

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 222 of 2020**Wednesday, this the 08th day of September, 2021**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

IC-41720W Col Sudhir Kumar Bhola (Retd), Son of Shri Raj Kumar Bhola, Resident of House No A-1/62, Jalvayu Vihar Phase-II, Sector-P, Mansarovar Yojana, PO – LDA Colony, Kanpur Road, Lucknow (Uttar Pradesh)-226012.

..... Applicant

Ld. Counsel for the: **Shri Yashpal Singh, Advocate**
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi.
2. Additional Director General Personnel Services, Adjutant General’s Branch/PS-4 (Imp-1), Integrated Headquarter of the Ministry of Defence (Army), Plot No 108 (West), Church Road, Brassey Avenue, New Delhi-110001.
3. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (U.P.)-211014.
4. Officer-in-Charge Records, Signals Record, Pin No 908770, C/o 56 APO.

.....Respondents

Ld. Counsel for the Respondents. : **Dr. Gyan Singh,**
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). *Issue/pass an order directing the respondents to consider case of the applicant for holding of a medical board to assess the disability Lumbar spondylosis and Cervical Spondylosis- PIVD-C5-C6 within a specified time, and grant disability pension extending the benefit of rounding off with effect from 01.11.2015, i.e. the date of retirement, including arrears thereof with interest.*
- (b). *Issue/ pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*
- (c). *Allow this original application with cost.*

2. Briefly stated facts of the case are that applicant was commissioned in the Indian Army on 17.12.1983 and was retired from service on 01.11.2015 in Low Medical Category on completion of age of superannuation. At the time of discharge, the Release Medical Board (RMB) assessed his disability ‘**Osteoarthritis both knee joints**’ @ 30% for life and opined the disability to be aggravated by service. He was granted service pension for his services rendered in the army. Applicant was also granted 30% disability element which was rounded off to 50% for life. The officer claims that during service he was diagnosed with other disabilities namely ‘**Lumbar Spondylosis and Cervical Spondylosis**’ but it was not mentioned in his RMB. It is in this

perspective that the applicant has preferred the present Original Application for holding a medical board to assess the disability '**Lumbar Spondylosis and Cervical Spondylosis**' and grant of disability pension extended with benefit of rounding off from the date of retirement.

3. Ld. Counsel for the applicant pleaded that the applicant was commissioned in the Army in medically and physically fit condition. It was further pleaded that an individual is to be presumed in sound physical and mental condition upon entering service if there is no note or record to the contrary at the time of entry. In the event of his being retired from service, any deterioration in his health is to be presumed due to service conditions. He pleaded that the applicant was under stress and strains due to rigors service conditions which may have led to occurrence of the disability. The Ld. Counsel for the applicant, on account of aforesaid, pleaded for holding medical board to assess the disability '**Lumbar Spondylosis and Cervical Spondylosis**' and to grant disability element extending with rounding off from the date of retirement.

4. On the other hand, Ld. Counsel for the respondents submitted that since the RMB has opined the disability '**OSTEORATHRITIS BOTH KNEE JOINT**' @ 30% for life and considered as attributable to military service. The applicant has been granted 30% disability element which has been rounded of to 50% for life from the date of his retirement. In RMB held at the time

of retirement of the officer nothing has been mentioned about the disease '**Lumbar Spondylosis and Cervical Spondylosis**'. He pleaded that in view of the facts stated above, case of the applicant lacks merit as the case is devoid of substance and deserves to be dismissed.

5. We have heard Ld. Counsel for the parties and perused the material placed on record. We find that the question which need to be answered is whether the applicant is entitled disability element for the disability '**Lumbar Spondylosis and Cervical Spondylosis**'.

6. As per Rule 81 (a) of Pension Regulations for the Army 2008 (Part-1) and Rule 173 of Pensions Regulations for the Army, 1961 (Part-I), which stipulates that, "unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service and is assessed at 20% or more. A low medical category officer who transfers on superannuation or on completion of tenure can also be granted disability pension under the provision of Regulation 37 of Pension Regulations for the Army, 2008, if he fulfils the twin eligibility conditions stated except that the percentage of disability should be 20% or more.

7. An officer who is in low medical category at the time of retirement is required to appear before a RMB in case his medical

condition does not warrant his retention in service up to the age of superannuation. The board examines the individual and his entire medical history thoroughly in the light of relevant medical provisions and records its assessment/view with regard to extent (percentage) of disability and the aspect of attributability and aggravation by military service or otherwise. Applicant was placed in low medical category for the disability '**Osteoarthritis both knee joints**' and for which he has been granted disability element from the date of retirement. At the time of retirement applicant made no mention about the disability '**Lumbar Spondylosis and Cervical Spondylosis**'. An officer of the rank of Col cannot take the plea of oversight after having served in very responsible appointments. Disability pension can be granted only on opinion of Medical Board. Moreover he has already been benefitted in form of promotions attained during the service as well as by granting disability element @ 50% for life as assessed by RMB for the disability '**Osteoarthritis both knee joints**'.

8. The Regulation 53 (a) of PRA 2008, Part -1 stipulates that 'An individual released retired/discharged on completion of terms of engagement or on completion of service limits or on attaining the prescribed age (irrespective of his period of engagement), if found suffering from a disability attributable to or aggravated by military service and so recorded by Release Medical Board, may be granted disability element in addition to service pension or service

gratuity from the date of retirement/ discharge, if the accepted degree of disability is assessed at 20% or more. On perusal of all medical documents including Release Medical Board, it is observed that the petitioner was never placed in low medical category for the disability '**Lumbar Spondylosis and Cervical Spondylosis**'.

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 : 08 September, 2021

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