

**Court No. 1**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**TRANSFERRED APPLICATION No. 01 of 2024**

Monday, this the 26<sup>th</sup> day of February, 2024

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

Ex. AG AA-4 Rahul Singh (No. 195042-B), House NO. 108,  
Rishab Vihar, Modinagar, Ghaziabad, Uttar Pradesh-201201.

**..... Applicant**

Ld. Counsel for the : **Shri Vinay Pandey**, Advocate.  
Applicant **Shri Devendra Kumar**, Advocate  
**Shri Ved Prakash**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi.
2. Chief of Naval Staff, Integrated HQ of MoD (Navy), PDAPA, New Delhi-110011.
3. Naval Pension Office, C/o INS Tanaji, Sion Trombay Road, Mankhurd, Mumbai-400088.
4. PCDA (Navy), No. 1 Cooperage Road, Colaba, Mumba-400001.

**.....Respondents**

Ld. Counsel for the : **Shri Rajiv Pandey**, Advocate  
Respondents. Central Govt. Counsel

**ORDER**

**“Per Hon’ble Mr. Justice Anil Kumar, Member (J)”**

1. The instant application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, before the Armed Forces Tribunal, Principal Bench, New Delhi, which has been transferred to this Tribunal and has been renumbered as Transferred Application No. 01 of 2024, for the following reliefs:-

- (a) *Direct the Respondents to grant Service element of Disability Pension w.e.f. from the date of discharge with all consequential benefits.*
- (b) *Direct the respondents to pay arrears with interest @12% from his retirement with all consequential benefits.*
- (c) *Any other relief which the Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case along with cost of the application in favour of the applicant.*

2. Briefly stated, applicant was enrolled in the Indian Navy on 03.08.2005 and was discharged on 11.04.2016 in Low Medical Category at his own request on compassionate grounds after rendering 10 years, 08 months and 08 days of service. At the time of discharge from service, the Release Medical Board (RMB) held at Kochi on 05.02.2016 assessed his disability ‘**IDK (LT) KNEE WITH OSTEO-ARTHRITIS ICD M23, S 83.5, W01**’ @30% for life as **aggravated by service**. The applicant was granted disability

element of disability @30% for life only with effect from 12.04.2016 vide letters dated 27.06.2016 and 07.11.2019 whereas he was entitled for Disability Pension (Service Element + Disability Element). The applicant preferred Legal Notice-cum-Representation dated 14.01.2021 but of no avail. It is in this perspective that the applicant has preferred the present Application.

3. Learned Counsel for the applicant pleaded that the applicant's disability was regarded as **aggravated by service** by the RMB @30% for life as such he was entitled for Disability Pension (Service Element + Disability Element) in terms of Regulation 107 (a) (b) of Navy (Pension) Regulations, 1964 but the applicant was unfairly granted only disability element of disability pension. He further submitted that although the applicant was discharged from service at his own request on compassionate ground but since the service of the applicant were cut short and he was discharged before completion of terms of engagement the applicant is entitled for Disability Pension which includes Service Element of Disability Pension along with Disability Element of Disability Pension. He relied upon the law laid down by the Hon'ble Apex Court in the case ***Union of India Versus V.S. Nanukuttan Nair***, Civil Appeal No. 7414-4715 of 2012, decided on 07.11.2019 and order dated 19.06.2020 passed by the Armed Forces Tribunal, Principal Bench, New Delhi in Original Application No. 1301 of

2028 in ***Dilip Murlidhar Sonwane Versus Union of India & Others*** and order dated 25.01.2016 passed by the Armed Forces Tribunal, Kolkata Bench in T.A. No. 01 of 2015, ***Jagabandhu Mishra Versus Deputy Commandant & Another***. He pleaded that various Benches of Armed Forces Tribunal have also granted disability pension in similar cases, as such the applicant be granted service element of disability pension also.

