

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 322 of 2019**Thursday, this the 7th day of January, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)Ram Vilas Singh, No. 2960387A, Ex. Sepoy,
S/o Medai Singh
R/o Vill : Maheshpur, P/O : Rajpur,
Distt.-Farrukhabad (U.P.)

..... Applicant

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

Versus

1. Union of India through Secretary to the Ministry of Defence, Government of India, New Delhi – 110011.
2. Dte PS-4, AG'S Branch, IHQ, MoD (Army), DHQ, P.O.-New Delhi-110011.
3. OIC, The Rajput Regiment, c/o 56 APO.
4. PCDA (P), Draupadighat, Allahabad, (U.P.)

..... Respondents

Ld. Counsel for the Respondents : **Shri G.S. Sikarwar**,
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) That this Hon'ble Tribunal may kindly be pleased to direct the opposite parties to grant the War Injury Pension, to the applicant w.e.f. 01.01.1981, in the interest of justice.

- (ii) That this Hon'ble Tribunal may kindly be awarded the cost Rs. 20,20,000/- (RUPEES TWENTY LAC AND TWENTY THOUSAND ONLY) to the applicant against the opposite parties.
- (iii) Any other beneficial relief which this Hon'ble Tribunal deems fit and reasonable be also awarded to the applicant against the respondents."

2. The facts of the case, in brief, are that applicant was enrolled in the Indian Army on 07.12.1965 and was discharged from service on 31.12.1980 (AN) in low medical category (EEE) after serving about 16 years. The Release Medical Board (RMB) assessed his disability (i) Fracture Clavicle (Rt) @ 30% attributable to military service and (ii) Osteo Arthritis Lt Knee @ 10% aggravated by military service with composite assessment for both disabilities @ 40% for two years. Thereafter, Re-Survey Medical Board (RSMB) was conducted and applicant was granted disability element from 03.10.1982 to 03.10.1984, from 04.10.1984 to 09.10.1986 and in the last RSMB with effect from 10.10.1986, disability element was assessed @ 40% for life vide PPO No. D/RA/11816/87 dated 18.02.1987 and applicant is in receipt of disability pension @ 40% for life in addition to service element. Subsequently applicant submitted several applications/representation on 13.12.2015, 05.02.2016, 21.06.2016, 28.01.2017 and 07.06.2017 but no fruitful result was achieved. It is further submitted that on 18.08.2017, applicant sent an application under RTI Act, 2005 on which Public Information Officer informed that on 16.09.2017, injury was sustained by the applicant in the Field Area. The applicant is in receipt of disability pension and has come forward for grant of war injury pension. Being denied by War Injury Pension, the instant Original Application has been filed.

3. Heard Shri Vijay Kumar Pandey, Learned Counsel for the applicant, Shri G.S. Sikarwar, Learned Counsel for the respondents and perused the record.

4. Learned Counsel for the applicant submitted that applicant sustained severe injury on 20.04.1970 while posted in Field Area of Jammu & Kashmir "HEAD INJRY FRACTURE CLAVICLE RT" and was admitted in Army Hospital for treatment but after long treatment his condition was not normal and at the time of discharge his medical category was lower than 'AYE'. It is further submitted that on 18.08.2017, applicant sent an application under RTI Act, 2005 on which Public Information Officer informed on 16.09.2017 that injury was sustained by applicant in the Field Area and prior to this applicant was not aware of this fact that he is entitled to war injury pension. His further submission is that while serving in J&K, applicant was a part of an operational exercise and when the patrol was in the process, unfortunately his vehicle met with an accident on 20.04.1970 and applicant sustained severe head injury, therefore applicant is entitled to War Injury Pension instead of disability pension. His contention is that casualty to this effect was also notified by Regimental Part-II Order as "Non Battle Casualty" which is illegal, unjust, improper and not sustainable in the eyes of law.

5. Further contention of learned counsel for the applicant is that the respondents have not conducted any Court of Inquiry to ascertain the circumstances under which applicant sustained head injury and straightway granted disability element instead of War Injury Pension.

6. Learned Counsel for the applicant further submitted that action on the part of the respondents is illegal, unjust, improper and affecting the

livelihood of the applicant which is violative of fundamental rights as guaranteed by Art 14, 16 & 21 of the Constitution of India. Ld. Counsel for the applicant placed reliance on the case of Armed Forces Tribunal, Regional Bench, Chandigarh judgment in O.A. No. 24 of 2014, titled **Lakshbir Singh Vs. Union of India**, decided on 24.07.2017 and submitted that the applicant's case is squarely covered by this judgment which entitles the applicant for grant of Battle Casualty status and War Injury Pension.

7. Learned Counsel for the applicant further submitted that applicant was on bonafide military duty in Field Area in Jammu and Kashmir and his injury has also been considered as attributable to military service, as such, his injury is to be considered as Battle Casualty, and, accordingly, War Injury Pension be granted to him.

