

Court No. 1 (E-Court)**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 147 of 2018**

Wednesday, this the 25th day of August, 2021

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Krishna Kumar Singh, Ex. No. 13974231 Sep. Son of Shri Shivendra Singh, Resident of C-12, Sainik Nagar, Post Office – Kharika, Telibagh, Lucknow, U.P.

..... Applicant

Ld. Counsel for the Applicant : **Shri Satish Chadnra**, Advocate.

Versus

1. Union of India, through its Secretary, Ministry of Defence, D.H.Q., New Delhi-11.
2. Principal Controller of Defence Account (Pensions), GTS-3, Sec, Allahabad, U.P.
3. Lt. Colonel, Army Medical Corps Record Office, Lucknow.

.....**Respondents**

Ld. Counsel for the Respondents. : **Shri Shyam Singh**, Advocate
Central Govt. Counsel

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs :-

- (i) This Hon'ble Court may kindly be pleased to set aside the impugned order dated 18.05.2009 (Annexure No. 1) passed by respondent no. 3 and after summoning the order dated 24.04.2009 passed by the respondent no. 2 with all consequential benefits in the interest of justice.
- (ii) This Hon'ble Court may kindly be pleased to direct the opposite parties to allow and pay the interest on the arrears of disability pension and its arrears along with interest @18% till the date of actual payment.
- (iii) In addition to above relief, if this Hon'ble Tribunal may deem fit and proper to grant any other relief, the same may kindly be granted to him including an order consider and decide the last representation dated 15.04.2007 (Annexure No. 6) by speaking and reasoned order in the interest of justice.

2. Briefly stated facts of the case are that applicant was enrolled in the Army Medical Corps of Indian Army on 09.10.1987 and was discharged from service on 01.01.1999 (FN) as an undesirable soldier on administrative grounds under Rule 13(3) Item III (v) of the Army Rules, 1954 in Low Medical Category after rendering 11 years, 02 months and 14 days of service. At the time of discharge from service, the Release Medical Board (RMB) held at Military Hospital, Roorkee on

09.12.1998 assessed his disability '**LOW BACK ACHE**' @6-10% permanent and opined the disability to be neither attributable to nor aggravated (NANA) by service. However, the applicant was granted disability element with effect from 01.01.1999 to 08.12.2000 and service element with effect from 01.01.1999 for life vide P.P.O. dated 12.05.1999. On being approached by the applicant vide his application dated 18.07.2005, Resurvey Medical Board held at Base Hospital, Lucknow on 03.09.2005 assessed his disability @20% for life with effect from 09.12.2000. Accordingly, disability element was granted to the applicant vide P.P.O. dated 19.09.2006. The respondents without calling any explanation or issuing any show cause notice to the applicant passed an order dated 24.04.2009 by means of which the disability pension of the applicant has been cancelled in TOTO by PCDA (P), Allahabad, which was communicated to the applicant vide letter dated 18.05.2009. The applicant preferred representations dated 22.07.2009, 23.11.2012 and 15.04.2017 but of no avail. It is in this perspective that the applicant has preferred the present Original Application.

3. Ld. Counsel for the applicant pleaded that the applicant was enrolled in the Army in medically and physically fit condition. It was further pleaded that an individual is to be presumed in sound physical and mental condition upon entering service if there is no note or record to the contrary at the time of entry. In the event of his subsequently being discharged from service on medical grounds, any deterioration in his health is to be presumed due to service conditions. He pleaded that the disability element of the applicant has been stopped without calling any explanation from the applicant. The Ld. Counsel for the applicant, on account of aforesaid, pleaded for disability pension to be granted to the applicant.

4. On the other hand, Ld. Counsel for the respondents submitted that when in the month of May, 2007 the applicant approached the respondents for rounding off of his disability element from 20% to 50% then it was found that initial claim for disability pension should not have been initiated by Army Medical Corps Records Office, but on being initiated, applicant has wrongly been granted disability element 20%. Although applicant's initial disability was assessed by the RMB @6-10% as NANA and

as he was discharged as an **“undesirable soldier on administrative ground”**, was not entitled for disability element/disability pension as per paragraph 5(c) of Army Headquarters Letter No. B/40502/Appeal/05/ AG/PS-4 (Imp-II) dated 18.08.2005. Accordingly, the disability element of the applicant was stopped and direction was issued to take necessary action to recovery. He further submitted that the applicant is not entitled to disability element in terms of Rule 173 of Pensions Regulations for the Army, 1961 (Part-I), which stipulates that, “unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service and is assessed at 20% or over, but in the instant case the disability of the applicant has been assessed at 6-10% permanent and NANA, therefore, the applicant is not entitled to disability pension. The Ld. Counsel for the respondents further submitted that claim for disability pension has rightly been stopped by the competent authority. He pleaded that in the facts and circumstances, as stated above, Original Application deserves to be dismissed.

5. We have heard Ld. Counsel for the parties and perused the material placed on record.

6. On careful perusal of the medical documents, it has been observed that the applicant was enrolled on 09.10.198 and was discharged from service on 01.01.1999 as an "undesirable soldier on administrative ground". Before discharging the applicant was served a show cause notice calling upon to show cause as to why applicant's services should not be terminated from the Army under Rule 13(3) Item III (v) of the Army Rules, 1954. The applicant had incurred four red ink entries and two black ink entries. At the time of discharge Release Medical Board held on 09.12.1996 assessed applicant's disability @6-10% as NANA. However, on being processed the disability element @20% was granted by the Principal Controller of Defence Accounts (Pension), Allahabad. In the month of May, 2007 on being approached by the applicant for grant of rounding off of his disability element from 20% to 50%, it was found that initial claim for disability pension should not have been initiated by Army Medical Corps Records Office, but on being initiated, applicant has wrongly been granted disability element 20%. Accordingly, disability element was stopped. As per paragraph 5(c) of the Army

Headquarters letter No. B/40502/Appeal/05/AG/PS-4 (Imp-II) dated 18.08.2005, a person discharged as an undesirable soldier on administrative ground is not entitled for disability element/disability pension. Further, on being assessed applicant's disability @6-10% permanent (less than 20%) by the RMB held on 09.12.1996, the applicant was not entitled for disability element. We do not find any irregularity in the order impugned by means of which disability element was stopped.

7. In view of the above, the Original Application is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

8. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 25 August, 2021

AKD/-