

COURT NO: 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 1062 of 2022****Friday, this the 11th day of August, 2023****“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”****“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

No. 2873129-K Ex Hav / Hony Nb Sub Niyaz Ahmad, Son of Shri Muhamad Khalil, Resident of Village: Bahadurganj, Post: Bahadurganj, District : Ghazipur (U.P.), Pin code - 275201.

..... Applicant

Ld. Counsel for the Applicant : **Shri VP Pandey, Advocate**

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi - 110011.
2. The Chief of the Army Staff, Integrated Headquarters, Ministry of Defence (Army), South Block, New Delhi - 110011.
3. Officer In-Charge Records, The Rajputana Rifles, New Delhi -110010.
4. Principal Controller Defence Accounts (Pension), Draupadi Ghat, Prayagraj (U.P.) - 211014.

.....Respondents

Ld. Counsel for the Respondents. :**Mrs. Anju Singh, Central Government Counsel.**

ORDER (ORAL)

“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, 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 for the following reliefs :-

“(a) To issue / pass an order or direction to the Respondents to quash / set – aside the order dated 29 June 2022 passed by respondent No. 3, contained in Annexure No. A-1 being arbitrary and illegal.

(b) To issue / pass an order or direction to the Respondents to grant disability element @ 20% for life which after rounding off will be @ 50% for life with effect from 01-11-2004.

(c) Any other relief as considered proper by this Hon’ble Tribunal be awarded in favour of the applicant.

(d) Cost of the Original Application be awarded to the applicant.”

2. Briefly stated, applicant was enrolled in the Indian Army on 07.10.1978 and was discharged on 31.10.2002 (AN) in Low Medical Category S1H1A2P1E1 under Rule 13 (3) Item III (1) of the Army

Rules, 1954. At the time of discharge from service, Release Medical Board (RMB) held on 02.07.2002 assessed his disability “**CRUSH INJURY (RT) INDEX FIGNER TERMINAL PHALANX (OPTE)**” @ 6-10% for two years and disability considered to be attributable to military service. His claim for grant of disability element was rejected. Feeling aggrieved he preferred O.A. No 522 of 2017 before this Tribunal which was allowed vide judgment and order dated 29.11.2018 and applicant was granted disability element for two years from 01.11.2002 to 01.11.2004 and respondents were directed to hold Re-Survey Medical Board (RSMB). RSMB assessed his disability @ 15% for life. Claim of the applicant for grant of disability element was rejected vide order dated 29.06.2022. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant submitted that applicant suffered injury “**CRUSH INJURY (RT) INDEX FIGNER TERMINAL PHALANX (OPTE)**” while performing military duty and his disability was regarded as attributable to military service and applicant was granted disability element @ 20% for two years. RSMB held on 28.04.2022 at Base Hospital, Lucknow assessed the degree of the applicant’s disability @ 15% (less than 20%) for life and disability element of disability pension has been stopped which is illegal and arbitrary. He pleaded that various Benches of Armed Forces Tribunal

have granted disability pension in similar cases, as such the applicant be granted disability element of disability pension and its rounding off to @50% as well as arrears thereof.

4. Learned Counsel for the applicant further submitted that applicant was diagnosed to be suffering from “**CRUSH INJURY (RT) INDEX FINGER TERMINAL PHALANX (OPTE)**” at the time of discharge from service, therefore, applicant’s case is fully covered with law laid down by the Hon’ble Apex Court in ***Sukhvinder Singh Vs. Union of India and Others*** (Civil Appeal No. 5605 of 2010, decided on 25.06.2014) and therefore, applicant is entitled for disability element of disability pension which has been stopped by the respondents in very illegal and arbitrary manner. He also submitted that the Hon’ble Apex Court in ***Union of India vs. Ram Avtar*** has held that service personnel who were in low medical category at the time of their retirement/release they are deemed to be invalided out of service and not released from service as such applicant is entitled for the benefit of Govt. of India letter dated 31.01.2001. He pleaded to release disability pension of the applicant in the interest of natural justice.

5. Per contra, learned counsel for the respondents submitted that since disability of the applicant has been assessed at 15% (below 20%) for life by Re-Survey Medical Board dated 28.04.2022, hence, applicant became ineligible for grant of disability element on account

of disablement being below 20%, therefore, condition for grant of disability element of pension does not fulfil in terms of Regulation 179 of Pension Regulations for the Army, 1961 (Part-I) and the competent authority has rightly stopped the benefit of disability element of disability pension to applicant. He pleaded for dismissal of Original Application.

6. 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 re-assessed above or below 20% and also whether the applicant is entitled for disability element even if the disability is re-assessed below 20%?

7. It is undisputed case of the parties that applicant was enrolled in the Indian Army on 07.10.1978 and was discharged from service on 31.10.2002 in low medical category. The applicant was placed in low medical category and his Release Medical Board was conducted at Base Hospital Lucknow. The Release Medical Board assessed applicant's disability @ 6-10% for two years and considered as attributable to military service. Applicant was granted disability element of disability pension for two years. Thereafter, on the basis of Re-Survey Medical Board held on 28.04.2022 disability element of disability pension was revised @ 15% (less than 20%) for life. Hence, respondents have stopped the applicant's disability element of disability pension.

8. As per Regulation 186 (2) of Pension Regulations for the Army, 1961 (Part - I), an individual who was initially granted disability pension but whose disability is re-assessed at below 20% subsequently shall cease to draw disability element of disability pension from the date it falls below 20%. He shall however continue to draw the service element of disability pension. Since, applicant's disability element has been assessed at 15% (less than 20%) by the Re-Survey Medical Board held on 28.04.2022, applicant does not fulfil the requirement of Regulation 186 (2) of Pension Regulations for the Army, 1961 (Part-I).

9. Further, holding the applicant's disability at 15% (less than 20%) by RSMB 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 186 (2) of Pension Regulations for the Army, 1961 (Part-I), makes it abundantly clear that an individual being re-assessed disability below 20% subsequently shall cease to draw disability element of disability pension from the date it falls below 20 per cent. 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. No order as to costs.

(Vice Admiral Atul Kumar Jain) (Justice Ravindra Nath Kakkar)
Member (A) Member (J)

Dated : 11 August, 2023

UKT/-