

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 506 of 2022**

Monday , this the 9th day of January, 2023

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

No. 685805 N Ex. Sgt. Suraj Prakash Sharma, 1528/D,
Ramaipatti Gali, Post – Sadar, Mahuarua, Mirzapur, Uttar
Pradesh-231001.

.... Applicant

Ld. Counsel for the : **Col. Ravindra Nath Tiwari (Retd.)**, Advocate
Applicant

Versus

1. Union of India, Through it’s Secretary, Ministry of Defence,
South Block, New Delhi-01.
2. The Chief of Air Staff, Integrated HQ of MoD (Air Force),
air Force Headquarters, South Block, DHQ PO 6, New
Delhi-110001.
3. Directorate of Air Veteran, Air Headquarters, SMC
Building, Subroto Park, New Delhi-110010.
4. AOC, Air Force Record Office, Subroto Park, New Delhi-
110010.
5. Principal Controller of Defence Accounts (Pensions),
Draupadi Ghat, Near Sadar Bazar, Prayagraj, Uttar
Pradesh-211014.

... Respondents

Ld. Counsel for the: **Shri Arvind Kumar Pandey**, Advocate
Respondents. 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, whereby the applicant has sought following reliefs:-

- (a) *To declare the action of respondents as unjust, arbitrary and illegal;*
- (b) *To quash and set aside the letter No. HQ/99798/5/TBS/Appeal/AV-III (Appeal) dated 29 Dec 21 and to direct the respondents to allow the disability pension from the time applicant was released from service i.e. 30 Nov 2005 with an interest @12% per annum with all consequential benefits;*
- (c) *To direct the respondents to grant the benefit of rounding off disability from 40% to 50% and pay arrears with an interest @12% per annum from the date of release i.e. 30 Nov 2005;*
- (d) *To grant an interest @12% on delayed payment of disability pension and;*
- (e) *Any other relief which this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case.*
- (f) *Award cost;*

2. Briefly stated, applicant was enrolled in the Indian Air Force on 30.11.1985 and discharged on 30.11.2005 (AN) in Low Medical Category on fulfilling the conditions of his enrolment. At the time of discharge from service, the Release Medical Board (RMB) held at 2 Wing Air Force on 28.12.2004 assessed his disability ‘**OTHER NON ORGANIC PSYCHOSIS (OLD)**’ @15-19% for life (as per copy of RMB annexed at Annexure 2 of

Original Application disability is 40% for life) and opined the disability to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected vide letter dated 01.03.2006 which was communicated to the applicant vide letter dated 29.03.2006. The applicant preferred representation dated 06.12.2021 which was replied vide letter dated 29.12.2021. 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 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 of the applicant was contracted during the service, hence it is attributable to and aggravated by Military 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, its rounding off as well as arrears thereof.

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 element is 15-19% i.e. below 20% as NANA, therefore, condition for grant of disability element of pension does not fulfil in terms of Regulation 153 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 including Release Medical Board proceedings. The question in front of us is straight; whether the disability is attributable to/aggravated by military service, whether it is above or below 20% and whether applicant was invalidated out of service on account of the disability or was discharged on completion of terms of engagement?

6. Although in the RMB proceedings annexed at Annexure 2 of the Original Application the disability is shown as @40% for life but there is no signatures of Members of the Board whereas the proceedings annexed along with Counter Affidavit bears signatures of the RMB Members. As such we relied upon the RMB proceedings filed by the respondents along with Counter Affidavit.

7. On perusal of records we find that the applicant was enrolled in the Indian Air Force on 30.11.1985 and was discharged from service on 30.11.2005 on completion of terms of engagement. The applicant was in low medical category and his Release Medical Board was conducted on 28.12.2004 at 2 Wing Air Force. The Release Medical Board (filed by the respondents) assessed applicant's disability @15-19% for life neither attributable to nor aggravated by military service.

8. 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 military service. Since, applicant's disability element is 15-19% for life, applicant does not fulfil the requirement of Regulation 153 of Pension Regulations for the Air Force, 1961 (Part-I).

9. Since applicant was discharged from service on completion of terms of engagement, his case does not fall within the category of invalidation in which circumstance he would have become eligible for grant of disability element of pension @ 20% in terms of reported judgment in the case of **Sukhwinder Singh vs Union of India & Ors**, (2014) STPL (WEB) 468 where the operative part of the order reads:-

“9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Thirdly, there appears to be no provisions authorising the discharge or invaliding out of service where the disability is below twenty per cent and seems to us to be logically so. Fourthly, wherever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension.”

10. Further, contrary view to Release Medical Board dated 28.12.2004 to the extent of holding the applicant's disability at 15-19% for life is not tenable in terms of Hon'ble Apex Court judgment in the case of ***Bachchan Singh vs Union of India & Ors***, Civil Appeal Dy 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%.”

(underlined by us)

11. 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.

12. 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 military service. 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%.

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.”

13. In view of the discussions made above, Original Application lacks merit and same is accordingly **dismissed**.
14. Pending application, if any, stands disposed of.
15. No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 09 January, 2023

AKD/-