

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 734 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)”**

Ex Hav Pramod Kumar Teotia (3188192-A)
S/o Birbal Singh
R/o H. No. 14/A, Gokul Vihar
Rohta Road, Meerut (UP) – 250002

..... Applicant

Ld. Counsel for the : **Shri Manoj Kumar Awasthi**, Advocate
Applicant holding brief of **Wg Cdr Ajit Kakkar** (Retd)

Versus

1. Union of India, through the Secretary, Ministry of Defence, DHQ PO, New Delhi-110011.
2. Senior Record Officer, Records Office, Jat Regiment Bareilly, (UP) – 243001, C/o 56 APO
3. Principal Controller of Defence Account (Pension) Draupadi Ghat, Prayagraj (UP) – 211014.

.....Respondents

Ld. Counsel for the Respondents: **Shri Adesh Kumar Gupta**,
Central Govt. Counsel

ORDER (Oral)

1. The instant Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs :-

- (a) *To direct the respondents to bring all relevant service and medical documents including Battle Casualty certificate, Severity Certificate on record with advance copy to the Applicant.*
- (b) *To direct the Respondents to conduct RSMB, to reassess and enhance applicant's war injury element/ Battle Casualty and grant broad banded war injury/battle casualty pension.*
- (c) *Alternatively to direct the respondents to broad band applicant's war injury disability pension from 30% to 50% and normal disability from 20 to 50%.*
- (d) *To direct the respondents to issue a corrigendum PPO pertaining to applicants reassessed and enhanced War injury/Battle Casualty.*
- (e) *To direct the respondents to pay arrears of War injury/Battle Casualty and broad banded War injury/battle casualty along with interest @ 12%.*
- (f) *To direct the respondents to pay arrears along with 12% interest in accordance of separately broad banded disability pension w.e.f. 01.03.2019.*
- (g) *To direct the respondents to grant Ex-Gratia payment and additional pay of AGIS.*
- (h) *To grant such other relief appropriate to the facts and circumstances of the case as deemed fit and proper.”*

2. Briefly stated, applicant was enrolled in the Army on 24.02.1995 and discharged on 28.02.2019 in Low Medical Category under Rule 13 (3) III (i) of Army Rules 1954. The applicant while serving in 17 JAT sustained injury “**SPLINTER INJURY (LT) KNEE & (RT) GLUTEAL**

REGION (OPTD)” on 01.06.1999. The applicant was downgraded to low medical category CEE (Temporary) w.e.f. 29.07.1999. The RMB assessed applicant’s disabilities (i) **“SPLINTER INJURY (LT) KNEE & (RT) GLUTEAL REGION (OPTD)” @ 20%** for life as attributable to military service (Battle Casualty) and (ii) **‘PRIMARY HYPERTENSION’ @ 30%** for life as aggravated by military service, Composite disabilities @ 40% for life. The applicant was granted service element w.e.f. 01.03.2019 vide PPO dated 05.03.2019. Thereafter, applicant was granted War Injury Element w.e.f. 01.03.2019 @ 40% duly rounded off to 50% for life w.e.f. 01.03.2019 vide PPO dated 21.09.2021. The applicant submitted an application dated 22.11.2021 and a legal notice dated 21.02.2022 which were suitably replied by JAT Records vide letter dated 08.03.2022 and letter dated 25.03.2022 respectively. The applicant’s prayer that he is entitled to round off from 30% to 50% for ‘Primary Hypertension’ and from 20% to 50% for war injury separately has been rejected by the respondents. 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 applicant suffered with “Splinter Injury Of Left Knee and Right Gluteal Region” in active service on the face of enemy during OP Vijay which was assessed @ 20% and was declared as attributable to military service as per medical board dated 08.05.2018. The applicant was found suffering with “Primary Hypertension” which was assessed @ 30% and was declared as aggravated by military service as per medical board dated 08.05.2018.

4. Learned counsel for the applicant further submitted that war injury and disability pension are two distinct disabilities that cannot be clubbed together. The applicant is entitled to round off from 30% to 50% for ‘Primary Hypertension’ and from 20% to 50% for war injury separately. He also submitted that war injury percentage ought to have been assessed @ 50%, rounded off to 75% and respondents were supposed to broad band applicant’s war injury disability pension from 20% to 50% and normal disability from 30% to 50%. However, the respondents have granted permanent composite disability @ 40% rounded off to 50%.

5. Learned counsel for the applicant placed reliance on the judgment of the Hon’ble Supreme Court in the case of **State of Jharkhand & Ors vs. Jitendra Kumar Srivatava & Anr**, 12 SCC 210 (2013) and **Deoki Nandan Prasad vs. State of Bihar & Ors**, (1971) Suppl. SCR 634 and pleaded that applicant is presently entitled to

revised Battle Casualty Pension, Ex Gratia payment and additional pay of AGIS and pleaded to grant war injury element @ 20% duly rounded off to 50% and normal disability from 30% to 50% for life and to issue corrigendum PPO accordingly.

