

**FORM NO – 4**

**(SEE RULE 11 (1))**

**IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA**

**ORDER SHEET**

**APPLICATION No : O A 13/2012**

APPLICANT (S)

Biswajit Kumar Bose

RESPONDENT (S)

Union of India & 2 Ors

Legal Practitioner of applicant

Legal Practitioner for Respondent (s)

Mr. Durga Prasad Dutta

Mr. D.K.Mukherjee

<b>NOTES OF THE REGISTRY</b>	<b><u>ORDERS OF THE TRIBUNAL</u></b>
	<p>Order Sl. No. : <u>9</u> Dated : <u>04.12. 2012</u></p> <p>Mr. Durga Prasad Dutta, Id. adv. for the applicant and Mr. D.K.Mukherjee, Id. adv. for the respondents are present.</p> <p>This is a matter where the applicant was invalidated out of Air Force service on medical ground after rendering 10 years and 44 days of service and he has prayed now for invalidment pension.</p> <p>The brief facts of the case are that the applicant was enrolled in the Air Force on 26.3.73 and was discharged on 11.4.83 under Air Force Rules, 1969, Chapter III, Rule 15 clause 2(h) "being medically unfit for ADSO Trade and unwilling to remuster to any other trade". His disability was that of colour vision i.e. in category CP-4. It is for this reason that he was invalidated out of service under the provision of regulation 153A of Regulations for the Air Force, 1961. His medical category, as assessed by the medical board, was "AYE" (i.e. A4G1). It implies that for the purpose of his functional ability in Air, he was not in an acceptable medical category, which is being A4, while for the purpose of functioning on ground, he was in an acceptable category which is G1. It is on this ground that he was offered for</p>

remustering into another trade so that his service could be utilized on ground. The applicant, however, was unwilling for such remustering for which he had to be ultimately discharged under the above rule.

The applicant, however, after getting discharged, had been approaching the authorities for granting him invalidment pension as per regulation 153A of Pension Regulations, as according to the applicant, he was entitled to such pension. This rule should be read in conjunction with the provision made in the Air Force Pension Regulations, 1961 regulation 172., both the rules are quoted below :-

“Rule 172. The minimum period of qualifying service required for an invalid pension is 10 years. For less than 10 years qualifying service an invalid gratuity only shall be admissible.”

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**Individuals discharged on account of their being permanently in low medical category.**

“153A. Individuals who are placed in a lower medical category \*(other than E) permanently and who are discharged because no alternative employment suitable to their low medical category could be provided, shall be deemed to have been invalided from service for the purpose of entitlement rules laid down in Appendix II to this regulation.”

Note : The above provision shall also apply to individuals who are placed in a low medical category while on extended service and are discharged on that account before completion of the period of their extension.”

Not satisfied with repeated representations by the applicant, the authorities rejected his prayer for invalidity

pension under the impugned order dt. 21.9.11 (annexure-H to the OA) clearly mentioning that he could not be granted any pension as per extant rules, as explained in this impugned order. At the same time, in para 4 of the impugned order, the Air Force Headquarters has admitted to the existence of a court decision by the Principal Bench of Armed Forces Tribunal, New Delhi against which an appeal filed by the authorities, stood dismissed by the Hon'ble Supreme Court. But as interpreted by the Air Force authorities that such a decision was applicable only to the applicant of that case and not to others.

We have gone through the ibid decision of the Principal Bench of AFT in TA 367/2009 (**Ex Cpl. Ram Avtar –vs- UOI & Ors**) decided on 7.1.2010. In the operative paragraph of the said judgement, following order was passed :-

“ In the present case the incumbent has already put 12 years and 350 days. For persons who have been going out on medical ground and not inclined to accept lower trade, for such persons 10 years of service will be qualifying service. In view of this, we are of the opinion that the petitioner has wrongly been denied the pension. Petitioner is entitled to pension as per Rule 172 as a result , the petition is allowed and petitioner shall be paid pension as per rule 172. This should be worked out within a period of three months from today. All the arrears should be paid to the petitioner and arrears will carry interest @ 12% P.a. No order as to costs. “

It appears that an appeal was filed against this order of the Principal Bench before the Hon'ble Supreme Court by the respondents being Civil Appeal D No. 21344 of 2010, which was dismissed by order dt. 8.11.2010.

