

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 374 of 2020****Friday, this the 30th day of July, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Ex Sub/Clk (GD) Om Prakash (JC-216120) son of Udmi Ram R/O Village – Pawera, P.O. – Chhilro, Tehsil – Narnaul, District – Mahendergarh (Haryana).

.... Applicant

Ld. Counsel for the: **Col AK Srivastava (Retd)**, Advocate.
Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi-110011.
2. Chief of Army Staff, Integrated Head Quarter, Ministry of Defence, (Army), South Block, New Delhi-110011.
3. Officer In charge, EME Records, PIN - 900453 C/o 56 APO.
4. Principal Controller of Defence Account (P), Draupadi Ghat Allahabad -211014.

... Respondents

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

ORDER (Oral)

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) *Issue/Pass an order or direction of appropriate nature to quash/set aside respondent's impugned order PCDA (P), Allahabad vide their letter dated 26.06.2002, communicated to the applicant vide BEG Records letter dated 03.08.2002, rejected the applicant's claim for entitlement of disability element of pension for his 15% to 19% disability due to Diabetes Mellitus-250 (Annexure No A-1) leading to denial of disability element of pension.*

(b) *Issue an order or direction of appropriate nature to quash/set aside respondents' letter dated 30.11.2018 rejecting claim of the applicant for his 15% to 19% disability element of pension duly rounded off to 50% due to Diabetes Mellitus (Annexure No A-1).*

(c) *Issue/pass an order or direction of appropriate nature to the respondents to issue a separate disability element PPO to the applicant for his 15% to 19% disability element of pension duly rounded off to 50% due to Diabetes Mellitus w.e.f. 28.02.2002.*

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

2. The facts of the case are that the applicant was enrolled in the Indian Army on 23.01.1979 and was discharged from service w.e.f. 28.02.2002 (AN) on account of **rendering unwillingness certificate** to continue in service being placed in medical category 'BEE (Permt)'. Before discharge, the applicant being in low medical category, was brought before the Release Medical Board (RMB) which found him suffering from "Diabetes Mellitus" and opined it to be neither attributable to nor aggravated by military service with percentage of disablement @ 15-19% for life. Disability element of pension claim was rejected vide order dated 28.06.2002. Applicant has not filed appeal against rejection order of disability element of pension claim. This O.A. has been filed for grant of disability pension.

3. Learned counsel for the applicant submitted that applicant was not suffering from any disability at the time of enrolment and the disability 'Diabetes Mellitus' has occurred after 20 years of service in the Army therefore, the aforesaid disability should be aggravated by military service and applicant deserves to be granted disability element of pension keeping in view of pronouncement of Hon'ble Apex Court judgment in the case of ***Dharamvir Singh Vs Union of India & Ors***, (2013) 7 SCC and numerous judgments delivered by various Regional Benches of Armed Force Tribunal.

4. Per contra, learned counsel for the respondents contended that applicant was serving in low medical category and he was discharged from service by furnishing unwillingness certificate to serve further. The learned counsel further submitted that since Release Medical Board (RMB) dated 28.09.2001 has assessed applicant's disability @ 15 to 19% for life and NANA, therefore, he is not entitled to disability element of pension in terms of para 33 (a) of Pension Regulations for the Army, 2008 (Part-I). He pleaded for dismissal of O.A.

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

6. It is undisputed case of the parties that applicant was discharged from service by furnishing unwillingness certificate before completion of terms of engagements. His RMB was conducted on 28.09.2001 at Military Hospital, Ambala Cantt. The RMB assessed his disability 'Diabetes Mellitus Type-II' @ 15-19% for life neither attributable to nor aggravated by military service.

7. As per para 90 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 15-19% (i.e. below 20%) for life and NANA, applicant does not fulfil the requirement of para 90 of Pension Regulations for the Army, 2008 (Part-I).

8. In view of the above, O.A. lacks merit and same is according **dismissed.**

9. No order as to costs.

10. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated :30th July 2021
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