

(2019) 09 AFT CK 0014
In the Armed Forces Tribunal
Case No : Original Application No. 328 Of 2018

Gyandra Nath Mishra

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 18-09-2019

Acts Referred:

Citation : (2019) 09 AFT CK 0014

Hon'ble Judges : Sunita Gupta, J;B.B.P. Sinha, Member (A)

Bench : Division Bench

Advocate : R.S. Dhull, J.S. Yadav

Final Decision : Dismissed

Judgement

1. By way of the instant OA, the applicant seeks the following reliefs:

(i) Set aside the impugned order, rejecting the Applicant's claim (Annexure A-1) dated 22.6.2017.

(ii) Direct the respondents to process the case of the petitioner for grant of disability pension in terms of law settled by Hon'ble Supreme Court U.O.I

Vs Rajbir (Annexure-I) and since disability pension has simply been refused to the applicant's attributable/aggravated disability on the ground that he was discharged on medical grounds.

(iii) Direct respondents to release Disability Pension benefits to the applicant in view of Judicial dicta as above along with heavy costs and interest, and benefits as referred to supra may therefore begin to flow from the date of the Applicant's invalidation.

(iv) Issue any other suitable direction that the Hon'ble Court may deem fit in the facts and circumstances of the case.

2. The applicant was enrolled in the Indian Army on 29th July 1977, after being

found physically and medically fit. He was invalided out of service on 4th December, 1978 having been found unfit for further service.

3. Learned counsel for the applicant contended that the applicant is entitled to disability pension in view of the judgment of the Hon'ble Supreme Court in the case of Union of 'India Vs. Raibir Singh [(2015) 12 SCC 164].

4. The contention of learned counsel for the respondents, on the other hand, is that the present OA is not maintainable and is liable to be dismissed in view of Rule 173 of Pension Regulations (Part-I) 1961, which clearly stipulates that disability pension consisting disability element and service element may be granted to an individual who is invalided out from service on account of disability which is attributable to or aggravated by military service.

Since the applicant was discharged from service merely after rendering one year and six days of service and further his disability could not be

ascertained as the complete service documents had been destroyed by the Destruction Board on completion of retention period in terms of para 595 of

Regulations for the Army (Revised) 1987, the applicant is not entitled for grant of disability pension benefits. It is also contended that the OA is barred

by limitation as the same has been filed after a gap of thirty nine years of discharge from service.

5. We have heard learned counsel on both sides and have also gone through the documents available on record.

6. The question that arises for our consideration is whether the applicant, in the absence of any medical board documents relating to his disability, percentage and attributability by military service, available on record, is entitled to disability pension, as claimed.

7. The applicant did not file any document showing that at the time of invalidment of service he was suffering from any disability. The mere fact that

the applicant was invalided out of service after putting in one year and six days service ipso facto does not entitle him for grant of disability pension

unless there is some material available on record to show that he suffered from disability, if any, and the same was attributable to or aggravated by

military service. Additionally, prima facie invalidment after one year and six days of service indicates that the applicant was in all probability a recruit

at the time of invalidment. The documents filed in support of the case are mere typed copies which cannot be accepted in evidence unless original or

true photo copies are produced. No relief can be granted in vacuum. The applicant had been sleeping over his rights for good thirty nine years. The onus to prove his case is on the applicant. Absence of any invalidation medical board documents clearly indicating the reasons as to why the Medical Board decided to make the disease neither attributable to nor aggravated by military service is an important requirement. No relief can, therefore, be granted to the applicant in the present circumstances.

8. In view of the above, the instant OA is dismissed with no order as to costs.

Pronounced in open Court on this 18th day of September, 2019.