

**RESERVED
Court No. 1**

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 03 of 2016

Friday, this the 13th day of July, 2018

**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal BBP Sinha, Member (A)”**

No. 1512371 EX. ENGR. PRAKSH NARAIN SHUKLA S/o Late Lekhpat
Rao R/o 10 Mandir Meahawa District- Etawah.
..... Applicant

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

Versus

1. Union of India through its Secretary, Ministry of Defence, (Delhi Head Quarter) Post Office South Block, New Delhi.
2. The Chief of Army Staff Army Headquarter Delhi Head Quarter Post Office South Block, New Delhi.
3. The Chief Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.
4. The office-in-charge /Chief Record Officer Bombay Engineering Group of Centre Kirkee Pune Maharashtra.

..... Respondents

Ld. Counsel for the: **Dr. Shailendra Sharma Atal, Advocate**
Respondents. Counsel for the respondents.

ORDER

(Per Hon Air Marshal BBP Sinha, Member (A))

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant for grant of disability pension after setting aside the rejection order passed by the respondents regarding non payment of disability pension to him.

2. For ready reference the prayers made by the applicant in the instant petition are reproduced hereunder:-

“(A) Issue an order for set aside the rejection of disability pension which was communicated vide order dated 03.11.2001.

(B) Issue an order or directions by which the opposite parties no.3 or directions by which the opposite parties no.3.

(C) Issue an order or directions by which the opposite parties no.3 to decide the pending appeal of the appellant dated 10.04.2003.

(D) Issue an order or directions to the opposite parties to pay the disability pension to the applicant as early as possible with interest of 12% annum from the date of discharge.

(E) Issue any other order or direction to conduct the Re-Medical Board for verifying the percentage of the disability as per the decision of Apex Court.

(F) Issue any other order or direction which this Hon’ble Court may deem fit and proper under the circumstance of the case.

(G) This Hon’ble Tribunal may graciously be pleased to award the cost of the writ application to the applicant.”

3. The brief facts of the case are that the applicant was enrolled in the Indian Army as Sepoy on 03.08.1957 and was discharged from service on 17.07.1964. He served with the Army for about 06 years, 10 months and 18 days. It has been claimed by the applicant that he had received a serious injury in his right hip bone while serving the Army and had got treatment in Army Hospitals. The learned counsel of the applicant has also claimed that the applicant never applied for premature retirement but the respondents discharged him on extreme compassionate ground on 17.04.1964, on their own without his consent. As per the applicant he demanded time and again the proceedings of the Medical Board for grant of disability pension but he received no reply to it. According to the applicant when he applied on 10.01.2001 to the HQ BEG and Centre Kirkee Pune for disability pension then he received a communication of rejection of disability pension vide

letter/ order dated 03.11.2001. Thereafter applicant represented against the said order to the Records Officer on 24.01.2003 but the same was rejected on 11.02.2003. Against the said rejection order applicant preferred an appeal to the Chief of the Army Staff on 02.04.2003 for grant of disability pension but till date he did not receive any reply. The case of the applicant is also that he has sent several applications and reminders for supplying him relevant documents for the purpose of payment of disability pension but till date neither the disability payment has been granted to him nor the documents asked for have ever been supplied.

4. This case was admitted on 29.03.2016 and respondents have filed their counter affidavit denying the claim of the applicant. It has been pleaded by the respondents that the applicant was discharged from Army Service on 17.07.1964 at his own request on extreme compassionate grounds under Item III (IV) of table annexed to Rule 13(3) of Army Rules, 1954. It has also been pleaded by the respondents that since the applicant had rendered only a total service of 06 years, 10 months and 18 days in Army prior to his discharge, applicant is neither entitled to nor was granted any type of pension at the time of discharge. The respondents have further pleaded that since the applicant was a non-pensioner, his service documents were retained/ preserved for 25 years after his discharge and thereafter all the service documents pertaining to him were destroyed in accordance with Relevant Regulations, 1987 of the Army. In this regard the respondents have annexed relevant pages of the Destruction Board dated 30.04.2006 as Annexure No.CR-2 to the counter affidavit. These relevant pages of Destruction Board clearly indicate that he was discharged on 'own request'. It has also been pointed out by the respondents that the applicant had also filed O.A. No. Nil/ 2013 and M.A. No. 799 of 2013 before this

Tribunal demanding disability pension but the same was dismissed as withdrawn on the request of the applicant with a liberty to him to file a fresh application in accordance with law.

5. We have given our anxious consideration to the material on record and the arguments raised by learned counsel for both the parties.

6. The short question involved in the present case for adjudication of controversy is that whether the applicant was discharged from Army on his own request or due to low medical category through invalidation on account of alleged injury sustained by him while serving the Army.

7. In this regard the submission of the learned counsel for the applicant is that the applicant had not taken voluntary discharge and he was discharged by the respondents themselves on compassion ground in view of the injury sustained by him while serving the Army.

8. To this effect it has been vehemently submitted on behalf of the respondents that the applicant as per Destruction Board records had taken voluntary discharge and since his documents have been destroyed, there is nothing on record for them to comment on his claim of injury and disability pension. It has also been submitted on behalf of the respondents that the applicant is admitting to voluntary discharge but putting the onus on respondents for forcing him to proceed on compassionate discharge. Since the applicant has approached after over 50 years of discharge when his documents have already been destroyed as per prescribed period fixed for the purpose under the relevant Regulations of the Army, no meaningful comment can be offered by respondents.

9. After hearing both the parties and perusing the material on record, particularly the records of Destruction Board we are of the following considered opinion :-

(a) The applicant has failed to provide any evidence that he had an injury because of which he was discharged from Army.

(b) We are not inclined to accept the contention of applicant that he was forced to go out of Army by respondents on grounds of compassionate release, because of his injury. In this context the applicant has failed to bring out any credible evidence to support his claim.

(c) Since he has approached after over 50 years of discharge, his documents have already been destroyed as per statutory provisions on the subject. Therefore no meaningful conclusion can be arrived at on his claim for disability pension in vacuum without having any evidence of injury and opinion of medical board on attributability and percentage.

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 costs.

(Air Marshal BBP Sinha)
Member (A)

Dated: July 13, 2018
JPT/-

(Justice S.V.S.Rathore)
Member (J)

