

COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA No. 1972 of 2019

Ex Sep Salik Ram Sharma **Applicant**

Versus

Union of India & Others **Respondents**

For Applicant : Mr. Ajit Kakkar, Advocate

For Respondents : Mr. Neeraj, Sr. CGSC

CORAM:

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

1. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 are read as under:

- "a. To direct the respondents to bring all relevant medical papers on record.***
- b. To direct the respondents to conduct reassessment of Medical Board of the applicant.***
- c. To direct the respondent to grant disability pension to the applicant from the date of invalidment that is 20.06.1977.***

d. To direct the respondents to issue a PPO pertaining to the disability pension and broad-banding of the disability pension.

e. To direct the respondents to pay arrears of disability pension and broad banding of disability pension along with interest @ 12%.

f. To grant such other relief appropriate to the facts and circumstances of the case as deemed fit and proper.”

2. Although the applicant, through this OA, sought for the grant of the disability pension, however, during the course of hearing on 07.01.2025, the learned counsel for the applicant sought to confine the prayer made in the OA for seeking the grant of invalid pension only. Thus, the present case is being considered qua the prayer for the grant of invalid pension only.

BRIEF FACTS

3. The applicant was enrolled in the Indian Army on 29.08.1968 and was discharged from service on 19.06.1977 under Army Rule 13 (3) III (v). being service no longer required on administrative grounds before completion of terms of engagement after having served 08 years 09 months and 21 days of military service.

4. As per the RMB vide AFMSF-16, dated 28.02.1977, at the time of discharge, the applicant was found in Low Medical

Category (LMC) for the disability **TRAUMATIC SYNOVITIS RIGHT KNEE (731)** which was recommended as neither attributable to nor aggravated (NANA) by the military service assessed at @ 20% for 02 years.

5. The first appeal against the rejection of disability pension dated 01.09.2018 was rejected by the respondents vide their letter dated 25.09.2018 stating that the appeal could not be processed at this stage due to it being beyond five years old.

6. Aggrieved by the decision of the respondents, the applicant has filed the instant OA. In the interest of justice, in accordance with Section 21(1) of the AFT Act, we take up the present OA.

CONTENTIONS OF THE PARTIES

7. The learned counsel for the applicant submitted that the applicant was enrolled in the Indian Army on 29.08.1968 and was invalided out from service on 19.06.1977 due to the disability of **TRAUMATIC SYNOVITIS RIGHT KNEE (731)**.

8. The learned counsel for the applicant had placed reliance on the judgement of the Hon'ble Supreme Court in the case of **Dharamvir Singh Vs. Union of India and Ors.** [2013

(7) SCC 36], that after thorough medical examination the applicant was enrolled into military service and there was no note of any disability recorded in his service records. Therefore, any disability occurring during the period of his service is deemed to be attributable to or aggravated by military service.

9. *Per contra*, the learned counsel for the respondents submitted that the claim of the applicant for the grant of disability pension was rejected on the ground that the individual was discharged from service purely on administrative grounds and since the applicant was discharged on administrative ground, he is not entitled for any pensionary benefits.

10. The learned counsel for the respondents further submitted that the ratio of the judgment of ***Dharamvir Singh Case (Supra)*** does not apply to the facts of the instant OA as Dharamvir Singh was invalided out from service on medical grounds and the applicant in the instant OA was discharged from service under Rule 13 (3) III (v) of Army Rules 1954 being service no longer required on administrative grounds due to more than four red ink entries.

11. The learned counsel for the respondents further submitted that during the course of service the applicant was punished on several occasions i.e., on 15.01.1971, 17.09.1974, 19.08.75 and 10.07.1976 under sections 63, 40 (e), 63 and 41 (2) & 42 (e) of the Army Act, 1950 respectively for neglecting the Infantry order, use of insubordinate language towards his superior officer, being improperly dressed and for contravening the battalion routine order respectively, which rendered him undesirable for further retention in the military service.

12. It was further submitted by the learned counsel for the respondents that the applicant was served with a Show-Cause Notice (SCN) by the Commander 330 Infantry Brigade in accordance with Rule 13 (3) III (v) of Army Rules, 1954 and IHQ-MoD (Army) letter no. A/13210/159/AG/PS2(C) dated 28.12.1988 and he was awarded more than four red-ink entries for his misconduct during the service and was accordingly discharged from service under the provision of Army Rule 13 (3) III (v).

ANALYSIS

13. We have heard the learned counsel for the parties at length and gone through the records produced before us. After perusal of the records produced and arguments advanced, we find that it is an undisputed fact that the applicant was discharged from the service purely on administrative grounds. It is also a fact that the applicant was discharged from service being undesirable for further retention under Army Rule 13 (3) III (v) and IHQ of MoD (Army), AG's Branch letter dated 28.12.1988 being "service no longer required". Rule 13 (3) III (v) of the Army Rules 1954 read with Regulation 41 (b) of the Pension Regulations for the Army (Part - 1), 1961 encapsulates the authority and grounds for discharge which herein are reproduced as under: -

"Rule 13 of Army Rules 1954. Authorities empowered to authorize discharge.

- (1)
- (2)
- (3)

TABLE

CATEGORY	GROUNDS OF DISCHARGE	COMPETENT AUTHORITY TO AUTHORIZE DISCHARGE	MANNER OF DISCHARGE
1	2	3	4

Persons enrolled under the Act but not attested	III (V) All other classes of discharge	Commanding officer or Commanding Recruit reception Camp, or a Recruiting. Technical Recruiting or Deputy Technical Recruiting	The Brigade or Sub Area Commander before ordering the discharge shall, if the circumstances of the case permit give to the person whose discharge is contemplated an opportunity to show cause against the contemplated discharge.
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Regulation 41 (b) of the Pension Regulation for the Army, Part-I 2008 is reproduced hereunder: -

“41 (b) An individual who is compulsorily retired/discharged or removed on grounds other than misconduct or discharged under the provisions of Army Act, 1950 and the Rules made thereunder, remains eligible for pension and/or gratuity as admissible on the date of discharge. This will suo-moto apply to cases of dismissal/removal converted into discharge subsequently.”

14. It is pertinent to note that in the instant case the applicant was not discharged from the service on the medical grounds, however, he was discharged on administrative grounds being undesirable for further retention on the grounds of indiscipline/misconduct in the military service under the provision of Rule 13 (3) III (v) of the Army Rules 1954.

15. Since, the applicant has been discharged on the basis of his misconduct/indiscipline on administrative grounds, hence, the applicant is not eligible for Invalid Pension. Therefore, we are not inclined to accept the contentions made by the applicant for the grant of any relief. Thus, the present O.A. is rejected being devoid of merit.

16. Consequently, Miscellaneous Application(s) if any, stands disposed off accordingly.

Pronounced in the open Court on this 7 day of
February, 2025.

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

**[REAR ADMIRAL DHIREN VIG]
MEMBER (A)**

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