

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No. 464 of 2023**

Thursday, this the 11th day of January, 2024

“Hon’ble Mr. Justice Anil Kumar, Member (J)”**“Lt Gen Anil Puri, Member (A)”**

No. 15693701K Ex ACP Naik Ram Pal Singh, S/o Shri Hari Babu Kushwaha, resident of Vill : Madanpur, PO : Madanpur, Distt – Firozabad, Pin – 205151 (UP) - **Applicant**

Ld. Counsel for the Applicant : **Shri KP Datta**, Advocate

Versus

1. Union of India, through its Secretary, Min of Defence, New Delhi-110011.
2. The Additional Directorate General of Personnel Services/AG’s Branch, Integrated HQ of MoD (Army)
Pin-900256, C/O 56 APO
3. Officer-in-Charge, The Records Signals Jabalpur,
Pin-908770, C/O 56 APO
4. PCDA (P) Draupadi Ghat, Allahabad, Pin-211014.

... Respondents

Ld. Counsel for the Respondents : **Shri Shyam Singh**, Advocate
Central Govt Counsel.

ORDER (ORAL)

“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 pass an order or directions to set-aside/quash IHQ of MoD (Army) rejection letter No. B/40502/204/2022/AG/PS-4(1st Appeal) dated 11 Apr 2022 recd vide Records Signals letter No P/15693701/DP-2/NER dated 19.05.2022.*
- (b) *To pass an order or directions to grant disability element deemed @20% as the Release Medical Board has assessed his disability less than @20% by overruling Guide to Medical Officers 2008 (Military Pension), where the degree of hearing attained is minimum @20%.*
- (c) *To pass an order or directions to grant benefits of rounding off to 50% alongwith arrears and interest @ 18% p.a. from the date of discharge wef 30.06.2021.*
- (d) *To issue/pass any by 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.*

2. Briefly stated, applicant was enrolled in the Indian Army on 03.06.2004 and was discharged on 30.06.2021 (AN) in Low Medical Category on fulfilling the conditions of his enrolment under Rule 13 (3) Item 3 (i) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at INHS Asvini, Mumbai on 05.03.2021 assessed his disability ‘**Acoustic Trauma Bilateral (ICD No – H 83.3)**’ @15% for life opined the disability as ‘Attributable’ to service. The applicant’s claim for grant of disability pension was rejected vide letter dated 04.07.2021. The applicant preferred First Appeal which too was

rejected vide letter dated 11.04.2022. 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 applicant sustained injury '**Acoustic Trauma Bilateral (ICD No – H 83.3)**' during small arms firing in Counter Insurgency Operational Field Area in Dharmund, Batote, Dist – Ramban (J&K) on duty, hence it has been assessed as 'Attributable to 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 15% i.e. below 20%, therefore, condition for grant of disability element of pension does not fulfil in terms of Regulation 53 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 which is attributable to military service and assessed below 20% is authorised disability pension?

6. It is undisputed case of the parties that applicant was enrolled in the Indian Army on 03.06.2004 and was discharged from service on 30.06.2021 on completion of his terms of engagement. The applicant was in low medical category and his Release Medical Board was conducted on 05.03.2021 at INHS ASVINI, Mumbai. The Release Medical Board assessed applicant's disability @ 15% for life which is 'Attributable to Military Service'.

7. As per Regulation 53 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 15% for life which is less than 20%, the applicant does not fulfil the requirement of Regulation 53 of Pension Regulations for the Army, 2008 (Part-I).

8. Since applicant was discharged from service on completion of his 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. In addition to above, a bare reading of Regulation 53 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.”

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

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

12. No order as to costs.

13. Ld. Counsel for the respondents 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.

(Lt Gen Anil Puri)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated: 11 January, 2024

DDS