidence to establish the cause of the disability from which the applicant is alleged to have been suffering.

8. We are in agreement with the arguments of Ld. Counsel for the respondents that as per provisions of law, on completion of prescribed retention period and after following due procedure, the records have been weeded out. It is clarified that benefit of statutory provision cannot be given in vacuum. The burden lies on the applicant to establish within four corners of settled provisions of law that the disability due to which the applicant was invalided out of service was attributable to or aggravated by military service.

9. The applicant has approached the Tribunal after an inordinate delay of more than 33 years. On account of delay caused by the applicant in approaching the Tribunal and for the reason that the records have been weeded out after following due process of law and in the absence of relevant documents, it is not possible to come to a definite opinion either to uphold or reject the grounds taken by the applicant for grant of invalid/disability pension.

10. In view of what has been observed above, the Original Application lacks merit and is liable to be dismissed for want of necessary documents, which have been weeded out due to delay caused by the applicant himself.

11. Accordingly, we decline to interfere in the matter. The Original Application is hereby **dismissed**.

No order as to cost.

(Air Marshal BBP Sinha)
Member (A)

(Justice Virendra Singh)
Chairperson

Dated: September 2019
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