

FORM NO – 4

(SEE RULE 11 (1))

IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

ORDER SHEET

APPLICATION No : O A 49/2013

APPLICANT (S)	Ex Nk. Md. Rajaur Rahman
RESPONDENT (S)	<u>Union of India & 7 Ors</u>
Legal Practitioner of applicant	Legal Practitioner for Respondent (s)
Mr. Fulman Singh	Mr. D.K.Mukherjee (Res. 1-7)

NOTES OF THE REGISTRY	<u>ORDERS OF THE TRIBUNAL</u>
	<p data-bbox="600 875 1353 909"><u>Order Sl. No. : 5</u> <u>Dated : 03.07.2014</u></p> <p data-bbox="600 969 1361 1160">Mr. Fulman Singh, Id. advocate appears on behalf of the applicant and Mr. Dipak Kumar Mukherjee, Id. advocate for the respondents 1 to 7 is present. The application is taken up for hearing.</p> <p data-bbox="600 1205 1361 1395">2. The applicant, who was discharged from Army service on medical ground, has filed this application being aggrieved by the decision of the respondents to discontinue his disability pension from Oct 1997.</p> <p data-bbox="600 1440 1361 1944">3. The admitted facts in this case are that the applicant was enrolled in the Indian Army on 16.12.1981 in Rajput Regiment and was discharged on 28.12.1993 being in low medical category 'EEE'(Permanent), for suffering from the disease of Leprosy during the course of service. This disability was considered as attributable to and aggravated by Military service and his disability was assessed at 100%. Accordingly, the applicant was granted disability pension with effect from 29.12.1993 for one year and then as further reviewed. His service element of pension was all through sanctioned for life. The applicant was</p>

subsequently placed before the Re-survey Medical Board (RSMB) in 1994 and again in 1997 in which his disability was assessed at 80% for four years i.e. up to 30.09.2002. The applicant was accordingly paid such disability pension. He was due for a further RSMB in 2002-03 for which he was issued with a letter in September, 2005 followed by several reminders, numbering eight, asking him to appear at MH, Danapur for conducting such RSMB. However, the applicant did not report to MH Danapur for such RSMB and thereafter his disability pension was stopped. The applicant made representations to various authorities and was intimated by a letter dated 17.10.2005 (Annex. 3) that due to his failure on repeated directions to appear before the RSMB at MH Danapur, payment of disability pension was stopped. The applicant thereafter made further representation and it was informed that his medical documents which were sent to the MH Danapur for holding RSMB, were returned in view of his continued absence on repeated requests.

4. The applicant has submitted in his OA that he has not been paid any disability pension from October, 1997 and has accordingly filed this O.A. (No.49/2013) praying for a direction upon the respondents to resume payment of disability pension from October, 1997 with all arrears and also other benefits like AGI etc.

5. This original application having been filed in the year 2013 although the cause of action arose in Oct 1997 when disability was allegedly discontinued, the applicant also filed an M.A. (No.89/2013) under Section 22 of the Armed Forces Tribunal Act, 2007 praying for condonation of delay in filing the O.A. The delay was condoned by this Tribunal vide our order dated 09.12.2013.

6. The respondents have contested the application by filing an affidavit only on this day in court, from which it appears that the applicant was enrolled in the Army on 16.12.1981 and invalidated out of service on 28.12.1993 after rendering 12 years 13 days of service, under Rule 13(3) (III) (iii) being in low medical category 'EEE' (Permanent) due to disability of "*Leprosy Borderline Lepromazous -030(a)*". His disability was considered as attributable and assessed at 100% for one year (Annexure-R1) and accordingly he was granted disability pension with effect from 19.12.1993 @ Rs. 375 per month for one year, but the service element for life. This payment continued till 29.11.1994. Thereafter, he was brought before the RSMB on 30 Nov 1994 and his disability was assessed at 80% for two years i.e. upto 13 Oct 1997. He was again brought before RSMB on 14 Oct 1997 when his percentage of disability was assessed at 80% for five years from 14.10.1997. Therefore, he was due for further assessment in September, 2002. Accordingly, the applicant was intimated to appear before the RSMB at MH Danapur by an advance communication dt. 15th April 2002 (annexure-Rv) followed by several reminders as detailed in page-3 of the A/O. But the applicant failed to appear. Therefore, the respondents had no other alternative but to stop payment of disability pension in view of Rule 161 of Pension Regulations as he failed to appear before the RSMB. It is, however, stated that all benefits under AGIF scheme had already been paid to the applicant. This is recorded in our order dated 09.12.2013.