6. On the other hand, Ld. Counsel for the respondents submitted that applicant while serving in 17 JAT, sustained injury “**SPLINTER INJURY (LT) KNEE & (RT) GLUTEAL REGION (OPTD)**” on 01.06.1999 which was considered as attributable to military service and was declared as Battle Casualty. The applicant was downgraded to low medical category CEE (Temporary) w.e.f. 29.07.1999. The RMB assessed applicant’s disabilities (i) “**SPLINTER INJURY (LT) KNEE & (RT) GLUTEAL REGION (OPTD)**” @ 20% for life as attributable to military service (Battle Casualty) and (ii) ‘**PRIMARY HYPERTENSION**’ @ 30% for life as aggravated by military service, Composite disabilities @ 40% for life. The applicant was granted service element w.e.f. 01.03.2019 vide PPO dated 05.03.2019. Thereafter, applicant was granted War Injury Element w.e.f. 01.03.2019 @ 40% duly rounded off to 50% for life w.e.f. 01.03.2019 vide PPO dated 21.09.2021.

7. Learned counsel for the respondents further submitted that applicant submitted an application dated 22.11.2021 and a legal notice dated 21.02.2022 which were suitably replied by JAT Records

vide letter dated 08.03.2022 and letter dated 25.03.2022 respectively clarifying the rule position. He further submitted that as per para 5.2 of Govt. of India, Ministry of Defence letter dated 05.09.2017 and para 5(c) of PCDA (P) Circular No. 585 dated 21.09.2017, the applicant is entitled for War Injury Element @ 40% rounded off to 50% for life which has already been notified vide PCDA (P) Prayagraj PPO dated 21.09.2021. As per AGI letter dated 24.04.2018, the scheme is applicable w.e.f. 01.05.2018 to the individuals whose service is cut short on medical grounds and who are not in receipt of any pension. Since, the applicant is in receipt of service element w.e.f. 01.03.2019, he is ineligible for benefit of AGIF/AGIS. He pleaded for dismissal of the Original Application.

8. We have heard Ld. Counsel for the parties. We have also gone through the Medical Board proceedings as well as the records.

9. It is pertinent to mention here that judgments relied up by the applicant in Para 5 above are not relevant in this case being based on different facts and circumstances and therefore, applicant cannot be given the benefit of aforesaid judgments.

10. We find that applicant sustained injury “**SPLINTER INJURY (LT) KNEE & (RT) GLUTEAL REGION (OPTD)**” on 01.06.1999 which was considered as attributable to military service and was declared as Battle Casualty. The RMB of the applicant was conducted in Sept.

2019 and assessed applicant's disabilities (i) "**SPLINTER INJURY (LT) KNEE & (RT) GLUTEAL REGION (OPTD)**" @ 20% for life as attributable to military service and (ii) '**PRIMARY HYPERTENSION**' @ 30% for life as aggravated by military service, Composite assessment for both the disabilities @ 40% for life. The applicant has been granted War Injury Element w.e.f. 01.03.2019 @ 40% duly rounded off to 50% for life vide PPO dated 21.09.2021.

11. We also find that Medical Board has assessed percentage of both the disabilities according to gravity of the injury/disability which is final and therefore, applicant's prayer to hold RSMB to assess enhance war injury element/battle casualty is rejected. Since, second disability (Primary Hypertension) is the result of first disability (**SPLINTER INJURY (LT) KNEE & (RT) GLUTEAL REGION (OPTD)**) and both the disabilities are connected to each other, RMB being a final authority has assessed both the disabilities correctly which have been rounded off to 50% and applicant is getting the same w.e.f. 01.03.2019.

12. Since rounding off benefit of composite disabilities has already been granted to the applicant, there is no question to treat both the disabilities separately and to grant benefit of rounding off of war injury element from 20% to 50% and Primary Hypertension from 30% to 50% separately.

13. We are also of the view that as per AGI letter dated 24.04.2018, applicant is not entitled to get benefit of AGIS as he is in receipt of service element w.e.f. 01.03.2019. Hence, contrary to rule position, applicant is ineligible for AGIF/AGIS benefit.

14. As per para 5.2 of Govt. of India, Ministry of Defence letter dated 05.09.2017 and para 5(c) of PCDA (P) Circular No. 585 dated 21.09.2017, the applicant is entitled for War Injury Element @ 40% rounded off to 50% for life w.e.f. 01.03.2019 which has already been notified vide PCDA (P) Prayagraj PPO dated 21.09.2021.

15. In view of aforesaid, we are of the view that applicant is getting his disability element of disability pension correctly @ 50% for life as per rules and nothing more is left or payable to the applicant.

16. In the result, we do not find any illegality or irregularity in rejecting the reliefs prayed by the applicant in the present Original Application, by the respondents. The Original Application deserves to be dismissed and is accordingly **dismissed**.

17. No order as to costs.

18. Pending Misc. Applications, if any, shall stand disposed off.

(Lt Gen Rakesh Kumar Anand)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : December, 2022
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