

Court No. 1
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 172 of 2018

Wednesday, this the 28th day of July, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Shiwaji Yadav (JC-349525 M Ex SM-Hony Capt)
 S/o Late Prabhu Nath Yadav
 R/o House No. 6, Pratap Building, Sadar Bazar, Lucknow

.... **Applicant**

Ld. Counsel for the Applicant: **Shri Yashpal Singh**, Advocate.

Versus

1. Union of India, Through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Director PS-4, Adjutant General's Branch, Integrated headquarters of Ministry of Defence (Army), DHQ Post Office, New Delhi – 110011.
3. Officer-in-Charge Records, Bombay Engineer Group, PIN-908796, C/o 56 APO.
4. Principal Controller of Defence Accounts (Pension), Allahabad.

... **Respondents**

Ld. Counsel for the Respondents: **Shri Virendra Singh & Shri Ashish Saxena**,
 Central Govt Counsel.

ORDER

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

“(a) Issue/pass an order or direction setting aside rejection of the claim of the applicant for disability pension as communicated by the letter dated 08.02.2017 (Annexure No.

1 to the Original Application) after summoning the relevant original records.

(b) Issuing/passing of an order directing the respondents to consider case of the applicant for grant of disability pension and provide the same from the date of discharge including arrears with interest, and also the benefit of rounding off and other consequential benefits of ex-serviceman.

(c) Issuing/passing of any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

(d) Allowing this Application with cost.”

2. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Army on 08.03.1984 and was discharged from service on 31.12.2016 under Rule 13 (3) I (i) (a) of Army Rules, 1954 on fulfilling the terms of engagement of service in low medical category P2 (Permanent). The Release Medical Board (RMB) assessed his disability “**ISECHEMIC STROKE (LT) MCA TERRITORY CD NO G-46**” @ 6-10% for life as aggravated by military service. The disability pension claim of the applicant was rejected vide order dated 20.07.2016. The applicant preferred first Appeal dated 23.03.2017 for which decision is still awaited from the side of respondents. It is in this perspective that applicant has filed this O.A.

3. Learned Counsel for the applicant submitted that applicant was enrolled in the Army in medically and physically fit condition and there was no note in his service documents with regard to suffering from any disease prior to joining, therefore any disability

suffered by applicant after joining the service should be considered as attributable to or aggravated by military service and he should be entitled to disability pension as per Entitlement Rules for Casualty Pensionary Awards, 1982, Pension Regulations for the Army, 2008 and recent pronouncements of the Hon'ble Apex Court on the subject.

4. On the other hand, learned counsel for the respondents opposed the submissions of learned counsel for the applicant and submitted that since the assessment of the disability is @ 6-10% for life i.e. below 20%, therefore, condition for grant of disability element of pension does not fulfil in terms of para 53 (a) and 66 (c) of Pension Regulations for the Army, 2008 and para 4 of Entitlement Rules for Casualty Pensionary Awards, 2008, therefore, the competent authority has rightly denied the benefit of disability element of pension to applicant. Learned counsel for the respondents pleaded for dismissal of O.A.

5. We have given our considerable thoughts to both sides and have carefully perused the records. The question in front of us is straight; whether the disability is attributable to/aggravated by military service and, if so, whether it is above or below 20%?

6. We have noted that the applicant suffered with disability which is assessed @ 6-10% which is below 20%. As per para 90 of Pension Regulations for the Army, 2008, disability element of pension is eligible only when the disability is assessed at 20% or more and accepted as attributable to or aggravated by military

service. Since, applicant's disability is assessed @ 6-10% for life, applicant does not fulfil the requirement of para 90 of the Pension Regulations for the Army, 2008.

7. Further, disability assessed below 20% is not tenable in terms of Hon'ble Apex Court judgment in the case of **Bachchan Singh vs Union of India & Ors**, Civil Appeal Dy. No. 2259 of 2012 decided on 04th September, 2019 wherein their Lordships have held as under:-

“..... After examining the material on record and appreciating the submissions made on behalf of the parties, we are unable to agree with the submissions made by the learned Additional Solicitor General that the disability of the appellant is not attributable to Air Force Service. The appellant worked in the Air Force for a period of 30 years. He was working as a flight Engineer and was travelling on non pressurized aircrafts. Therefore, it cannot be said that his health problem is not attributable to Air Force Service. However, we cannot find fault with the opinion of the Medical Board that the disability is less than 20%.”

(underlined by us)

8. In light of the above judgment, inference may be drawn that Medical Board is a duly constituted body and findings of the board should be given due credence.

9. In addition to above, a bare reading of para 53 (a) of Pension Regulations makes it abundantly clear that an individual being assessed disability below 20% is not entitled to disability element irrespective of disability being attributable to or aggravated by the military service. The Hon'ble Supreme Court in Civil Appeal No 10870 of 2018 **Union of India & Ors vs Wing Commander SP Rathore**, has made it clear vide order dated 11.12.2019 that disability element is inadmissible when disability

percentage is below 20%. Para 9 of the aforesaid judgment being relevant is quoted as under:-

“9. As pointed out above, both Regulation 37 (a) and Para 8.2 clearly provide that the disability element is not admissible if the disability is less than 20%. In that view of the matter, the question of rounding off would not apply if the disability is less than 20%. If a person is not entitled to the disability pension, there would be no question of rounding off.”

10. In view of the discussions made above, O.A. lacks merit and same is accordingly **dismissed**.

11. Pending Misc. Application, if any, stands disposed of.

12. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 28th July, 2021
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