

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

OA 1998/2018

Ex Cfn Budh Ram Yadav Applicant
Versus
Union of India & Ors. Respondents
For Applicant : Mr. Mohan Kumar, Advocate
For Respondents : Mr. Shyam Narayan, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE MS RASIKA CHAUBE, MEMBER (A)

ORDER
26.03.2025

At the very outset, we may mention that this is the second round of litigation. In the first round the applicant had filed OA 1637/2017 praying for continuation of disability element of pension which in the year 1988 was discontinued on the ground that it was sanctioned only for two years. This Tribunal finding that even though the disability was assessed @ 20% and attributable to military service, dismissed the OA *in limine* on the ground, we quote *"that the nature of disease is such that it is fully curable. This has happened. The individual having served his term of service, is now fortunately also fully well."*

2. It needs to be mentioned here that the applicant seeking modification of the order dated 26.09.2017 passed in OA 1637/2017, moved a Review Application bearing No. 36/2018 contending that while dismissing his OA the

Hon'ble Court has not referred to his entitlement to service element as contained in Regulation 186 of the Pension Regulation for the Army 1961. However, as observed by the Bench which decided the OA, there was no such reference made by the applicant to this Regulation in the main OA 1637/2017. There being no error apparent on the face of the record, the RA came to be dismissed without prejudice to any right of the applicant available to him on the strength of Regulation 186 of the Pension Regulation for the Army 1961.

3. The applicant thereafter under Para 186 of Pension Regulations for the Army, 1961 filed a representation/legal notice which, as contended, has never been replied..

4. In the backdrop of the order passed in the RA 36/2018 arising out of OA 1637/2017, the applicant has now filed the instant OA No. 1988/2018, seeking the following reliefs.

“(a) To grant service element of the pension to the applicant from 21.05.1988.

(b) . To grant arrears of service pension with effect from 21.05.1988 along with 18% interest thereon.”

5. The applicant herein was enrolled in the Indian Army in the corps of EME on 28th September, 1974. At time of the joining the applicant was found physically and medically fit in Shape I. During the period of service, the applicant was diagnosed with (I) Hepto Intestinal Amoebiosis and placed in medical category 'C' (CEE) Temporary which ultimately resulted in his release from

service on 24th July, 1984. The Release medical board held the disability of the applicant assessed @20% for two years and also "attributable to military service". In 1988, a Re-survey Medical Board was conducted which assessed the applicant's disability as Nil. On the strength of Re-survey Medical Board, the Competent Authority w.e.f. 20.06.1988 discontinued the disability element as well as service element of pension from 20.5.1988 of the applicant.

6. It is submitted by learned counsel for the applicant that in view of para 186 of the Pension Regulations for the Army 1961 in case an individual who was initially granted disability pension but whose disability is assessed below 20% subsequently shall cease to draw disability pension from the date it falls below 20%, however, he shall continue to draw the service element of disability pension.

7. The Respondents have filed the counter affidavit and have submitted that on being discharged from service, the applicant was granted disability pension (service element with effect from 25th July, 1984 for life and disability element with effect from 25th July, 1984 to 5th June, 1986 i.e., for two years vide PCDA (P) Allahabad PPO No. D/4401/1984 dated 17th January, 1985.

8. Further contention of the respondent is that the Release Medical Board assessed the disability of the applicant @ 20% and attributable to military service. However, he was held to be

suitable for civil employment. As the disability element of pension was sanctioned only for two years, it was discontinued and on 20.05.1988, a Re-survey Medical Board assessed the disability of the applicant as NIL for life. The PCDA (P) Allahabad vide its letter dated 05.09.1988 stopped the disability element of the applicant and a corrigendum PPO issued.

9. On going through the pleadings, it appears that the disability of the applicant having been assessed NIL by the Re-survey Medical Board; the decision of the Competent Authority to discontinue the disability element of pension, initially granted for two years was in order, however stoppage of the service element of pension, which, as per the counter affidavit, was granted for life, was wrong.

10. We have gone through the relevant paragraph of the Pension Regulations for the Army 1961. In view of paragraph 186(2), which is reproduced herein below, the applicant is entitled to service element of pension from the date of its discontinuation i.e., 21st May, 1988. Para 186 of the Pension Regulations for the Army, 1961 reads thus:-

"186 (1)xxx xxx xxx xxx

(2) An individual who has initially granted disability pension but whose disability is re-assessed at below 20% subsequently shall cease to draw disability element of disability pension from the date it falls below 20 per cent. He shall, however, continue to draw the service element of disability pension."

11. Without going into any further details, in view of Para 186(2) of the Pension Regulations for the Army, 1961 and the admitted fact that on being discharged the applicant was granted service element of pension for life, he is held entitled to service element of pension for life from 21.5.1988, the date of its discontinuation. The respondents are directed to assess and release the arrears of service element of pension to the applicant within three months of the receipt of this order.

12. The OA is allowed. Pending application(s), if any, also stands closed.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[RASIKA CHAUBE]
MEMBER (A)

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