

Court No. 1 (E-Court)**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 696 of 2017**

Monday, this the 18th day of January, 2021

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 1260351 Ex. Nk. Chhun Bahadur S/o Bir Bahadur R/o H. No.138 Shiv Mandir Chandra Nagar, Nai Basti, P.O. – Arhat Bazar, Dehradun, PIN-248001.

..... Applicant

Ld. Counsel for the : **Shri V.P. Pandey**, Advocate.
Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. The Chief of Army Staff, Integrated Head Quarter of Ministry of Defence, SouthBlock, New Delhi-110001.
3. The Officer-In-Charge Records, Raksha Suraksha Corps Records, Defence Security Corps, PIN No. 901277, C/o 56 APO.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

.....**Respondents**

Ld. Counsel for the : **Shri Ashish Kumar Singh**,
Respondents. 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.

- (I) To set aside/quash rejection of disability pension if any after summoning the copy of rejection of disability pension.*
- (II) To issue order or direction to respondents to grant disability pension along with service element to the applicant from the date of discharged from service.*
- (III) Any other relief as considered proper by this Hon’ble Tribunal be awarded in favour of the applicant.*
- (IV) Cos of the appeal be awarded to the applicant.*

2. Briefly stated, applicant was enrolled in Regiment of Artillery of Indian Army on 28.05.1973 and was discharged on 30.11.1988. The applicant was re-enrolled in Defence Security Corps (DSC) on 27.05.1989 and was discharged from service on 30.06.2004 in Low Medical Category P2 (Permanent) on fulfilling the conditions of his enrolment under Rule 13 (3) Item III (i) of the Army Rules, 1954. At the time of retirement from DSC service, the Release Medical Board (RMB) held at Kanpur on 18.02.2004 assessed his disability ‘**IHD (OLD)**’ @ 30% for life and opined the disability to be neither attributable to nor aggravated (NANA) by service. The applicant was not granted disability pension and he was never

communicated about its rejection. The applicant had filed Original Application No. 259 of 2013, Chhun Bahadur Versus The Union of India and Others, for grant of second service pension after condoning shortfall in qualifying service which was allowed vide order dated 13.09.2017 and direction was issued for granting second service pension. 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 re-enrolment in DSC, the applicant was found mentally and physically fit for service in the DSC and there is no note in the service documents that he was suffering from any disease at the time of re-enrolment in DSC. The disease of the applicant was contacted during the service, hence it is attributable to and aggravated by DSC 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, as such the applicant is entitled to disability pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant @ 30% for life has been regarded as NANA by the RMB, hence applicant is not entitled to disability pension. He further pleaded that earlier the applicant had filed Original Application No. 259 of 2013 for condoning the shortfall of DSC service for second service pension in which he had

not mentioned even a single word with regard to his disability and disability pension. The cause of action for both the reliefs were the same i.e. discharge and therefore should have been claimed together. However, instead of claiming both reliefs in one Original Application, applicant chosen to claim only one and when the Original Application was allowed and shortfall of DSC service was condoned by this Tribunal, then he filed the present Original Application which is not permissible in law. He thus pleaded for dismissal of the Original Application.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Release Medical Board proceedings as well as the records and we find that the only question which needs to be answered is whether the applicant can raise the claim in peace meals which arisen out of same cause of action at the time of discharge?

6. On going through the record we find that applicant was discharged from DSC service in low medical category on 30.06.2004. The applicant had filed Original Application No. 259 of 2013 for condonation of shortfall in DSC service for grant of second service pension which was allowed vide order dated 13.09.2017. In the Discharge Certificate, annexed as Annexure A-2 (page 19) of the said Original Application, the medical category has been mentioned as "P2 (Permanent), as such the applicant cannot say that he was not aware about his disability at the time of retirement.

The applicant had not pleaded about his disability as well as for grant of disability pension in the said Original Application. In this regard we would like to quote Order II Rule 2 of Code of Civil Procedure, 1908 as under :-

“2. Suit to include the whole claim. – (1) *Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.*

(2) **Relinquishment of part of claim.** – *Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.*

(3) **Omission to sue for one of several reliefs.** – *A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs, but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.*

Explanation. – *for the purpose of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.”*

7. Although the Armed Forces Tribunal is not bound by the procedure laid down in the Code of Civil Procedure, 1908, but it shall be guided by the principal of natural justice. However, the law enunciated are applicable on the Tribunal.

8. In view of above law, we are of the opinion that applicant in Original Application No. 259 of 2013 ought to have included whole of the claim i.e. second service pension and disability pension to which the applicant was entitled in respect of the same cause of action i.e. discharge from DSC service or ought to have sought the leave of the Tribunal to file a fresh Original Application which he did not do. Since the applicant has utterly failed to follow the law, his present Original Application for grant of disability pension is not permissible in law.

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

10. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 18 January, 2021

AKD/-