

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 174 of 2019

Monday, this the 1st day of February, 2021

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

No. 14325515A, Ex Nk Raj Bahadur
S/o Shri Munnu Lal
R/o Village – Namamau, P..O.- Mauhar
District – Fatehpur, State- Uttar Pradesh

..... **Applicant**

Ld. Counsel for the Applicant : **Shri Pankaj Kumar Shukla**, Advocate.

Versus

1. Union of India, through Secretary, Ministry of Defence (Army)
South Block, New Delhi-110010.
2. Chief of the Army Staff, IHQ MOD (Army), Army HQ, South
Block, New Delhi.
3. Officer In Charge Records, Artillery Records, Nasik Road
Camp, District – Nashik (Maharashtra) PIN-422102.
4. PCDA (Pension) Draupadi Ghat, Allahabad.

..... **Respondents**

Ld. Counsel for the Respondents : **Shri Arun Kumar Sahu**,
Central Govt Counsel.

ORDER

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

- “A. To issue/pass an order or direction to set-aside/quash the orders dated 31.10.1999 and 26.06.1995 (copy not attached) passed by respondents.
- B. To issue/pass an order or directions to the respondents to grant of disability element of disability pension @ 40% from date of discharge i.e. 31.10.1993 and benefit of “Rounding off” the disability element of disability pension @ 40% to 50% w.e.f. 01.01.1996 in light of Hon’ble Apex court Cases i.e. “Sukhvinder Singh vs. Union of India” (Supra) and “Union of India vs. Ram Avtar” along with @ 9% interest.
- C. To issue/pass any other order or directions as this Hon’ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.
- D. To allow this original application with costs.”

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 06.03.1976 and after rendering 17 years, 07 months and 26 day service he was discharged from service on 31.10.1993 in low medical category ‘CEE’ under Rule 13 (3) III (v) of Army Rules 1954. Prior to discharge, Release Medical Board (RMB) was conducted and applicant’s disabilities (i) “LOW BACK ACHE” and (ii) “HYPERMETROPIA WITH AMBLYOPIA” were assessed below 20% for life neither attributable to nor aggravated by military service. Disability pension claim of the applicant was rejected by PCDA (P) Allahabad vide order dated 08.05.1995. After a gap of 23 years from the date of rejection of disability pension by PCDA (P) Allahabad applicant approached Artillery Records through an appeal dated 12.05.2018 which was rejected vide order dated 05.07.2018 as per Govt of India letter dated 17.05.2016 stating that “cases which are

more than five years from the date of discharge/invalidment from service or from the date of rejection of claim will not be entertained”.

It is in this perspective that this O.A. has been filed.

3. Learned counsel for the applicant submitted that applicant was found fit in all respects at the time of enrolment in the Army and there was no note in his primary service documents with regard to any disease/disability. Therefore, disability suffered during service is attributable to military service as has been rightly assessed by RMB, @ 40% for life but medical board proceedings not provided to the applicant by the respondents. Learned counsel for the applicant also relied upon judgment of the Hon'ble Apex Court in the case of **Sukhvinder Singh vs. Union of India**, reported in (2014) STPL (WEB) 468 SC and submitted that if disability is not detected prior to the enrolment so disability to be deemed as attributable to service and pleaded that disability pension be granted to the applicant and benefit of rounding off from 40% to 50% also to be given from the date of discharge in view of **Union of India and Ors vs. Ram Avtar & ors**, Civil Appeal No 418 of 2012, dated 10th December 2014 and Govt of India letter dated 31.01.2001.

4. Learned counsel for the applicant also relied upon judgment of AFT (RB) Chennai in OA No. 30 of 2017 **Ex Sapper G. Jaganathan vs. Union of India & Ors**, decided on 09.02.2018 and submitted that applicant's case is squarely covered by this judgment and therefore, applicant be granted disability pension.

5. On the other hand, learned Counsel for the respondents submitted that applicant is in receipt of service pension vide PPO No S/040148/1993 dated 11.10.1993 and has been denied the disability pension on the ground that his disability is assessed less than 20%. He further emphasised that competent authority has rightly rejected the disability pension claim in terms of Para 173 of Pension Regulations for the Army 1961, Part-1, Rule 14 of Entitlement Rule for Casualty Pensionary Awards, 1982 and Para 53 (a) of Pension Regulations for the Army, 2008 (Part I). Para 53 of Pension Regulations reads as under:-

“An individual released/retired/discharged on completion of term of engagement or on completion of service limits or on attaining the prescribed age (irrespective of his period of engagement), if found suffering from a disability attributable to or aggravated by military service and so recorded by Release Medical Board, may be granted disability element in addition to service pension or service gratuity from the date of retirement/discharge, if the accepted degree of disability is assessed at 20 percent or more.”

Learned counsel for the respondents further submitted that since the percentage of disability in this case is less than 20% and no medical papers are available with service dossier of the applicant at this belated stage, therefore, applicant is not entitled to disability pension and O.A. deserves to be dismissed.

6. We have heard learned counsel of both sides and found that moot question involved in this case is whether disability pension is payable to an incumbent whose disability is less than 20%?

7. Since no medical papers of RMB have been produced either by the applicant or by the respondents to authenticate percentage of

disability of the applicant whether it is 40% for life as per averment made by the applicant in O.A. or below 20% as per the respondents, it is to be presumed below 20% as per Para 20 of Counter affidavit, hence it is below 20%. It is also pertinent to mention here that reliance made by learned counsel for the applicant in judgment of ***Ex Sapper G. Jaganathan (supra)*** is also not sustainable as in this case applicant was invalidated out from service and not discharged from service.

8. 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. Further, 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%.

9. In view of above, the O.A. is liable to be dismissed and is therefore **dismissed**.

10. No order as to costs.

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

Dated: February, 2021

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