

**RESERVED
Court No. 1**

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 535 of 2017

Wednesday, this the 11th day of July, 2018

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

No. 2668226, Ex Sep. Tej Bahadur Singh S/o Ram Brikash Singh, R/o Village – Dudhaura, PO- Salamatpur, District Gazipur, UP, PIN-275201.

..... Applicant

Ld. Counsel for the:
Applicant

Shri V.P. Pandey, Advocate

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. The Chief of Army Staff, Integrated Headquarters of Ministry of Defence, South Block, New Delhi- 110001.
3. The Office In-charge Records, The Grenadiers Records, Jabalpur (MP), PIN- 482001.
4. Principal Controller of Defence Accounts (P), Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the:
Respondents.

**Shri R.K.S. Chauhan, Advocate
Central Govt Standing Counsel.**

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. He is challenging the validity of findings of the Invaliding Medical

Board holding the disability of the applicant as neither attributable nor aggravated by military service.

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

“(I) To set aside/ quash rejection of disability pension if any after summoning the copy of rejection of disability pension.

(II) To issue order or direction to respondents to grant disability pension along with service element to the applicant from the date of discharge from service.

(III) Any other relief as considered proper by this Hon’ble Tribunal be awarded in favour of the applicant.

(IV) Cost of the appeal be awarded to the applicant. ”

3. The brief facts of the case are that the applicant was enrolled in the Indian Army on 16.09.1976 and was invalided out from service on 14.06.1979 after serving for about two years and nine months in medical category EEE (P) under Rule 13 (3) item IV of Army Rules 1954 as the disability from which the applicant was suffering was found neither attributable to nor aggravated by Military Service. According to the applicant he was not provided copy of proceedings of Invaliding Medical Board. According to the applicant he also represented for giving him copy of rejection order of disability pension on 16.05.2016 and 10.03.2017 but he was not provided copy of the same. However, the applicant received communication vide letter dated 05.09.2016 that the service record pertaining to him has been destroyed in accordance with the relevant Rules on expiry of period of 25 years.

4. This case was admitted on 15.11.2017 and thereafter time was granted to the respondents three times to file counter affidavit but when the

same was not filed, on 17.01.2018 last opportunity was granted to the respondents to file counter affidavit. When despite giving last opportunity to the respondents to file counter affidavit, they failed to file the same their opportunity to file counter affidavit was closed on 08.05.2018, fixing the case for hearing on 04.07.2018 and also directing the respondents to produce original documents pertaining to the case along with medical documents for perusal of the Bench if any, but the respondents could not produce the medical papers pertaining to the applicant and submitted that the same have been destroyed in accordance with the relevant Regulations after the prescribed period of 25 years from the date of discharge of the applicant.

5. During the course of arguments the respondents have denied the claim of the applicant. It has been submitted by the respondents that the applicant was invalided out from service on 14.06.1979 in medical category EEE (P) as is evident from his discharge order under Rule 13(3) item IV of Army Rules 1954 and as the disability with which the applicant was found to have been suffering was neither attributable to nor aggravated by Military Service, the applicant is not entitled to any disability pension. It has also been submitted on behalf of the respondents that the applicant being non pensioner, his service documents have been destroyed in accordance with the relevant Rules and Regulations on the subject. During the course of hearing the respondents have shown the Long Roll pertaining to the applicant but it does not contain any description of the medical opinion of the Invaliding Medical Board, therefore it is of no avail.

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

7. No opinion of Medical Board or any other related evidence has been filed by the applicant, hence we are not in a position to find out whether the disability suffered by the applicant at the time of discharge, was attributable to or aggravated by military service and what was its percentage.

8. Learned counsel for the applicant submits that the opinion of the Medical Board is not required for adjudication of the present case keeping in view the fact that the discharge book issued by the concerned authorities establishes the fact that the applicant had been invalided out on medical ground.

9. For grant of invalid pension, the relevant portions of the Pension Regulations for the army 1961 (Part I) and Entitlement Rules for Casualty Pension Award, 1982 are reproduced below:

(a) **Para 173 of Pension Regulations for the Army 1961 (Part I)**

“Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20 percent or over.

(b) **Para 197 of Pension Regulations for the Army 1961 (Part- 1) – (Invalid Pension/ Gratuity when admissible)**

197. Invalid pension/gratuity shall be admissible in accordance with the Regulations in this chapter to :-

(a) an individual who is invalided out of service on account of a disability which is neither attributable to nor aggravated by service.

(b) an individual who is though invalided out of service on account of disability which is attributable to or aggravated by service, but the disability is assessed less than 20% and

(c) a low medical category individual who is retired/discharged from service for lack of alternative employment compatible with his low medical category.

(c) **Para 198 of Pension Regulations for the Army 1961 (Part-1)- (Minimum Qualifying Service)**

198. The minimum period of qualifying service actually rendered and required for grant of invalid pension is 10 years. For less than 10 years actual qualifying service gratuity shall be admissible.

(d) **Entitlement Rules for Casualty Pensionary Awards, 1982**

4. Invaliding from service is necessary condition for grant of a disability pension. An individual who, at the time of his release under the Release Regulation, is in a lower medical category than that in which he was recruited, will be treated as invalided from service, JCOs/Ors & equivalents in other service who are placed permanently in a medical category other than 'A' and are discharged because no alternative employment suitable to their low medical category can be provided, as well as those who having been retained in alternative employment but are discharged before the completion of their engagement will be deemed to have been invalided out of service.”

10. The aforesaid Regulation provides those people who are boarded out with a disability held attributable to/aggravated by military service with minimum 20% or above disability are entitled to disability pension. Invalid pension is granted to those personnel who are boarded out on medical grounds held neither attributable to nor aggravated by military service subject to having rendered minimum 10 years of qualifying service. Learned counsel for the respondents vehemently argues that decision of Hon'ble Apex Court in the case of **Dharamvir Singh Vs. Union of India and Others**, reported in (2013) 7 Supreme Court Cases 316, will not be applicable in the present case.

11. 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 Para 173 of Pension Regulations for the Army is mandatory and cannot be overlooked while deciding the controversy. Applicant was required to produce the Medical Board's opinion to indicate that the disability/injury 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 the discharge book 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. Applicant has come to this Tribunal after lapse of about thirty eight years of his discharge.

12. Learned counsel for the respondents further submits that as per provisions of law, on completion of prescribed retention period, after following due process of law, the record has been weeded out. It is vehemently submitted that benefit of statutory provision cannot be given in vacuum. The burden lies on the applicant to establish within four corner of settled provisions of law that the disability due to which he was invalided out of service was attributable to or aggravated by military service.

13. A perusal of the Pension Regulation for the Army 1961 (Part I) and Entitlement Rules for Casualty Pension Award, 1982(Supra) shows that not only the opinion of Medical Board is to be taken into account, but the decision taken thereon on attributability and percentage of disability is also required to be taken into consideration while recording satisfaction for grant of invalid/disability pension. Keeping in view the fact that after lapse of statutory period, the record has been weeded out, the provisions contained in Appendix II (supra) cannot be followed. The applicant has approached the Tribunal after above 38 years. On account of delay caused by the applicant in approaching the Tribunal and for the reason that the record has 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 disability/invalid pension.

14. 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.

15. 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 11, 2018
JPT/-

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