

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 139 of 2019**Friday, this the 18th day of December, 2020**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)IC-43305N Col (Retd) R.P. Singh
Son of late Shri (Dr) Rajender Nath Singh
Resident of 204 Samiah Melrose Avenue,
6A Vrindavan Yojna, Raebareli Road,
Lucknow -226029

..... Applicant

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

Versus

1. Union of India and others through, The Secretary Ministry of Defence, South Block, New Delhi – 110011.
2. Chief of the Army Staff, Integrated HQ of MoD (Army), DHQ P.O., New Delhi – 110011.
3. Additional Directorate general of Personnel Services, Adjutant General's Branch/PS-4 (Imp-I), Integrated HQ of Ministry of Defence (Army), Plot No. 108 (WEST), Church Road, Brassey Avenue, New Delhi – 110001.
4. PCDA (P) Draupadi Ghat, Allahabad, UP

..... Respondents

Ld. Counsel for the Respondents : **Dr. Shailendra Sharma Atal**,
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 for the following reliefs:-

- “(i) To direct the respondents to quash/set aside the order dte 20 may 2014 and direct respondents to grant Disability Pension to Applicant from date of his Discharge – 31/03/2014, with arrears.
- (ii) To direct the respondents to grant Disability Pension to the Applicant @ 50% after rounding off as the same being applicable.
- (iii) To issue/pass an order to the respondents to grant Applicant Disability Pension from his date of Invalidation with interest,.
- (iv) To direct the respondents to pay all consequential benefits till date.
- (v) To pass orders which their lordships may deem fit and proper in the existing facts and circumstances of the case.
- (vi) Allow this application with costs.”

2. Submission of learned counsel for the applicant is that applicant was commissioned in the Army on 14.12.1985 and retired from service on 31.03.2013 (AN) on reaching the age of superannuation. The officer was re-employed in service upto 03.03.2017. The Release Medical Board (RMB) assessed his disability “**CHIP FRACTURE RT LATERAL MELLEOLUS FOR RMB**” @ 6-10% as per attributability. However, the RMB opined that attributability to be decided by the competent adm auth (To be decided by PSA). In the instant case, the Competent Administrative Authority has assessed the disability of the applicant as attributable to military service but assessed @ 6-10%. His claim for disability pension was rejected by the competent authority vide letter dated 20.05.2014. Thereafter, applicant preferred

an appeal dated 13.09.2017 which has not been replied by the respondents till the date of filing of Original Application.

3. Learned Counsel for the applicant submitted that applicant was commissioned 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. Learned Counsel for the applicant further submitted that disability pension claim of applicant has been rejected in a cavalier manner without assigning any meaningful reason. He pleaded for disability pension to be granted to applicant duly rounded off to 50%.

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 element is 6-10% i.e. below 20%, therefore, condition for grant of disability element of pension does not fulfil in terms of Regulation 53 of Pension Regulations for the Army, 2008 and, therefore, the competent authority has rightly denied the benefit of disability element of pension to applicant. He 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% and also whether applicant was invalidated out of service on account of the disability?

6. As per Regulation 53 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 element is 6-10%, applicant does not fulfil the requirement of Regulation 53 of the Pension Regulations for the Army, 2008.

7. Further, in terms of judgment of the Hon'ble Apex Court 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 Regulation 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: December, 2020

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