7. We have heard the Id. counsel for both sides and perused various documents including the original departmental file as produced by the respondents. There is no dispute that the applicant was suffering from Leprosy for an attributable cause and percentage of his disability was initially assessed as

100% which was subsequently re-assessed at 80%. His last assessment was done in Oct 1997 and he was due for re-assessment in 2003. It is also apparent from the A/O that the applicant was intimated on several occasions to appear before the RSMB but he failed to do so and as per rules, therefore, payment of disability pension was stopped.

8. Mr. Fulman Singh, Id. counsel for the applicant has tried to explain that the applicant did not receive any such intimation/communications, which appear to have been sent per ordinary post and not through any registered post with A/D. Therefore, the respondents are also not in a position to prove that the said intimation/communications were actually received by the applicant.

9. Be that as it may, although the applicant has submitted that he has not been receiving disability pension from 1997 and the relief prayed for is also for resumption of payment of disability pension from October, 1997, we are of the opinion that as per last assessment which was effective up to Sept 2002 according to the respondents, it is unacceptable that he did not receive any such disability pension after October, 1997. Even otherwise he was entitled to service element for life as per rules. In fact, from the original documents produced by the respondents we find a copy of the corrigendum P.P.O. No. D/CORR/409120/2013 dated 05.09.2013 wherefrom it appears that service element @ Rs. 4050 p.m. admissible w.e.f. 1.7.2009 to 23.09.2012 was revised to Rs. 4537 with effect from 24.09.2012 and the State Bank of India, Pali Ganj, Bihar, wherefrom the applicant was drawing his pension, was also intimated accordingly.

10. Having heard the Id. counsel for both sides and having

gone through the averments made in the O.A. and the A/O filed today and also on perusal of the original documents, we are of the opinion that it is not anybody's case that the applicant is not entitled to any disability pension because it is the admitted position that he suffered disability of Leprosy which was attributable to and aggravated by Military service and his last assessed disability was 80% valid till Sept 2002. It is true that the applicant has not appeared before the MH Danapur for RSMB due to lack of communication. It is also to be borne in mind that the applicant was 100-80% disabled person and has been suffering from Leprosy which is looked down upon by our society even in this 21st century. It is unfortunate that a soldier of the Indian Army, who has suffered such miserable disease due to his faithful service to the nation, is now without any disability pension which he is entitled to as per rules. In our considered opinion, in such cases the respondents should have been more sympathetic and pro-active and should have taken all steps with right earnest so that the Leper soldier gets intimation before the RSMB in due time and there may not be any occasion to discontinue his disability pension in any event. So far as non-receipt of disability pension from Oct 1997 till Sept 2002 as stated by the applicant, we are of the view that the respondents should inquire into the matter and if really he did not receive such pension for the said period, then urgent steps should be taken for making actual payment.

11. On consideration of the facts and circumstances of the case, we are inclined to dispose of this application by issuing the following directions :-

1) The applicant is directed to report before the medical authority at MH Danapur, within 30 days from to-day and get admitted there by virtue of this order, for the purpose of

holding RSMB.

2) The respondents are directed to conduct RSMB in respect of the applicant within 60 days from this date to re-assess his percentage of disablement.

3) The applicant is held entitled to get disability pension at the rate to be assessed by RSMB.

4) Till such RSMB is held and the percentage of disablement is re-assessed, the applicant shall be treated to be continuing with disablement at the same percentage as was last assessed i.e. at 80%. He is held entitled to get arrears of disability pension for three years prior to the date of filing this O.A. i.e. 01.06.2010 at the above rate till the percentage is re-assessed as per RSMB and on the basis of our above direction.

5) If the applicant has not received any disability pension or service element of pension from 1997 onwards as claimed, the respondents shall look into the matter and make all arrangements for payment immediately within 30 days from the date of communication of this order.

12. The application stands allowed to the above extent on contest but without cost.

13. Original documents submitted by the respondents be returned to them under proper receipt.

14. A plain copy of the order, duly countersigned by the Tribunal Officer, be furnished to both sides after observance of usual formalities.

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

(JUSTICE RAGHUNATH RAY)
MEMBER(J)