

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

Original Application No. 362 of 2023

Monday, this the 26th day of February, 2024

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

Ex. NK. Anirudh Pandey (1451237-X), S/o Late Shri Ram Pandey, Residence of Nai Abadi Devla, Gautam Budh Nagar, Uttar Pradesh – 2013306.

.... **Applicant**

Ld. Counsel for the: **Wg. Cdr. Ajit Kakkar (Retd)**, Advocate and Applicant
Shri Manoj Kuamr Awashti, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, DHQ PO, New Delhi -110001.
2. The Chief of Army Staff, IHQ, MoD (Army), Sena Bhawan, New Delhi -110001.
3. Senior Records Officer, EME Records, PIN CODE -900453, C/o 56 APO, Tirumalagiri, Maruti Nagar Colony, Secunderabad -500015.
4. PCDA, Draupadi Ghat, Near Sadar Bazar, Prayagraj, Uttar Pradesh -211014.

... **Respondents**

Ld. Counsel for the: **Shri J.N. Mishra**, Advocate
Respondents. Central Govt Standing Counsel.
Assisted by **Major Naman Gupta**,
Departmental Representative.

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. *To direct the respondents to bring all service and medical documents on record with advance copy to the applicant.*
- b. *To set aside/quash the Impugned Order/Rejection letter dated 13.10.2022.*
- c. *To grant disability pension to the Applicant from the date of Release (01.01.1999) w.e.f. 02.01.1999.*
- d. *To direct the Respondents to grant broad banding of the disability pension w.e.f. 02.01.1999.*
- e. *To direct the Respondents to issue a corrigendum PPO pertaining to the disability pension and broad banding of the disability pension of the Applicant.*
- f. *To direct the Respondents to pay arrears of disability pension and broad banded disability along with interest @8% w.e.f. 02.01.1999.*
- g. *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 EME Corps of Indian Army on 23.11.1978 and discharged on 31.01.1999 (AN) at his own request on extreme compassionate grounds before fulfilling the conditions of enrolment after rendering 20 years, 02 months and 08 days of service under Rule 13 (3) Item III (iv) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at 170 Military Hospital, C/o 56 APO on 23.03.1998 assessed his disability ‘**GENERALISED SEIZURE 345**’ @ 15-19% for five years opined the disability to be

neither attributable to nor aggravated by service. The applicant's claim for grant of disability pension was rejected vide letter dated 20.10.2004 which was communicated to the applicant vide letter dated 25.10.1999. The applicant preferred First Appeal Cum Legal Notice dated 04.08.2022 which too was rejected vide letter date 13.10.2022. 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 contacted 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 element of disability pension in similar cases, as such the applicant be granted disability element of 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 15-19% i.e. below 20% as NANA, therefore, condition for grant of disability element of pension does not fulfil in terms of Regulation 173 of Pension Regulations for the Army, 1961 (Part-I) and Regulations 81 of Pension Regulation for the Army, 2008 (Pat-I),

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 23.11.1978 and was discharged from service on 31.10.1999 at his own request before completion of terms of engagement. The applicant was in low medical category and his Release Medical Board was conducted on 23.03.1998 at 170 Military Hospital. The Release Medical Board assessed applicant's disability @ 15-19% for five years as neither attributable to nor aggravated by military service.

7. As per Regulations 81 and 173 of Pension Regulations for the Army, 1961 (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 15-19% for five years as NANA, the applicant does not fulfil the requirement of Regulations 81 and 173 of Pension Regulations for the Army, 1961 (Part-I).

8. Since applicant was discharged from service at his own request on compassionate ground before 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 23.03.1998 to the extent of holding the applicant's disability at 15-19% for five years 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 Regulations 81 and 173 of Pension Regulations for the Army, 1961 (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. Further, the applicant's disability was assessed @15-19% for five years from the date of his discharge i.e. 31.01.1999 and after a

lapse of 24 years from the date of discharge it will not be appropriate to conduct Re-Survey Medical Board to assess his disability.

13. Further, in the case of **Union of India & Others Versus Ex. Sep. R. Munusamy**, Civil Appeal No. 6536 of 2021, decided on 19.07.2022, in para 13 the Hon'ble Supreme Court has observed as under :-

13. In the considered opinion of this Court, the Tribunal fell in error in passing its order dated 2nd November 2018 directing the Appellants to convene a Resurvey/Review Medical Board at the Military Hospital, Chennai or a designated hospital for the purpose of examining the applicant and assessing the degree of disability due to "Right Partial Seizure with Secondary Generalisation 345" and the probable duration of disability. The tenor of the order itself shows that even the Tribunal realized that accurate medical opinion could not have been obtained after lapse of 30 years from the date of recruitment of the Respondent and after 20 years from the date of his discharge. The Tribunal, therefore, sought assessment of 'probable duration of disability'.

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

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

16. No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated: 26 February, 2024

AKD/-