

**E- Court No.1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 683 of 2021**Wednesday, this the 16<sup>th</sup> day of February, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

No- 1547739A, Ex Rect Ram Singh Son of Shri Asha Ram Chauhan, Resident of Bhadokhara, PO- Kuchera, Tehsil – Milkipur, District- Faizabad (Now Ayodhya)

.....Applicant

Ld. Counsel for : **Shri Vinay Pandey**  
Applicant **Advocate**

Versus

1. Union of India, through the Secretary, Ministry of Defence, DHQ PO, New Delhi 110011.
2. The Chief of the Army Staff, through additional Director General, Personnel Services (PS-4) Adjutant Generals Branch, IHQ of MoD (Army), DHQ PO New Delhi- 11.
3. The Director General of Medical Services (Army) North Block, IHQ of MoD (Army) DHQ PO, New Delhi – 11.
4. Officer in Charge Records, Armoured Corps Records, Ahmednagar- 414003.
5. The Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (U.P.)

.....Respondents

Ld. Counsel for the : **Shri Yogesh Kesarwani,**  
Respondents **Central Govt Counsel**

**ORDER****“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has claimed the following reliefs:-

*(a) Issue/ pass an order or directions of appropriate nature for grant of disability pension to the applicant with effect from the date of discharge i.e. 23.01.2001 giving the parity with Ex No 6925839X, Rect Vinod Kumar, Disability pension granted with effect from 07.10.1985.*

*(b) Issue/ pass an order or direction of appropriate nature to the respondents to make the payment of arrears along with interest accrued to the applicant due to revision of his disability pension and continue to pay regularly disability pension to the applicant in the revised rate.*

*(c) Issue/ pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*

*(d) Allow this application with cost.*

2. The undisputed factual matrix on record is that the applicant was enrolled in Indian Army on 02.07.1999. During training applicant suffered injury in left thigh for which implantation of steel rod was done. The applicant was discharged from service on 22.07.2001 as “Service no longer required”. On the directions of the Court, applicant was medically examined at Command Hospital, Central Command,

Lucknow and disability of the applicant was assessed @ 30%. Medical Board considered the disability of the applicant as attributable to military service and applicant was granted disability pension wef 09.07.2016 vide PPO dated 07.05.2018. Being aggrieved applicant has filed instant Original Application for grant of disability pension from the date of discharge.

3. Learned counsel for the applicant submitted that the applicant was enrolled in the army in medically fit condition. He suffered injury in his leg for which implantation of steel rod was done and applicant was discharged from service on 22.07.2001 under Rule 13 (3) Item IV of Army Rule, 1954. The applicant filed O.A. No 274 of 2011 before Armed Forces Tribunal, Principal Bench, New Delhi which was transferred to this Tribunal. O.A. was disposed of with directions to respondents to conduct Medical Examination. Medical Board of the applicant was held and the disability of the applicant was assessed @ 30% for life and considered as attributable to military service. Applicant was granted disability pension from 09.07.2016.

4. Learned counsel for the applicant pleaded that applicant was on bonafide duty while he sustained injury resulting in implantation of steel rod in his leg. Due to fracture in leg, applicant was unable to complete his training and he was discharged from service. As per latest Supreme Court pronouncement on disability pension, it has to be presumed

that if any individual is not suffering with any kind of disability at the time of recruitment and subsequently found suffering with any kind of disability then it has to be presumed that such disability has arisen/ aggravated/ attributable due to the service conditions. It is settled legal proposition that for grant of disability pension there must be disability of at least 1% in case of invalidment.

5. Learned counsel for the applicant pleaded that applicant filed Civil Writ Petition No 26600 of 2001 in Hon'ble High Court of Judicature at Allahabad for grant of disability pension which was allowed vide order dated 21.07.2001 and respondents were directed to grant disability pension to the applicant within six months. In spite of order of the Hon'ble High Court, Allahabad, respondents intentionally not granted disability pension to the applicant. Applicant sustained injury in the year 1999 and he was discharged from service on 22.07.2001, hence applicant is entitled disability pension from the date of discharge and not from 09.07.2016. He pleaded that various Benches of the Armed Forces Tribunal have granted disability pension in similar cases, as such, the applicant is entitled to disability pension from the date of discharge and its rounding off to 50%.