4. On the other hand, Ld. Counsel for the respondents contended that the applicant was discharged at his own request on compassionate ground in accordance with Regulation 280 of Navy (Pension) Regulations, 1964. The applicant was not invalidated out from Naval service due to his disability and rendered only 10 years, 08 months and 08 days of service which is non-pensionable as per Regulation 78 of Navy (Pension) Regulations, 1964, hence applicant is not entitled to Service Element of Disability Pension. Accordingly, he was granted only disability element of disability pension vide letters dated 27.06.2016 and 01.11.2016 as per Regulations 105B of Navy (Pension) Regulations, 1964. He further submitted that Entitlement Rules, 1982 and Regulation 101 of Navy (Pension) Regulations, 1964 do not entitle the applicant to receive service element as he was discharged from service before completing 15 years i.e. minimum pensionable service. He pleaded for dismissal of the Transferred Application.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents and gone through the records and we found that there are certain facts admitted to both the parties i.e. the applicant was enrolled in the Indian Navy on 03.08.2005 and was discharged from service on 11.04.2016 at his own request on compassionate ground in low medical category with 10 years, 08 months and 08 days of service i.e. before terms of completion of terms of engagement. RMB has assessed his disability @30% for life as aggravated by service. The respondents have issued Corrigendum PPO No. 09/97/B/D/450/2019 dated 17.07.2019 granting only Disability Element of Disability Pension @30% rounded off to 50%.

6. It is not disputed that the payment of Disability Pension (Service Element and Disability Element) is governed by The Navy (Pension), Regulations, 1964 which envisages that in case the disability of an incumbent is either attributable to or aggravated by military service, the individual shall be entitled to disability pension.

7. Further, Government of India, Ministry of Defence letter No. 16(5)/2008/D(Pen/Policy) dated 29.09.2009 stipulates that *"In pursuance of Government decision on the recommendations of the Sixth Central Pay Commission vide Para 5.1.69 of their Report, President is pleased to decide that Armed Forces personnel who are retained in service despite disability, which is accepted as*

*attributable to or aggravated by Military Service and have foregone lump-sum compensation in lieu of that disability, may be given disability element/war injury element at the time of their retirement/discharge whether voluntarily or otherwise in addition to Retiring/Service Pension or Retiring/Service Gratuity.”* In view of aforesaid letter, the applicant is entitled for grant of disability pension even if he has been discharged on his own request on compassionate grounds.

8. Further, in a similar case, the Hon'ble Supreme Court has upheld Regional Bench, Kochi judgment dated 26.10.2010 and 12.04.2011 in ***Union of India & Others Versus V.S. Nanukuttan Nair (supra)***, operative portion) of which is as under:-

*“21. The quantification of disability pension in the cases of an individual, who has not completed qualification service is dealt with in Regulation 107. Sub-clause (a) of Clause (1) of Regulation 107 deals with the situation where the individual has rendered sufficient service to qualify for a service pension i.e. 15 years of service in terms of Regulation 78. However, sub-clause (b) comes into play where the individual has not rendered sufficient service to qualify for service pension. In cases where the disability was suffered while flying or parachute jumping, the minimum service pension is appropriate to his rank and group but in all other cases, the service pension is restricted to minimum of two-thirds of the minimum service pension. For such reason, the disability element would be in addition to the service pension by cumulative reading of Regulation 78, Regulation 105B and*

*Regulation 107 of the Regulations. The service pension is to be assessed on the basis of the minimum service pension laid down for an able individual of the same group in Regulation 107 of the Regulations*

9. In view of the above and the ruling set out on admissibility of Service Element by the Hon'ble Supreme Court judgment dated 07.11.2019 (supra) the **Transferred Applications No. 01 of 2024** is allowed. In addition to Disability Element, the applicant shall be entitled to receive his due Service Element of Disability Pension w.e.f. his date of discharge. However, arrears of Service Element of Disability Pension shall be restricted to three years prior to filing of Application in view of law laid down by the Hon'ble Apex Court in the case of **Shiv Dass vs. Union of India**, reported in 2007 (3) SLR 445. The respondents are directed to grant Service Element of Disability Element in addition to Disability Element of Disability Element to the applicant and pay the arrears w.e.f. three years preceding the date of filing of Application. The date of filing of Application is 23.02.2022. The respondents are further 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 the actual payment

10. No order as to costs.

11. Ld. Counsel for the orally submitted to grant Leave to Appeal against the above order which we have considered and no point of

law of general public importance being involved in the case the plea is rejected

**(Vice Admiral Atul Kumar Jain )  
Member (A)**

**(Justice Anil Kumar)  
Member (J)**

Dated : 26 February, 2024

AKD/-