

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 323 of 2022

Wednesday, this the 10th day of August, 2022

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

No. 7241107P Ex. Dfr. Inderjeet, S/o Sri Ratan Lal, R/o Village and Post Kurli, District – Bulandshahar (UP).

.... **Applicant**

Ld. Counsel for the : **Shri K.K. Misra**, Advocate and
Applicant

Versus

1. Union of India, through its Secretary, Ministry of Defence, New Delhi.
2. The Chief of the Army Staff, South Block, New Delhi.
3. Officer-in-Charge, Records, Remount Veterinary Corps (RVC), Meerut Cantt.
4. PCDA (P), Allahabad.

... **Respondents**

Ld. Counsel for the: **Shri J.N. Mishra**, Advocate
Respondents. Central Govt Counsel.

ORDER

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

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:-

- (i) *To direct the respondents to grant 20% disability pension to the applicant w.e.f. the date of his discharge from the service i.e. 01 June 2021.*

- (ii) Thereafter, round of this percentage of disability to 50% and pay the arrears of pension from the date of his discharge with interest as applicable.
- (iii) Any other relief which Hon'ble Court may think just and proper may be granted in favour of the applicant.
- (iv) Cost of the case may be awarded,

2. Briefly stated, applicant was enrolled in the Remount Veterinary Corps (RVC) of Indian Army on 02.05.1995 and was discharged on 31.05.2021 (AN) in Low Medical Category on fulfilling the conditions of his enrolment under Rule 13 (3) Item III (i) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at Military Hospital, Meerut on 20.03.2021 assessed his disability '**TUBERCULAR CERVICAL LYMPHADENOPATHY (A 15.0)**' @10% for life opined the disability to be attributable to service. The applicant's claim for grant of disability pension was rejected vide letter dated 17.01.2022. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that since the applicant's disability has been regarded as attributable to service, he is entitled for disability element of disability pension. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension as well as arrears thereof.

4. On the other hand, learned counsel for the respondents opposed the submissions of learned counsel for the applicant and

submitted that the applicant has been discharged from service on completion of terms of engagement. He further submitted that although the applicant's disability has been opined by the RMB as attributable to service, but the assessment of the disability element is 10% i.e. below 20%, therefore, condition for grant of disability element of pension does not fulfil in terms of Regulation 53(a) of Pension Regulations for the Army, 2008 (Part-I) and Regulation 173 of Pension Regulations for the Army, 1961 (Part – I) and, therefore, the competent authority has rightly denied the benefit of disability element of pension to applicant. He pleaded for dismissal of Original Application.

5. We have given our considerable thoughts to both sides and have carefully perused the records including Release Medical Board proceedings. The question in front of us is straight; whether applicant's disability is above or below 20% and whether applicant was invalidated out of service on account of the disability or was discharged on completion of terms of engagement?

6. It is undisputed case of the parties that applicant was enrolled in the Indian Army on 02.05.1995 and was discharged from service on 31.05.2021 on completion of terms of engagement. The applicant was in low medical category and his Release Medical Board was conducted on 20.03.2021 at Military Hospital, Meerut. The Release Medical Board assessed applicant's disability @10% for life as attributable to service.

7. As per Regulation 53(a) of Pension Regulations for the Army, 2008 (Part - I) and Regulation 173 of Pension Regulations for the Army, 1961 (Part – I), 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 element is @10% for life, applicant does not fulfil the requirement of Regulation 53(a) of Pension Regulations for the Army, 2008 (Part-I) and Regulation 173 of Pension Regulations for the Army, 1961 (Part – I).

8. Since applicant was discharged from service on completion of terms of engagement, his case does not fall within the category of invalidation in which circumstance he would have become eligible for grant of disability element of pension @ 20% in terms of reported judgment in the case of **Sukhwinder Singh vs Union of India & Ors**, (2014) STPL (WEB) 468 where the operative part of the order reads:-

“9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Thirdly, there appears to be no provisions authorising the discharge or invaliding out of service where the disability is below twenty per cent and seems to us to be logically so. Fourthly, wherever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension.”

9. Further, contrary view to Release Medical Board dated 20.03.2021 to the extent of holding the applicant's disability at @10% for life 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)

10. 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.

11. In addition to above, a bare reading of Regulation 53(a) of Pension Regulations for the Army, 2008 (Part-I), 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.”

12. In view of the discussions made above, Original Application lacks merit and same is accordingly **dismissed**.

13. Pending application, if any, stands disposed of.

14. No order as to costs.

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

Dated: 10 August, 2022

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