6. Per contra, learned counsel for the respondents has not disputed that disability of the applicant was considered as

attributable to military service and assessed @ 30% for life, but submitted that Resurvey Medical Board of the applicant was discharged from service being 'service no longer required, hence he was not granted disability pension. Learned counsel for the respondents pleaded that applicant was not fulfilling criteria prescribed in Para 179 of the Pension Regulations for the Army, 1961 (Part-I), hence the claim of the applicant for the grant of disability pension has correctly been rejected.

7. We have heard learned counsel for the parties and perused the record.

8. The question before us for consideration is simple and straight whether applicant whose disability has been assessed @ 30% for life and found to be attributable to military service is entitled disability pension from the date of discharge?

9. On perusal of documents it transpires that concept of reasoned order has become an indispensable part of the basic rule of law and, in fact, is a mandatory requirement of the procedural law but in the instant case discharge of the applicant whose disability was considered as attributable to military service without disability pension has no logic.

10. It is well settled proposition of law that not only judicial or quasi-judicial order but even the administrative order affecting the civil rights of the citizens, should be reasoned one to cope

with the requirement of Article 14 of the Constitution. Unreasoned order creates instability and distrust in people's mind towards the administration or the authority who has passed such order. In democratic polity, there is no scope to pass an order affecting civil rights of the citizens which may be unreasoned.

11. The desirability for consistency, uniformity and predictability in administrative actions on similarly placed matters need no emphasis. It is noted with concern that a soldier sustained injury during performance of military duty which was declared attributable to military service but he was discharged under the clause 'service no longer required' without disability pension. Depriving disability pension to such a soldier who suffered disability and discharged from service on account of military duties is against the policy. If such a practice is persisted it may deter soldiers from undertaking hazardous tasks during training / service in difficult areas as there may have an apprehension that if they sustain injury due to some accident, they may not be discharged from service without disability pension, even if the injury is attributable to military service. Such an apprehension in the mind of soldiers would be against organizational interests of the Army. In the instant case in spite of specific order of Hon'ble High Court,

Allahabad, applicant was not granted disability pension for about 15 years.

12. In the instant case, applicant sustained injury in left thigh while participating in training for which implantation of steel rod was done. Applicant was discharged from service under the clause 'service no longer required'. The fact enumerated herein above shakes our conscience as to whether a person having been implanted steel rod in his leg will be fit to serve in the army as a soldier. It is settled law that in case the authorities want to do certain things, then that should be done in the manner provided in the Act of statutory provisions and not otherwise\_ vide **Nazir Ahmed Vs. King Emperor**, AIR 1936 PC 253; **Deep Chand Versus State of Rajasthan**, AIR 1961 SC 1527.

13. Applicant filed petition before Hon'ble High Court Allahabad which was allowed vide order dated 21.07.2001 and respondents were directed to grant disability pension to the applicant within six months. In spite of order of Hon'ble Allahabad High Court to grant disability pension, applicant was not granted disability pension for about 15 year. The applicant sustained injury while performing military service hence, he is entitled disability pension from the date of discharge.

14. On the issue of rounding off of disability pension, we are of the opinion that the case is squarely covered by the decision of **K.J.S. Buttar vs. Union of India and Others**, reported in (2011) 11 SCC 429 and Review Petition (C) No. 2688 of 2013 in Civil appeal No. 5591/2006, **U.O.I. & Anr vs. K.J.S. Buttar and Union of India vs. Ram Avtar & Others**, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014. Hence the applicant is eligible for the benefit of rounding off also.

15. In view of the above the Original Application deserves to be allowed.

16. Accordingly O.A. is **allowed**. The applicant is already in receipt of disability pension wef 09.07.2016. Respondents are directed to grant disability pension to the applicant @ 30% to be rounded of to 50% for the intervening period from the date of discharge i.e. 23.01.2001 to 08.07.2016 alongwith arrears. The respondents are directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 8% per annum till actual payment.

17. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)  
**Member (A)**

(Justice Umesh Chandra Srivastava)  
**Member (J)**

Dated : 16 February, 2022

UKT/-