

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 522 of 2023

Monday, this the 29th day of April, 2024

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

JC-243864F, Ex. Nb. Ris. Nawab Singh Bharangar, S/o Shri Pyare Lal, R/o House No. 1, Sangam Vihar, Balajipuram, Post – Aurangabad, District – Mathura (U.P.), PIN-281006.

.... Applicant

Ld. Counsel for the Applicant : **Shri D.S. Kauntae**, Advocate
(Not Present at the time of hearing)

Versus

1. Union of India, Through it’s Secretary, Govt. of India, Ministry of Defence, South Block, New Delhi-110011.
2. OIC, Armed Corps Records, Pin-900476, C/o 56 APO.
3. PCDA, O/O The CDA (P), PIN-211014.
4. Additional Director General of Personnel Services (PS-4), Adjutant General’s Branch, Integrated HQ of MoD (Army), DHQ PO, New Delhi-110011.

... Respondents

Ld. Counsel for the Respondents: **Shri Rajesh Shukla**, Advocate
Central Govt. Standing Counsel.

ORDER

“Per Hon’ble Mr. Justice Anil Kumar, 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) Impugned order dated 29.03.2012 passed by the respondent no. 2.*
- b) Direct the respondent no. 2 to take all necessary steps for grant a release of the entire sum of disability pensionary benefits in favour of the applicant as expeditiously as possible.*
- c) Pass any such other orders) or directions as this Hon’ble Tribunal may deem just fit and proper in the interest of justice accordingly.*

2. Briefly stated, applicant was enrolled in the Indian Army on 26.02.1986, discharged in a lower rank of Dafadar on 30.11.2007 on the grounds having being placed in low medical category and re-instated back in service on 20.01.2009 in pursuance of Hon’ble High Court order dated 20.11.2008. Upon having been re-instated back in service, the applicant filed O.A. No. 1025 of 2013 before Armed Forces Tribunal, Regional Bench, Chandigarh at Chandimandir against the denial of extension of two years service which was dismissed vide order dated 09.12.2014. The applicant was finally discharged from service on 29.02.2012 (AN) in Low Medical Category on fulfilling the conditions of his enrolment under Rule 13 (3) Item I (i) (a) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB)

held at Military Hospital, Babina on 09.09.2011 assessed his disability **'PAN URETHRAL STRICTURE WITH METALSTENOSIS (B X O) OPTD'** @10% for life opined the disability to be **aggravated by service**. The applicant's claim for grant of disability pension was rejected vide letter dated 29.12.2012. The applicant preferred Legal Notice-cum-representation dated 10.08.2020 which too was rejected vide letter dated 30.09.2020. It is in this perspective that the applicant has preferred the present Original Application.

3. The applicant pleaded that the applicant's disability has been opined as aggravated by military service but it's degree of disablement has wrongly been assessed @10%. The applicant further pleaded that since the applicant's extension has not been granted, hence, as per the Regulation 179 of the Pension Regulations for the Army, 1961 (Part-I) the applicant's discharge shall be deemed to have been invalidated out of from service as such he is entitled for the grant of disability pension. The applicant further pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension (which is consisting of disability element + service element both) and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents opposed the pleadings of the applicant and submitted that

although the applicant's disability has been opined as aggravated by military service but since the assessment of the disability element is 10% i.e. below 20%, therefore, condition for grant of disability element of pension does not fulfil in terms of Regulation 179 of Pension Regulations for the Army, 1961 (Part-I) and Para 8.2 of the Government of India, Ministry of Defence letter No. 1(2)/97/D (Pen/Policy) dated 31.01.2001 and, therefore, the competent authority has rightly denied the benefit of disability pension to applicant. He pleaded for dismissal of Original Application.

5. We have heard Ld. Counsel for the respondents 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. It is undisputed case of the parties that applicant was enrolled in the Indian Army on 26.02.1986 and was discharged from service on 29.02.2012 on completion of terms of engagement. The applicant was in low medical category and his Release Medical Board was conducted on 09.09.2011 at Military Hospital, Babina. The Release Medical Board assessed

applicant's disability @10% for life as aggravated by military service.

7. As per Regulation 179 of Pension Regulations for the Army, 1961 (Part - I) and Para 8.2 of the Government of India, Ministry of Defence letter No. 1(2)/97/D (Pen/Policy) dated 31.01.2001, disability pension is eligible only when the disability is assessed at 20% or more and accepted as attributable to or aggravated by military service. Although the applicant's disability has been assessed aggravated by military service but since, it's degree of disability is 10% for life, applicant does not fulfil the requirement of Regulation 179 of Pension Regulations for the Army, 1961 (Part-I) and Para 8.2 of the Government of India, Ministry of Defence letter No. 1(2)/97/D (Pen/Policy) dated 31.01.2001.

8. 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.”

9. Further, contrary view to Release Medical Board dated 09.09.2011 to the extent of holding the applicant's disability @10% for life is not tenable in terms of Hon'ble Apex Court judgment in the case of ***Bachchan Prasad vs Union of India & Ors***, Civil Appeal 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)

10. 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.

11. In addition to above, a bare reading of Regulation 179 of Pension Regulations for the Army, 1961 (Part-I) and Para 8.2 of the Government of India, Ministry of Defence letter No. 1(2)/97/D

(Pen/Policy) dated 31.01.2001, makes it abundantly clear that an individual being assessed disability below 20% is not entitled to disability pension 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.”

12. In view of the discussions made above, Original Application lacks merit and same is accordingly **dismissed on merit**.

13. Pending application, if any, stands disposed of.

14. No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated: 29 April, 2024

AKD/-