We note that in the ibid decision of the Principal Bench, nowhere any mention is there that that decision would be

applicable to that specific case only. Therefore, the ratio of this decision appears to be applicable to all such cases. In that view of the matter, we find that the case before us is almost a self-same case except that petitioner before the Principal Bench Cpl. Ram Avtar had served for 12 years and 350 days whereas the present applicant had served for 10 years and 44 days. That notwithstanding, the regulations quoted above have clearly stipulated that such invalidment pension can be granted on completion of 10 years of service. Therefore, in our opinion, the applicant appears to have a case for entitlement of such invalidment pension.

Mr. D.K.Mukherjee, Id. adv. for the respondents while making his oral submissions, drew our attention to the fact that is mentioned in the counter affidavit and has also, in his usual fairness, admitted to the decision rendered by the Principal Bench in the case of Ex Cpl. Ram Avtar, as quoted above, which was not interfered with by the Hon'ble Supreme Court on appeal. He, however, brought in the point of limitation in this matter. Mr. Mukherjee submitted that this application is hopelessly barred by time since the applicant having been discharged in April, 1983, filed this original application in this Tribunal after a long delay of 29 years, in the year 2012. However, he also admitted that during the intervening period, the applicant made some feeble efforts to represent before the authorities for disability pension, but later on, after the ibid judgement of Principal Bench, a further representation was made in the year 2010, which was rejected by the impugned order dt. 21.9.11. That notwithstanding, according to Mr. Mukherjee, the delay from the time of discharge has not been adequately explained.

Mr. Dutta, Id. adv. for the applicant while admitting the factual position, submitted that the applicant has filed this case

before this Tribunal in February 2012 after his representation was rejected by the authorities on 21.9.11 which is impugned in this case. Therefore, according to him, he has not taken more than six months, as is the stipulated time frame to file an application before this Tribunal as per AFT Act, 2007 and thus, he feels that there has been no delay in filing this application. He, however, admits that there has been long delay from the time the applicant was discharged from service but since pensionary benefit is a continuous cause of action and the applicant is without any pension and has been facing much hardship, such delay should be condoned so that the applicant could get some benefit by way of service element of his pension.

We have heard the Id. advocates for both sides on the question of limitation and we feel that there has been no undue delay in the matter and therefore, the point of limitation, as raised by Mr. Mukherjee, cannot be accepted.

We have also heard both the sides on the merit of the case and have gone through the decision of the Principal Bench case in detail. By applying the ratio of the ibid decision, we are of the opinion that the applicant's prayer should be allowed. However, the arrear payment should be restricted three years prior to the filing of this OA, following the ratio of the decisions of the Hon'ble Supreme Court in this regard.

In view of our above discussion, the OA is allowed by issuing the following directions.

- i) The impugned order dt. 21.9.11 be hereby quashed.
- ii) The respondents are directed to grant pension to the applicant as per regulation 172 read with regulation 153A ibid for the service he had rendered in the air force, which will be calculated by the concerned respondents as expeditiously as possible and payment of such pension shall commence with

immediate effect but not later than 3 months from the date of receipt of a copy of this order.

- iii) As regards arrears, we direct that such arrear shall be restricted <sup>to</sup> three years prior to the date of filing of this OA. This OA was filed on 2.2.12, therefore, the arrear will be admissible w.e.f. 1.2.2009, which shall be paid within six months from the date of receipt of a copy of this order.
- iv) However, in case the respondents fail to pay entitled pension, or arrears thereof, as per our above order, such arrear will carry interest at the rate of 12% p.a. from the date of expiry of the time limit so fixed.
- v) There will be no order as to costs.

Let plain copy of the order be handed over to both the sides.

(LT. GEN K.P.D.SAMANTA)  
MEMBER(A)

(JUSTICE RAGHUNATH RAY)  
MEMBER(J)