

E-Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 04 of 2021**Wednesday, this the 28th day of July, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)No. 2978630-P Ex Hav/GD Kalyan Prasad, Son of Late JP Sharma,
R/o C/o Shri Sheonayak Singh, Village – Patharra, Post – Garha
Kasda, District – Etawah (UP) PIN – 206121.

..... Applicant

Ld. Counsel for the : **Shri R Chandra, Advocate**
Applicant

Versus

1. Union of India, through its Secretary, Ministry of Defence Govt of India, New Delhi 110011.
2. Chief of the Army Staff, Integrated headquarters of Ministry of Defence (Army) DHQ Post Office- New Delhi – 11.
3. The Officer in charge, DSC Records, PIN- 901277, C/o 56 APO.
4. The Controller of Defence Accounts (P)
Draupadighat, Allahabad, (U.P).

.....Respondents

Ld. Counsel for the: **Mrs. Deepti P Bajpai,**
Respondents. **Central Govt. Counsel.**

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

1. The instant Original Application has been filed by the applicant filed under Section 14 of the Armed Forces Tribunal Act, 2007 being aggrieved by denial of grant of disability pension with the following prayers:

- (i) Hon’ble Tribunal may be pleased to direct the respondents to grant disability element to the applicant with effect from 01/10/2017 with the interest at the rate of 18% per annum.
- (ii) Hon’ble Tribunal may be pleased further to grant benefit of rounding of disability pension @ 50 percent in terms of Ram Avtar’s case.
- (iii) Any other appropriate order or direction which the Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case.

2. Undisputed factual matrix of the case is that the applicant was enrolled in the Army in Rajput Regiment on 24.06.1980 and was discharged from Army service w.e.f. 30.06.2000 after rendering 20 years and 07 days qualifying service for which he has been granted service pension. Thereafter, he was enrolled in DSC on 01.09.2001 and was discharged from DSC service w.e.f. 30.09.2017 after rendering 16 years and 01 month qualifying service for which he was granted second service pension. At the time of retirement his Release Medical Board (RMB) was held and applicant was placed in low medical

category A2 (Permanent) for the disability “**FRACTURE CLAVICLE (LT)**”. His disability was considered as neither attributable to nor aggravated by Military Service and disability was assessed as Nil. Applicant made an appeal for grant of disability pension vide letter dated 31.03.2019 but the same was not replied by the respondents. It is in this perspective that the applicant has preferred the present Original Application for grant of disability pension.

3. Learned counsel for the applicant pleaded that at the time of enrolment, applicant was found mentally and physically fit for service in DSC and there is no note in the service documents that he was suffering from any disease at the time of enrolment. On 28.08.2016, while posted with 440A DSC PI attached to 2253 Sqn AF, 40 Wing AF, applicant went for his lunch in family quarters. He slipped in the bathroom and sustained injury “**FRACTURE CLAVICLE (LT)**”. On 13.10.2016, applicant was placed in low medical category A-2 (Permanent) by medical board held at Military Hospital Gwalior. He pleaded that applicant is entitled disability element @ 20% and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents submitted that As per Rule 53 (a) of Pension Regulation for the Army 2008 (Part-1) “An individual released/retired/ discharged on completion of terms of engagement or on completion of service limits or on attaining the prescribed age, if found

suffering from a disability attributable to or aggravated by military service and so recorded by Release Medical Board, may be granted disability element in addition to service pension from the date of retirement/discharge, the accepted degree of disability is assessed at 20% or more". In the instant case, the disability of the applicant has been assessed as neither attributable to nor aggravated (NANA) by service with NIL disability by the duly constituted RMB. Learned counsel for the respondents pleaded that applicant is not entitled for the grant of disability element in terms of the policy and in views of the facts and circumstances, as stated above, Original Application deserves to be dismissed.

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

6. The question in front of us is straight; whether the applicant is entitled disability pension when disability has been assessed Nil and considered as neither attributable to nor aggravated by service?

7. In RMB of the applicant, column of disability percentage and attributability have been left blank, hence considered as Nil and NANA. In certificate dated 03.04.2017 issued by Wg Cdr OC Coy DSC, 40 Wing Air Force following finding has been given:-

“The holding of Court of Inquiry Investigation in the case of injury sustained by No 2978630-P Nk Kalyan Prasad of 440A DSC Platoon attached to 2253 Sqn Air Force, C/O 40 Wing Air Force on 20 Aug 2016 at 1230 hrs is dispensed with terms of Para 796 (c) (ii) of Regulations for the Air Force 1964, as holding of Court of Inquiry Investigation will not serve any purpose”.

8. Further, in terms of judgment of the Hon’ble Apex Court 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)

9. 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.

10. In addition to above, a bare reading of Regulation 53 (a) of Pension Regulations makes it abundantly clear that an individual being assessed disability Nil and NANA is not entitled to disability element. 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.”

11. In view of the discussions made above, O.A. lacks merit and same is accordingly **dismissed**.

12. Pending Misc. Application, if any, stands disposed of.

13. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 28 July, 2021

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