

RESERVED
COURT NO 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No 329 of 2017

Friday, this the 13th day of July, 2018

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

Ex Naik Bag Singh (Army No 1449740-H) on of late Makka Singh, resident of House No A-58, Subhash Nagar, Paniyala Road, Roorkee, District-Haridwar (Uttarakhand)-247667.

...Applicant

Ld. Counsel for the: **Shri K.K.S. Bisht, Advocate.**
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi-110011.
3. Officer-In-Charge Records, Bengal Engineer Group Record, PIN-900477, C/O 56 APO.
4. Principal Controller of Defence Accounts (Pension) Draupadi Ghat, Allahabad (U.P.)-211014.

.....Respondents

Ld. Counsel for the : **Dr. Chet Narain Singh, Advocate**
Respondents Govt Counsel.

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

1. The present Application has been filed under Section 14 of The Armed Forces Tribunal Act, 2007 for grant of following relief:-

(a) Issue/pass an order or direction of appropriate nature to the respondents to grant 80% disability pension, as assessed by Release Medical Board (RMB) and also to round of the disability pension which after rounding off will be 100% disability pension, to the applicant with effect from 01.09.1989 along with arrears of disability pension with interest at the rate of 18% per annum.

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

(c) Allow this application with cost.

2. We have heard Shri K.K.S. Bisht, Ld. Counsel for the applicant and Dr. Chet Narain Singh, Ld. Counsel for the respondents assisted by OIC Legal Cell and perused the records.

3. Brief facts of the case are that the applicant was enrolled in the Army (Bengal Engineer Group) on 05.12.1970 and discharged from service in low medical category CEE (P) on compassionate grounds at his own request with effect from 31.08.1989 under Rule 13 (3) III (iv) of the Army Rules, 1954 before completion of his service tenure. On 19.03.1988 while posted at Jaffna (Sri Lanka), the applicant was admitted to 454 Field Ambulance and was transferred to Military Hospital, Madras where he was hospitalized till March 1989 on account of suffering from “Pulmonary Tuberculosis

(011)” and finally placed in low medical category CEE (permanent) on 09.05.1989. Before normal discharge from service the applicant had submitted an application for premature discharge on compassionate grounds which was approved by the competent authority and the discharge order was issued vide letter dated 31.01.1989 with effect from 31.08.1989. The Release Medical Board held at Military Hospital, Madras assessed applicant’s disability @ 80% for two years from the date of discharge attributable to and aggravated by military service. The applicant approached to various authorities for grant of disability pension but was not granted the same due to prevalent rules at that time. The records reveal that the applicant suffered from the disease at the fag end of his service and was treated at various hospitals before being finally placed in medical category CEE (permanent) on 09.05.1989.

4. Ld. Counsel for the applicant submitted that on approaching the concerned authorities for payment of disability pension it was informed by the authorities concerned that the applicant was discharged from service in low medical category on his own request on 01.09.1989 and therefore as per the rules existing at that time he was not eligible for grant of disability pension.

5. The Ld. Counsel for the respondents submitted that the personnel discharged from service at their own request in any low medical category are not eligible for grant of disability benefits under AGI Scheme/disability pension. Ld. Counsel for the respondents further relied upon Govt of India, Ministry of Defence letter dated 31.01.2001 which states that an armed forces personal who retires

voluntarily or seek discharge on own request shall not be eligible for any award on account of disability.

6. We have given our anxious consideration to the views expressed by Ld. Counsel for the parties and hold that the applicant is prima facie entitled for disability pension wef 01.01.2006 in view of Govt of India, Ministry of Defence letter dated 29.09.2009 which stipulates as under:-

“In pursuance of Government decision on the recommendations of the Sixth Central Pay Commission vide Para 5.1.69 of their Report, President is pleased to decide that Armed Forces personnel who are retained in service despite disability, which is accepted as attributable to or aggravated by military service and have foregone lump-sum compensation in lieu of that disability, may be given disability element/war injury element at the time of their retirement/discharge whether voluntary or otherwise in addition to retiring/service pension or retiring/service gratuity.

The provisions of this letter shall apply to the armed forces personnel who are retired/discharged from service on or after 01.01.2006.”

7. We may add here that through judicial pronouncement by AFT Principal Bench order dated 07.02.2012 made in O.A. No. 336 of 2011, **Maj (Retd) Rajesh Kumar Bhardwaj vs Union of India & Ors** and upholding of the order by Hon’ble Supreme Court in CA No 318111 of 2013, the benefit of above letter has been extended to pre 2006 retirees also. Since The Release Medical Board has opined disability of the applicant @ 80% for two years from the date of discharge i.e. 31.08.1989 and held the disability to be attributable to military service, therefore as per rules valid at that time he is not entitled for disability pension for these two years being a case of discharge on own request. His entitlement to disability pension as

per new Govt Policy and settled law on discharge on own request, starts only w.e.f. 01.01.2006 hence the applicant needs to be reassessed by a Re-survey Medical Board.

8. In view of the above, the respondents are directed to conduct an RSMB for the applicant within three months from the date of this order. His claim to disability pension shall depend on the outcome of RSMB.

9. Thus the O.A. is partially allowed. The applicant's claim for disability element of pension shall be subject to the outcome of RSMB.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

Dated: July, 2018

gsr

(Justice SVS Rathore)
Member (J)