8. **Per contra**, learned Counsel for the respondents submitted that as per records held with service dossier, the applicant was serving with 4 RAJPUT and the battalion was located in field area. On 25.10.1971, the applicant sustained injury which was diagnosed as a case of "Head Injury Fracture Clavicle Rt". He was admitted to Military Hospital Binaguri and transferred to 158 General Hospital on 27.10.1971 for treatment. From there, the applicant was referred to Base Hospital Lucknow on 02.11.1971 for graded specialist opinion, wherein the applicant was brought before medical board and placed in low medical category CEE (Temporary) for six months. Further, the applicant underwent the medical re-categorization boards from time to time from 30.05.1972 for 06 months, from 27.01.1974 for 01 year, from 31.01.1974 for 06 months, from 07.11.1974 for 06 months as CEE (Temporary) and from 28.05.1975 for 06 months as medical

category BEE (Temporary). Consequent upon the above, the applicant was admitted to Military Hospital Jodhpur on 10.12.1975 for review of his medical category and on 19.12.1975 his disability was reviewed and upgraded to be medical category 'AYE'. Subsequently, the applicant was again admitted in 158 Base Hospital and diagnosed as "Malunited Fracture Rt Clavicle with Persistent Dislocation of Rt Sterne Clavicular Joint, Gross Wasting of Rt Deltoid and Osteo Arthritis Lt Knee Joint" on 06.11.1979. On 08.12.1979, the applicant was brought before the medical board and placed in Low Medical Category CEE (Temporary) for 06 months. On termination of stipulated time period of six months, the applicant appeared before the medical board for re-categorisation and was upgraded to low medical category BEE (Permanent) with effect from 03.07.1980. In the meantime, the applicant was due for retirement/superannuation with effect from 31.12.1980 (AN) on completion of his conditions of enrolment. Accordingly, he was brought before Release Medical Board at 166 Military Hospital vide medical board proceedings dated 29.12.1980 and his disability "Fracture Clavicle (Rt)" was considered as attributable to military service and assessed @ 30% for 2 years and "Osteo Arthritis Lt Knee" was considered as aggravated by military service, assessed @ 10% for 2 years, composite assessment was 40% for two years. Thereafter, applicant has undergone various Re-Survey Medical Boards and granted disability elements from 03.10.1982 to 03.10.1984, from 04.10.1984 to 09.10.1986 and in the last RSMB with effect from 10.10.1986, disability element was assessed @ 40% for life vide PPO No. D/RA/11816/87 dated 18.02.1987 and the applicant is in receipt of disability pension @ 40% for life.

9. Learned counsel for the respondents further submitted that as per the Regulation 99 of Pension Regulations for the Army, Part-1 (2008), the War Injury Pension is admissible in the following circumstances :-

(a) Where Service personnel is invalided from service on account of disabilities sustained under circumstances mentioned in category 'E' of Regulation 82 of these Regulations, he shall be entitled to war-injury pension as enumerated in this Section. The verbatim of category 'E' of Regulation 82 is as under :-

- (i) Enemy action in international war.
- (ii) Action during deployment with a peace keeping mission abroad.
- (iii) Border skirmishes .
- (iv) During laying or clearance of mines including enemy mines as also mine sweeping operations.
- (v) On account of accidental explosions of mines while laying operationally oriented mine field or lifting or negotiating mine field laid by the enemy or own forces in operational areas near international borders or the line of control.
- (vi) War like situations, including cases which are attributable to/aggravated by:-
 - (1) extremist acts, exploding mines etc, while on way to an operational area.
 - (2) battle inoculation training exercises or demonstration with live ammunition.
 - (3) Kidnapping by extremists while on operational duty.
- (vii) An act of violence/attack by extremists, anti social elements etc. while on operational duty.
- (viii) Action against extremists, antisocial elements etc. death/disability while employed in the aid of civil power in quelling agitation, riots or revolt by demonstrators shall be covered under this category.
- (ix) Operations specially notified by the Government from time to time.

(b) Where service personnel is invalided from service on account of disabilities sustained in the circumstances mentioned in category D of Regulation 82 of these Regulations, he shall be entitled to liberalised disability pension under these Regulations:-

Death or disability due to acts of violence /attack by terrorists, anti - social elements etc. whether on duty other than operational duty or even when not on duty. Bomb blasts in public places or transport, indiscriminate shooting incidents in public etc. would be covered under this category, besides death/disability occurring while employed in aid of civil power and also while dealing with natural calamities.

(c) Other conditions governing the grant of disability pension as laid down in Section-I shall apply.

10. Learned counsel for the respondents further submitted that disability of the applicant has been correctly classified as a 'Non Battle Casualty' attributable to military service and in the instant case, the applicant has not sustained injury in either of the conditions mentioned above, hence, he is not entitled for grant of War Injury Pension.

11. We have gone through the policy on grant of War Injury Pension and we are of the view that the applicant's case is not covered under War Injury Pension category since the applicant sustained injury during exercise which comes under non battle casualty. Hence, applicant is not entitled to War Injury Pension.

12. In view of the above, the Original Application is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

13. No order as to costs.

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

Dated: January, 2021
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