

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 473 of 2019**

Tuesday, this the 12th day of January, 2021

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

No. 708057-F, Sergeant, Ashok Kumar, Son of Mahipal Singh, R/o
6B, Bhopal Vihar, Garh Road, Meerut, U.P., Pin Code -250004.

..... Applicant

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

Versus

1. The Union of India, through the Secretary, Ministry of Defence (Air Force), New Delhi-110011.
2. The Chief of Air Staff, Air Headquarters, Vayu Bhawan, New Delhi-110011.
3. Director, Dte of Air Veteran, Subroto Park, New Delhi-110010.
4. Office of Joint CDA (Air Force), New Delhi C/o Air Force Central Accounts Office, Subroto Park, New Delhi-110010.
5. PCDA (Pension), Draupadi Ghat, Allahabad.

..... 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 under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- “A. To issue/pass an order or directions to set-aside/quash the order dated 19.02.2008 and 20.06.2018 passed by respondents.*
- B. to issue/pass an order or directions to the respondents to grant disability element of disability pension @15-19% and subsequently benefit of rounding off disability element of disability pension @15-19% to @50% along with 12% interest on arrear w.e.f. from date of discharge i.e. 30.04.2008 in light of Hon’ble Apex Court Cases i.e. “Sukhvinder Singh Vs Union of India” (Supra) and vide Government of India Ministry of Defence letter dated 31.01.2001.*
- 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. Briefly stated facts of the case are that the applicant was enrolled in Indian Air Force on 29.04.1988 and was discharged on 30.04.2008 in Low Medical Category A4G4(A) T-24 on fulfilling the conditions of his enrolment. At the time of discharge from service, the Release Medical Board (RMB) held at C/o 99 APO on 11.01.2008 assessed his disability ‘**FRACTURE HEAD OF RADIUS (RT) HAND S-52,1 W-01 Z09.0**’ @ 15-19% for life but opined the disability to be neither attributable to nor aggravated (NANA) by Air Force service. The applicant’s claim for disability pension was rejected by the

respondents vide order dated 19.02.2008. The applicant preferred First Appeal dated 26.10.2017 which too was rejected vide order dated 20.06.2018. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Indian Air Force and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Air Force. The disease (injury) of the applicant was contacted during the service, hence it is attributable to and aggravated by Air Force Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension as well as arrears thereof. He further pleaded that the applicant's disability @15-19% for life may be presumed @20% for life. He further submitted that in similar cases, Hon'ble Apex Court and various Benches of the Armed Forces Tribunals have granted disability pension, as such the applicant is entitled to disability pension and its rounding 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 is 15-19% i.e. below 20% and as per Injury Report dated 22.02.2007 the applicant himself stated that he sustained injury while coming out from bathroom his foot slipped and fell down and had injured over his right hand, therefore, condition for grant of disability element of pension does not fulfil in terms of Regulation 153 of Pension Regulations for

the Indian Air Force, 1961, Part – I and, therefore, the competent authority has rightly denied the benefit of disability element of pension to applicant. He pleaded for dismissal of Original Application.

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/injury is attributable to/aggravated by Air Force 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 153 of Pension Regulations for the Indian Air Force, 1961, Part – I, disability element of pension is eligible only when the disability is assessed at 20% or more and accepted as attributable to or aggravated by Air Force service. The submission of Ld. Counsel for the applicant that applicant's disability @15-19% for life may be presumed @20% for life is not acceptable. As per Injury Report dated 22.02.2007 the applicant had himself stated that he sustained injury while coming out from bathroom his foot slipped and fell down and had injured over his right hand. Since, applicant's disability element is @15-19% as neither attributable to nor aggravated by Air Force service, applicant does not fulfil the requirement of Regulation 153 of the Pension Regulations for the Indian Air Force, 1961, Part - I.

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

Diary 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%.”

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 153 of Pension Regulations for the Indian Air Force, 1961, Part – I, 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 air force service. The Hon’ble Supreme Court in Civil Appeal No 10870 of 2018, **Union of India & Ors Versus Wing Commander S.P. 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, Original Application lacks merit and same is accordingly **dismissed**.

11. Pending Misc. Application, if any, stands disposed off.

12. No order as to costs.

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

Dated: 12 January, 2021

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