

FORM NO – 4

(SEE RULE 11 (1))

IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

ORDER SHEET

APPLICATION No : T A 21/2011

APPLICANT (S)	Sri Charan Pradhan
RESPONDENT (S)	<u>Union of India & 2 Ors</u>
Legal Practitioner of applicant	Legal Practitioner for Respondent (s)
Mr. S.C.Hazra	Mr. Mintu Kr. Goswami

NOTES OF THE REGISTRY	<u>ORDERS OF THE TRIBUNAL</u>
	<p>Order Sl. No. _____ : _____ Dated : 06.11. 2012</p> <p>The Transferred Application is taken up for hearing. We have heard Mr. S.C.Hazra, Id. adv. for the applicant and Mr. Mintu Kr. Goswami, Id. adv. for the respondents at length.</p> <p>The case relates to the prayer of the applicant for resumption of disability pension. The applicant was enrolled in the Indian Army on 18th June 1968 and was discharged on 5th November 1985 on completion of normal terms and conditions of service. However, at the time of his discharge, he was placed in low medical category for his disability, which was considered attributable/aggravated by military service and his disability was assessed at 20% and accordingly he was granted disability pension to that extent. The applicant was in receipt of such disability pension from the date of his discharge. However, he was brought before the first re-survey medical board, which was held on 25.4.97, in which his disability percentage was reduced to 11-14%. The same disability percentage continued even in the final re-survey medical board held on 23.4.02. Therefore, in accordance with the recommendations of the two medical boards, the disability percentage of the applicant was reduced</p>

below 20% i.e. 11-14% from 25.4.97 and accordingly, the authorities stopped payment of disability pension from that date in accordance with the existing rules. The applicant being dissatisfied with such action of the respondents had approached the Hon'ble Orissa High Court by filing the present writ petition being WP© 6028 of 2003, which was subsequently transferred to this Tribunal for disposal. The applicant has prayed for resumption of payment of disability pension from the date it was stopped. It is submitted on behalf of the applicant that such stoppage of disability pension was not in order. Id. adv. for the applicant, during the course of arguments, has brought to our notice the current provision of bracketing of disability pension percentage and has submitted that according to this provision, the applicant is entitled to get disability pension. However, on perusal of the letter as produced by the Id. advocate for the applicant, we find that this provision is not applicable in the case of the applicant, who is pre-January 1996 retiree. The concepts of bracketing and the award of disability pension are two separate issues and the rules in that regard cannot be squarely applicable to the case of the applicant at all.

Mr. Mintu Goswami Id. adv. for the respondents has brought to our notice para 4 of the counter affidavit in which it is clearly mentioned that the applicant was not eligible for any disability pension since the disability that was re-assessed in his case, was less than 20% i.e. 11-14% and accordingly in terms of regulation 173 of Pension Regulations, as amended by CS No. 37/IV/67, the applicant is not entitled to get any such pension after his disability was re-assessed below 20%.

For the purpose of convenience we may quote the provision of regulation 173 below :-

"173 : Unless otherwise specifically provided, a disability pension may be granted to an individual who is invalidated from service on account of a disability which is

attributable to or aggravated by military service and is assessed at 20 percent or over.”

We have also perused the original records produced by the respondents and we find the submission of the respondents is justified and substantiated by records.

After having heard the submissions of both sides and after carefully considering the facts and circumstances of the case together with the rule position, we are of the opinion that the claim of the applicant has no merit and accordingly, the TA is liable to be dismissed.

In the result, the Transferred Application stands dismissed but without any order as to costs.

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

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

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

(JUSTICE RAGHUNATH RAY)
MEMBER(J)