

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH**

Original Application No.159/2007

This the 06th day of February 2009

HON'BLE MR. M. KANTHAIAH, MEMBER (J).

Sukh Dev aged about 80 years, S/o Late Sri Deoki Nand Duby R/o 1061/1 Purana Qila Sadar Bazar, District Lucknow.

...Applicant.

By Advocate: Shri D. Awasthi for Shri Sanjai Srivastava.

Versus.

- 1.Union of India through the Secretary, Ministry of Defence, New Delhi.
- 2.Director General, Medical Services (Army) Adjutant General's Branch, Army Head Quarters 'L' Block, New Delhi.
- 3.Officer In charge, Record Keeper, Dogra Regiment, Faizabad.
- 4.Chief Controller of Defence Accounts (Pension), Allahabad.

... Respondents.

By Advocate: Shri S.P. Singh.

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ORDER**BY MR. M. KANTHAIAH, MEMBER JUDICIAL.**


The applicant has filed the OA with a prayer to quash the order Dt. 16.09.2006 (Ann.A-1) and with a direction to the Respondent No.3 to provide disability pension to the applicant from 1959 to 1999 with all consequential benefits on the ground that the rejection order is illegal arbitrary and against the rules.

2. The respondents have filed Counter Affidavit, denying the claim of the applicant stating that the OA is not maintainable either on facts or on the ground of limitation and further the applicant is retired Military soldier and as such this tribunal has no jurisdiction to entertain the claim of the applicant.

3. The applicant has filed Rejoinder Affidavit, denying the stand taken by the respondents.

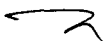
4. Heard both sides.

5. The point for consideration is whether the applicant is entitled for the relief as prayed for.



6. The admitted facts of the case are that the applicant was enrolled in Baluch regiment on 31.5.1944 and he was discharged from service w.e.f. 11.11.1945 by medical board and his disability Fissure in ano was assessed below 20 % and thus his disability pension claim was rejected. Subsequently, on the representation of the applicant a re-survey medical board which was held at Military Hospital Pune on 8.5.1957 and assessed his disability as 20 % for two years and accordingly, he was granted disability element from 8.5.1957 to 7.5.1959 and thereafter, another re-survey medical board held on 31.3.1959 at Military Hospital, Lucknow and assessed his disability as less than 20 % and upon which, the disability element was discontinued for the applicant from 8.5.1959.

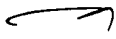
7. Subsequently, on the request of the applicant re-survey medical board was held on 21.4.1999 at Base Hospital, Lucknow which has reassessed his disability at 20 % and accordingly, he was granted disability pension w.e.f. 21.4.1999 to 20.4.2001 and again when he was brought before re-survey



Medical Board on 18.4.2001 at Based Hospital, Lucknow which reassessed his disability at 20 % for 10 years and upon which he was granted disability element and service element for life w.e.f. 21..4.2001.

8. Thereafter, the applicant filed OA 645.2000 on the file of this Tribunal, for grant of disability pension from 8.5.1959 to 20.4.1999, which was disposed of on 9.9.2005 at admission state with a direction to the respondents to examine the claim of disability pension of the applicant in accordance with law. In pursuance of said directions, the respondents have passed the impugned order Ann-A-1 Dt. 16.9.2006 rejecting the claim of the applicant, which is under challenge in this OA.

9. Before coming into the merits of the case, when the respondents have taken objection in respect of jurisdiction of this tribunal, it is the primary duty of the tribunal to answer the same before touching it's merits. Admittedly, earlier OA 645/2000 (Ann-A-6) was disposed of on 9.9.2005 at



admission stage, without giving any opportunity for filing CA by the respondents.

10. It is an undisputed case that the applicant is claiming the relief on the ground that he is a retired Military soldier enrolled in 2/10, Baluch regiment on 31.5.1944 and discharged w.e.f. 11.11.1945 AM. The respondents have taken main objection on the ground of jurisdiction of this tribunal, since the applicant belongs to Armed Force and Section 2 (a) of AT Act, 1985 clearly shows that the Act does not apply to the member of the Armed force of the union and in such circumstance, this tribunal has no jurisdiction to entertain the claim of the applicant.

11. In view of the above circumstances, this OA is rejected on the ground that this tribunal has no jurisdiction to entertain the claim of the applicant who belongs to armed force, with a liberty to the applicant to approach the proper forum as per rules. No costs.


(M. KANTHAIYAH)
MEMBER (J)

06.02.2005