

**FORM NO – 4**

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

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

**ORDER SHEET**

**APPLICATION No : T A 18 of 2011**

APPLICANT (S)

Radhanath Naik

RESPONDENT (S)

Union of India & 4 Ors

Legal Practitioner of applicant

Legal Practitioner for Respondent (s)

Mr. Sandip Kumar Bhattacharyya

Mr. D.K.Mukherjee

NOTES OF THE REGISTRY	<b><u>ORDERS OF THE TRIBUNAL</u></b> Order Sl. No. : <u>16</u> Dated : <u>10.05.2013</u>
	<p>This application was originally filed before the Hon'ble Orissa High Court as a writ application being No. OJC No. 17223 of 2001 by the applicant seeking disability pension. After coming into force of the Armed Forces Tribunal Act, the same was transferred to this Tribunal for disposal and accordingly it has been registered as TA 18 of 2011.</p> <p>Mr. Sandip Kumar Bhattacharyya, Id. adv. appears for the applicant and Mr. D.K.Mukherjee, Id. adv. is present on behalf of the respondents. The TA is taken up for hearing. Heard Id. advocates for both the sides.</p> <p>The applicant was enrolled in the Army Ordnance Corps on 18.10.1963 and was discharged on 17.10.1970 on completion of the terms and conditions under which he was enrolled. However, subsequent to his discharge from the army, he joined the Defence Security Corps (DSC) on 6.2.1976 from where he retired on 1.3.1996. He opted to combine his army service along with the DSC service, thus, his accumulated total service was 27 years and he was accordingly granted his normal service pension as admissible under the rules. However, during the course of his</p>

service in the DSC, the applicant was downgraded to low medical category but he continued in such category till he was discharged on 1st March 1996. At the time of his release, he was placed before the Release Medical Board, and we find from perusal of the original records, as produced by the respondents, that the release medical board opined that the disease for which he was downgraded to category 'C' was attributable to military service and it was considered as 'permanent' i.e. for life. We also notice from para 5 of the counter affidavit filed by the respondents ( at page 16) that, while they agree with the facts as have been mentioned in the writ petition, they have submitted that the percentage of disability was 20% for two years in respect of only one of the disabilities and not for all the three. This was later rejected by the PCDA(P), Allahabad, since they considered such disability was not to be attributable to military service. We, however, note two aspects from the records as also from the submissions made before us :

Firstly, the PCDA(P), Allahabad has differed with the opinion of the release medical board. While the release medical board opined that the disability was attributable to military service, the PCDA(P) held it otherwise. It is now well settled that the PCDA(P), Allahabad has no authority to interfere with the opinion of the release medical board without any fresh inputs or without subjecting the individual to a further medical examination.

Secondly, the applicant made an appeal against non-grant of disability pension before the authorities on 22.2.97 which was rejected on 13.12.97. According to the respondents, regulation 173 of the Pension Regulations for the Army, 1961, as amended, clearly stipulates that unless the disability is attributable to or aggravated by military service and the percentage of disability is 20% or more, the applicant would not be eligible for any

disability pension.

On perusal of the original medical documents, we, however, note that the requirement as stipulated in regulation 173 of the ibid Pension Regulations is adequately met in this case where the release medical board has very clearly in Part II of the Board proceedings opined that the disease with which the applicant was suffering was attributable to military service and that such disability is permanent in nature and as per the respondent's own affidavit, the percentage is indicated as 20% as stated above. In fact, the percentage of disability in a composite manner for three disabilities is given as 30% in the ibid medical board.

Under such circumstances, we are of the clear view that denial of disability pension to the applicant is wholly unjustified and arbitrary. It is settled position of law that PCDA(P) has no authority to sit on appeal over the opinion of the duly constituted medical board, which has been done in this case. On that ground alone, the impugned rejection by the PCDA(P) is liable to be quashed and is accordingly quashed.

In view of the above, we are of the opinion that the applicant is entitled to be paid disability pension as admissible under the rules for a percentage of 20% disability with immediate effect for life.

However, so far as arrears of such disability pension is concerned, it has been held by the Hon'ble Supreme Court in the case of **Shiv Dass –vs- UOI & Ors**, AIR 2007 SC 1330 that even though cause of action in respect of claim of disability pension continues from month to month, that, however, cannot be ground to overlook delay. If the petition is filed beyond reasonable period say, three years, normally court would restrict the relief for a period exceeding three years from the date of presentation of writ petition. Keeping in view the above principle

	<p>as laid down by the Hon'ble Apex Court, we have taken note of the following aspects :-</p> <ol style="list-style-type: none"> <li>The applicant retired on 1.3.1996.</li> <li>He preferred an appeal against non-grant of disability pension in February 1997 which was finally rejected in December, 1999.</li> <li>The applicant filed the instant writ petition before the Hon'ble Orissa High Court in the year 2001 as indicated above.</li> <li>Such writ petition was transferred to this Tribunal in the year 2011.</li> <li>From the above, it is quite clear that the applicant was pursuing the matter diligently by following up the matter at various levels and ultimately he filed the writ petition before the Hon'ble Orissa High Court in 2001. In our view, he was vigilant enough and did not waste any time for redressal of his grievance.</li> <li>Mr. D.K.Mukherjee, Id. adv. for the respondents has, however, submitted that the applicant was not vigilant enough in the Hon'ble Orissa High Court to pursue his case and has allowed its pendency there for more than 10 years till the time it was transferred to this Tribunal. This contention is vehemently contested by Mr. Bhattacharyya by contending that there was no way for the applicant once he filed the writ petition that he could do anything to expedite the matter but to wait for a decision of the Hon'ble High Court as and when it would be rendered. Therefore, the applicant should not be held responsible for the delay which actually occurred in the Hon'ble Orissa High Court during that period.</li> </ol> <p>On a consideration of the facts and circumstances as stated above, we are clearly of the view that there was no delay or</p>
--	---

laches on the part of the applicant in pursuing the claim for disability pension or for presenting the writ petition before the Hon'ble High Court and, therefore, the applicant is held entitled to get arrears from the date of his release from service i.e. from 1.3.96.

In view of the foregoing discussions, the Transferred Application stands allowed on contest by issuing the following directions :-

- a) The respondents, especially respondent Nos. 2 and 3 are hereby directed to grant disability pension to the applicant treating his disability attributable to military service and quantum of such disability to be 20% for life, with immediate effect.
- b) The said respondents are further directed to pay arrears of disability pension to the applicant from the date of release i.e. w.e.f. 1.3.96.
- c) So far as current payment of disability is concerned, the same should be paid within three months from the date of receipt of a copy of this order.
- d) So far as arrears are concerned, the same should be paid within four months from the date of receipt of a copy of this order, failing which the entire amount will carry interest at the rate of 12% per annum commencing from the date of expiry of four months from today till the date of actual payment.
- e) There will be no order as to costs.

The original records be returned to the respondents on proper receipt.

Let a plain copy of the order duly countersigned by the Tribunal Officer be furnished to both sides.

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

(JUSTICE RAGHUNATH RAY)  
MEMBER(J)