

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 192 of 2019

Tuesday, this the 2nd day of February, 2021

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

Rashtradeep Singh (No. 8961975-L, AC (U/T))
S/o Sri Bhupesh Kumar
R/o Village Post – Ghitauli
P.S. – Dannahar, District – Mainpuri (UP)

..... Applicant

Ld. Counsel for the Applicant: Shri Om Prakash Kushwaha, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, Government of India, New Delhi.
2. Air Headquarters, directorate of Air Veterans, AFRO Building, Subroto Park, New Delhi.
3. Deputy Controller of Defence Accounts (Air Force), New Delhi.

..... Respondents

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

- “(i). This Hon'ble Court may graciously be pleased to quash the impugned order dated 31-08-2017 (Annexure No. A-3) passed by respondent no. 2.

- (ii) This Hon'ble Court may be pleased to direct the respondents to give disability pension along with its arrears and interest to the applicant w.e.f. 22-5-2015 towards his disability "ACUTE ANTERIOR UVEITIS LEFT EYE H57-1'15-19% for life.
- (iii) This Hon'ble Court may further be pleased to pass such other and/or further order as deem fit, proper and necessary in the circumstances of this case.
- (iv) Award costs to the applicant."

2. Brief facts of the case are that the applicant was initially selected and recruited being trainee, Trade Comm Tech in Indian Air Force w.e.f. 02.07.2014. During training in the month of December, 2014, applicant felt some problem in his left eye. He was examined/treated and was found fully fit. On 04.01.2015, again applicant reported sick due to his eye problem at SMC, Air Force Station, Jalahalli. The doctor referred the applicant to CHAF, Bangalore who was admitted there and treatment was done and he was placed as LDSMC A4G3 (T-12). Again on 16.04.2015, applicant was upgraded to medical category A4 G2 (P). Pursuant to upgradation, the applicant was before IMB and was invalided out from service during his training period on 08.06.2015. His disability "**ACUTE ANTERIOR UVEITIS LEFT EYE H57.1**" was assessed @ 15-19% for life and was considered as neither attributable to nor aggravated by military service. Disability pension claim of the applicant was rejected by the respondents vide order dated 29.06.2015. Thereafter, applicant filed Original Application No. 173 of 2015 before this Tribunal which was disposed off with directions to

the respondents to conduct Re-Survey Medical Board of applicant which was conducted at Command Hospital, Lucknow and his disability was again assessed @ 15-19% for life as NANA. Thereafter, applicant filed another Original Application No. 38 of 2016 before this Tribunal for grant of disability pension. This O.A. was dismissed vide order dated 22.05.2017 directing the applicant to file appeal before the respondents for his grievances. In between applicant preferred his first appeal dated 13.06.2016 before the respondents which was rejected vide order dated 31.08.2017. 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 Air Force 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. Learned counsel for the applicant also relied upon various judgments of the Hon'ble Apex Court 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.

4. On the other hand, learned Counsel for the respondents submitted that applicant underwent primary medical exam before enrolment in service on 28.09.2013 and 29.11.2014 respectively and was declared fit in medical category A4G1 for trade duties vide AFMSF-2A dated 29.11.2014. During training, he was admitted to CHAF, Bangalore and was placed in low medical category A4 G2(P).

Accordingly, he was recommended to be invalided out from service vide order dated 30.04.2015. IMB has considered his disability @ 15-19% as neither attributable to nor aggravated by service. The reason “onset in peace and served in peace since enrolment, no history of trauma, hence, not connected with service vide Para 82 of Chapter VI of GMO (mil pen) 2008”. His IMB was approved by Dy PMO HQ TC, IAF Bangalore dated 21.05.2015. AFT (RB) Lucknow vide its order dated 23.09.2015, passed in O.A. No. 173 of 2015, directed the respondents to hold Re-survey Medical Board of the applicant. Accordingly, Re-survey medical Board was held in Command Hospital, Lucknow vide AFMSF-17 dated 06.11.2015 and assessed the disability @ 15-19% for life as NANA. He further emphasised that competent authority has rightly rejected the disability pension claim in terms of Para 82 of Chapter VI of GMO (mil pen) 2008.

5. 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%?

6. 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%.

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

8. 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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