

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 24 of 2021**

Tuesday, this the 28<sup>th</sup> day of September, 2021

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

Chhaku Singh (No. 13663484X Ex. GDSM), S/o Sri Kali Charan, R/o Village Chhaturipur, Post Kaithouli, District Mainpuri (UP, PIN-209720.

..... **Applicant**

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

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, Delhi-110011.
2. Officer Incharge Records, Brigade of the Guards, PIN-900746, C/o 56 APO.
3. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (U.P.).

..... **Respondents**

Ld. Counsel for the Respondents : **Shri Rajesh Shukla**, Advocate  
 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) *This Hon'ble Tribunal may graciously be pleased to direct the respondents to grant 'War Injury element/Invalid War Injury Pension' along with arrears from the date of its*

*entitlement w.e.f. 4-9-1973, towards his disability 'SPONDYLO ARTHRITIS L 3 – L4' in accordance with law to the applicant.*

- (ii) This Hon'ble Court may further be pleased to pass such other and/or further order as deem fit, proper and necessary in the circumstances of this case.*
- (iii) Award costs to the applicant.*

2. Briefly stated, are that applicant was enrolled in the Brigade of The Guards Regiment of Indian Army on 28.01.1966 and was discharged from service on 04.09.1973 in low medical category [BEE (P)] after rendering 7 years and 219 of service. At the time of discharge from service, the Release Medical Board (RMB) held at Military Hospital, Ambala on 28.04.1973 assessed his disability '**SPYNDYLO ARTHRITIS L3-L4 (434)**' @ 6-10% for two years and opined the disability to be attributable to military service. On consideration PCDA (P), Allahabad re-assessed his disability at 20% and granted disability element for two years with effect from 04.09.1973 to 27.04.1975 along with service element for life vide PPO dated 29.12.1973. Subsequent, the Re-Survey Medical Board was held on 24.02.1975 at Military Hospital, Agra and assessed his disability @5-11% for two years, but PCDA (P) accepted less than 20% for two years and accordingly PPO dated 03.07.1975 was issued. Thereafter, Re-Survey Medical Board was held on 12.02.197 at Military Hospital, Agra and assessed his disability less than 20%for two years, but the PCEA (P), Allahabad accepted the 20% for ten years w.e.f. 12.02.1977 to 11.02.1987. The next Re-Survey Medical Board was due on 12.02.198 but inspite of various letters the applicant failed to report at Military Hospital, Ambala to conduct his Re-Survey Medical Board. The applicant preferred Appeal

dated 25.10.2018 and requested for re-assessment medical board for grant of war injury pension. On being accorded sanction to waive off the time bar limit for holding one time Re-Assessment Medical Board (RAMB), the RAMB held at 7 Air Force Hospital, Kanpur assessed his disability @20% for life. Also the disability for intervening period from 12.02.1987 to 24.09.2019 was assessed @20%. Accordingly, the applicant was granted disability element from 12.02.1987 for life vide PPO dated 16.12.2019. The applicant preferred an application dated 08.01.2002 for seeking information regarding non grant of War Injury Pension which was replied vide letter dated 25.01.2020. The applicant preferred Appeal dated 14.02.2020 was rejected by the respondents vide letter dated 04.03.2020. The applicant is in receipt of disability pension and has come forward for grant of War Injury Element of Disability Pension. Being denied by War Injury Pension, the instant Original Application has been filed.

3. Heard Shri Ashok Kumar, Learned Counsel for the applicant, Shri Rajesh Shukla, Learned Counsel for the respondents and perused the record.

4. Learned Counsel for the applicant submitted that applicant sustained severe injury in March, 1972 during Indo-Pak conflict while carrying stores of the Unit i.e. Arms and Ammunition in operation area (Chhittagong (now Bangladesh), fell down, however, no injury was initiated but it is held that condition of applicant aggravated due to physical stress and strain of infantry duty. In the opinion of Medical Board, the disability of the applicant has been opined as attributable to service while he was serving at Bangladesh, 4 Guards on 16.03.1972. Therefore applicant is entitled to War Injury Pension instead of disability pension.

5. Further contention of learned counsel for the applicant is that since applicant's disability occurred during Indo-Pak conflict/war to Infantry duty (heavy weight carrying) i.e. Operation CACTUS LILY AT Chhittgaon, Dhaka, Bangladesh, hence, he is entitled for War Injury Pension. .

6. Learned Counsel for the applicant further submitted that applicant was on bonafide military duty in Operation Area (Bangladesh) and his disability 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.

7. **Per contra**, learned Counsel for the respondents submitted that as per records held with service dossier, the applicant's disability was opined by the RMB, RSMB and RAMB as attributable to military service due to stress and strain of military service. Accordingly, applicant was granted disability pension. Para 10.1 of the Government of India, Ministry of Defence letter No. 1(2)/D(Pen-C) dated 31.01.2001 envisages that the provisions of War Injury Pension is applicable in the case "where an Armed Forces personnel is invalided out of service on account of disabilities sustained under circumstances mentioned at Category 'E' of para 4.1 of Government of India letter dated 31 January, 2001, he shall be entitled to War Injury Pension consisting of service element and War Injury element". His further submission is that in the instant case, the applicant was suffering from 'SPONDULO ARTHRITIS L3-L4 (434)' due to stress and strain of service while serving in operation area which does not cover under category 'E' of ibid Government of India, Ministry of Defence letter. Hence, the applicant is not entitled for grant of War Injury element.

8. As per the para 4.1 of letter No. 1(2)/97/I/D (Pen-C) dated 31.01.2001, the War Injury Pension is admissible in the following circumstances :-

“4.1 xxxxxxxxxxxx

**Category E**

*Death or disability arising as a result of :-*

- (a) *enemy action in international war.*
- (b) *Action during deployment with a peace keeping mission abroad.*
- (c) *Border skirmishes.*
- (d) *During laying or clearance of mines including enemy mines as also minesweeping operation.*
- (e) *On account of accidental explosions of mines while laying operationally oriented mine-field or lifting or negotiating minefield laid by enemy or own forces in operational areas near international borders or the line of control.*
- (f) *War like situations, including cases which are attributable to/aggravated by :-*
  - (i) *Extremist acts, exploding mines etc. while on way to an operational area.*
  - (ii) *battle inoculation training exercises or demonstration with live ammunition.*
  - (iii) *kidnapping by extremists while on operational duty.*
- (g) *An act of violence/attach by extremists, anti-social element etc.*
- (h) *Action against extremists, antisocial elements, etc. Death/disability while employed in the aid of civil power in quelling agitation, riots or revolt by demonstrators will be covered under this category.*
- (i) *Operations specially notified by the Govt. from time to time.”*

9. 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 i.e. Category E of the above policy letter. Further, the

applicant was suffering from disability due to stress and strain of service while serving in operational areas which is not covered under Category E of ibid policy. Hence, applicant is not entitled to War Injury Pension.

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

11. No order as to costs.

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

Dated: 28 September, 2021  
AKD/-