

**IN THE ARMED FORCES TRIBUNAL
REGIONAL BENCH, GUWAHATI.**

O.A .- 09 of 2016

**Sri Van Lal Vena Vanchhong,
No. 5751735,ex-L/LNK,
S/o Sri Vantura Vanchhong,
Resident of Village-Longpi, P.O. Aizawl,
Under P.S. Ram Lunga, Dist. Aizawl, Mizoram.**

.....Applicant.

By legal practitioners
for Applicant.

Mr. M.Gunendra Singh,

Mr. NT Singh,

Mr. SK Singha,

Mr. MK Dutta.

-Versus-

- 1. Union of India,
Represented by the Secretary,
Ministry of Defence, Govt. of India,
Raksha Bhawan,
South Block, New Delhi-110011.**
- 2. The Chief of Army Staff,
Sena Bhawan, Army Head Quarters,
New Delhi- 110011.**
- 3. The Commanding Officer,
58 GTC, Happy Valley,
Shillong, Meghalaya,
C/o 99 APO.**
- 4. The Officer-in-Charge,
Record, 58 Gorkha Rifles,
Happy Valley, Shillong, Meghalaya,
C/o 99 APO.**

.....Respondents

By legal practitioners
for Respondents.

Brig N.Deka (Retd.),CGSC.

PRESENT

**HON'BLE MR. JUSTICE B.P.KATAKEY, MEMBER (J)
HON'BLE VICE ADMIRAL MP MURALIDHARAN, MEMBER (A)**

ORDER
07.06.2017

The applicant, who has been released from service on his own request under Army Rule 13(3)(III)(iv) on 31.07.1998, has filed this application claiming a direction to the respondent authority to pay the disability pension and also the service pension.

2. We have heard Mr. SK Singha, learned Counsel for the applicant and Brig N.Deka, learned Central Govt. Standing Counsel assisted by Lt Akash Bashisht, appearing for the respondents.

3. Referring to the averments made in the application and also the counter affidavit, apart from the additional affidavit filed by the respondents, it has been submitted by the learned Counsel for the applicant that since the applicant was suffering from PULMONARY TUBERCULOSIS at the time of his release from service, he is entitled to the disability pension. It has also been submitted that the order releasing the applicant from service having not been sanctioned by the Commandant, his release in fact is contrary to the provisions contained in Rule 13(3)(III)(iv) of the Army Rules. Learned Counsel, therefore, submits that a direction needs to be issued to the respondents to grant the service pension as well as the disability pension.

4. Per contra, learned Counsel appearing for the respondents, referring to the medical records annexed to the counter affidavit as well as the additional counter affidavit filed by the respondents, submitted that though the applicant was found to have suffered from the disability PULMONARY TUBERCULOSIS in the year 1993, he was found to be in the medical category 'AYE' by the Medical Board on 11.08.1994 and thereafter he was released on his own request on 31.07.1998 in medical category 'AYE' and hence the applicant is not entitled to the disability pension there being no disability from which the applicant has suffered at the time of his release on his own request. Learned Counsel further

submitted that it is evident from the willingness certificate, which is annexed to the additional affidavit that the Commanding Officer has sanctioned the request of the applicant for voluntary retirement and hence the contention of the applicant that the provisions of the Rule 13(3)III (iv) of the Army Rules has not been complied with cannot be sustained in law. In any case, according to the learned Counsel the applicant has not challenged his discharge from service in the present O.A. The learned Counsel further submits that the applicant having not rendered 15 years of qualifying service is not entitled to service pension also.

5. We have considered the submissions advanced by the learned Counsel for the parties and also perused the pleadings.

6. Though the applicant has claimed that he was suffering from Pulmonary Tuberculosis at the time of his release on 31.7.1998, the medical record annexed by the respondents in the counter affidavit as well as the additional counter affidavit reveal that the applicant was found to have suffered from such disablement on 22nd July, 1993 and he was treated upto 7th January, 1994 and on 4.1.1994 he was temporarily down graded to medical category CEE(T) for 6 months which however was upgraded to medical category 'AYE' on 11.08.1994. The Release Medical Board proceeding dated 30.7.1998 also reveal that the applicant at the time of his release was not suffering from any disablement and he was certified to be fit for release in medical category 'AYE'. That being the position, the applicant is not entitled to the disability pension, he having not suffered from any disablement at the time of his release from service. The submission of the learned Counsel for the applicant that his release from service is illegal also cannot be accepted as it is evident from the willingness certificate dated 30th July, 1998 submitted by the applicant that the Commandant on 31st July, 1998 has agreed to such proposal of the applicant by putting his signature. That apart, the applicant has not challenged the said release from service under Rule 13(3)(III)(iv) which provides for pre-mature retirement on his own request.

7. The applicant having not served for a period of 15 years he is also not entitled to the service pension under the provision of Pension Regulation for the Army, 1961. That being the position, the applicant is not entitled to the relief claimed and hence the O.A. stands dismissed. It would, however, not come in the way of the applicant to raise the issue before the appropriate forum if he has already applied for re-survey medical Board within 10 years from the date of his discharge from service under the Entitlement Rules for Casualty Pensionary Awards, 1982.

8. O.A. is accordingly dismissed with the above observation. No cost.

9. Order dasti.

MEMBER (A)

MEMBER (J)

Nath.