

Court No. 1
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 453 of 2022

Thursday, this the 15th day of December, 2022

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Lt. Gen. Rakesh Kumar Anand, Member (A)

No. 15693797X, Sigm. Brijesh Yadav, S/o Shri Shiv Pujan, R/o of Village – Raipur Belwadani, Post - Rambag Baragaon, Tehsil-Alapur, District - Ambedkarnagar (U.P) – 224147.

.... **Applicant**

Ld. Counsel for the : **Shri Manoj Kumar Awasthi**, Advocate and Applicant
Shri Anshuman Srivastava, Advocate.

Versus

1. Union of India, through Secretary, Ministry of Defence (Army), South Block, New Delhi-110010.
2. Chief of the Army Staff, IHQ MoD (Army), Army HQ, south Block, New Delhi – 110010.
3. The Appellate Committee on First Appeal (ACFA), Director, AG/PS -4 (Imp-II), Adjutant General's Branch, Integrated Headquarters of MoD (Army), Room No, 10, plot No. 108 (West) Brassey Avenue, Church Road, New Delhi -110011.
4. The Officer-in-Charge, record, The Records signals Pin - 908770 C/o 56 APO.
5. Principal Controller of Defence Accounts (Pension), Deaupadi Ghat, Prayagraj.

... **Respondents**

Ld. Counsel for the : **Shri Adesh Kumar Gupta**, 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 issue /pass an order or directions to set aside /quash the rejection order dated 29.09.2021, which is annexed as Annexure no. 1 to this original application.*
- B. *To issue /pass an order or directions to the respondents for grant of disability element of disability pension from date of Discharge i.e.31.07.2021 and rounding off disability pension upto 50% alongwith 12% interest of the arrear from the date of discharge i.e. 31.07.2021.*
- C. *To issue/pass any other order or direction as this Hon’ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.*
- D. *To allow this original application with costs.*

2. Briefly stated, applicant was enrolled in the Corps of Signals of Indian Army on 08.07.2004 and discharged on 31.07.2021 (AN) in Low Medical Category on fulfilling the conditions of his enrolment under Rule 13 (3) Item III (i) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at Base Hospital, Delhi Cantt. on 16.07.2021 assessed his disability

'FIBROUS DYSPLASIA (RT) FRONT SINUS & ETHMOD SINUS (RT) MAXILLA AND BODY OF MANDIBLE (OPT) (Q78.1)' @10%

for life 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 29.09.2021. 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 Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. 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 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 10% i.e. below 20%, therefore, condition for grant of disability element of

pension does not fulfil in terms of Regulation 53(a) of Pension Regulations for the Army, 2008 (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 and, if so, whether it is above or below 20% and also whether applicant was invalidated out of service on account of the disability?

6. It is undisputed case of the parties that applicant was enrolled in the Indian Army on 08.07.2004 and discharged from service on 31.07.2021 on completion of terms of engagement. The applicant was in low medical category and his Release Medical Board was conducted on 16.07.2021 at Base Hospital Delhi Cantt. The Release Medical Board assessed applicant's disability @ 10% for life neither attributable to nor aggravated by military service.

7. As per Regulation 53(a) of Pension Regulations for the Army, 2008 (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 10% for life, applicant does not fulfil the requirement of Regulation 53(a) of Pension Regulations for the Army, 2008 (Part-I).

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 be assumed that his disability was found to be above twenty per cent. Fifthly, as per the extant Rules/Regulations, a disability leading to

invalidating out of service would attract the grant of fifty per cent disability pension.”

9. Further, contrary view to Release Medical Board dated 16.07.2021 to the extent of holding the applicant’s disability at 10% 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)

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 53(a) of Pension Regulations for the Army, 2008 (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.”

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

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

14. No order as to costs.

(Lt. Gen. Rakesh Kumar Anand)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 15 December, 2022

AKD/Ashok/-