

Court No. 1

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

Original Application No. 688 of 2020

Wednesday, this the 14th day of July, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No 4064479 Ex Nk (TS) Rajendra Singh Rawat, son of Man Singh Rawat, Resident of Village-Bhettora Malla, Po-Pundera Gaon (Satpuli) District-Pauri Garhwal.

.... Applicant

Ld. Counsel for the: **Shri Rohit Kumar**, Advocate.
Applicant

Versus

1. Chief of Army Staff, New Delhi-110011.
2. Officer in Charge Records, Garhwal Rifles Regimental Centre and Records, PIN-900400, C/O 56 APO.
3. Union of India, through, Secretary, Ministry of Defence, New Delhi-110011.

... Respondents

Ld. Counsel for the: **Shri Amit Jaiswal**, Advocate
Respondents. Central Govt Counsel.

ORDER (Oral)

1. Being aggrieved by non grant of disability pension for the period 01 Jan 2004 to 06 May 2017, a representation dated 30.03.2019 was submitted by applicant to Officer-in-Charge, Records, Garhwal Rifles Regimental Centre which has not been decided as yet, applicant has filed the instant O.A. for grant of disability element of pension in terms of Section 14 of the Armed Forces Tribunal Act, 2007 and has prayed for the following reliefs:-

- (i) To direct the respondents to pay disability pension to the applicant @ 20% for the period 01 Jan 2004 to 06 May 2017 (intervening period).
- (ii) To direct the respondents to pay the benefits of rounding off to the applicant as catered for in paragraph 7.2 of Army Headquarters, Ministry of Defence policy letter No 1(2)/97/D(Pen)-C dated 31 Jan 2001.
- (iii) To direct the respondents to dispose of representation of the applicant dated 30 Mar 2019 by a reasoned order (speaking for itself) within a time frame to be fixed by this Hon'ble Tribunal preferably one month as over one year has already elapsed.
- (iv) To issue any other order or direction considered expedient and in the interest of justice and equity.
- (v) Award cost of the petition.

2. Brief facts of the case are that applicant was enrolled in the Army on 23.12.1981 and was discharged from service on 31.12.1998 in terms of Rule 13 (3) III (i) of Army Rules, 1954 on completion of his terms of engagements. Applicant's disability 'Carcinoma Rectum (Optd) 154' took place in the year 1995 and

he was placed in low medical category. At the time of discharge, his RMB was conducted which had assessed his disability @ 11-14% for five years. Since the disability was below 20%, the pension sanctioning authority had rejected his claim. He had filed O.A. No. 339 of 2015 to this Tribunal and vide its order dated 23.08.2016, he was granted disability element of pension duly rounded off for the period of five years from the date of discharge i.e. 01.01.1999 to 31.12.2003 which was paid to applicant vide PPO No. DE/0037/2017 dated 23.03.2017. As per this Tribunal's order dated 23.08.2016, his Re-survey Medical Board (RSMB) was conducted on 06.05.2017 which assessed his disability @ 11-14% (i.e. below 20%) for life neither attributable to nor aggravated by military service (NANA) but after filing O.A. No. 422 of 2017 to this Tribunal, it was allowed @ 50% for life w.e.f. 06.05.2017. The applicant is in receipt of service element of pension as well as disability element of pension which is on record. Now he has filed this O.A. for grant of disability element of pension for the intervening period of 01.01.2004 to 06.05.2017.

3. Learned Counsel for the applicant submitted that applicant was enrolled in the Army in medically and physically fit condition and there was no note in his service documents with regard to suffering from any disease prior to joining, therefore, any disability suffered by applicant after joining the service should

be considered as either attributable to or aggravated by military service and he should be entitled to disability element of pension. Learned Counsel for the applicant further submitted that a representation to this effect was forwarded to Records, Garhwal Rifles on 30.03.2019 but he has not received any response till date from their end. He pleaded for disability element of pension to be granted to applicant for the intervening period of 01.01.2004 to 06.05.2017.

4. On the other hand, learned counsel for the respondents opposed the submissions of learned counsel for the applicant and submitted that since applicant's disability for the intervening period is 11-14% (i.e. below 20%) neither attributable to nor aggravated by military service, therefore, he is not entitled to disability element of pension in terms of para 179 of Pension Regulations for the Army 1961 (Part-I). He pleaded for dismissal of O.A.

5. We have given our considerable thoughts to both sides and have carefully perused the records. The question before us is whether the applicant is entitled to disability element of pension for the intervening period i.e. 01.01.2004 to 06.05.2017 for the disability which was below 20% and he had filed O.A. in the year 2015 belatedly for grant of disability element of pension belonging to the period 01.01.1999 to 31.12.2003. Therefore, his RSMB which ought to have been conducted in the year

2003 was actually conducted in the year 2017 resulting in a gap of almost 12 years.

6. Further, as per para 90 of Pension Regulations for the Army, 2008, 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 for the period 01.01.2004 to 06.05.2017 was 11-14%, therefore, applicant does not fulfil the requirement of para 90 of the Pension Regulations for the Army, 2008.

7. In addition to above, a bare reading of para 53 (a) of Pension Regulations 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."

8. In view of the aforesaid discussions, we are of the view that applicant is not entitled to disability element of pension for the intervening period of 01.01.2004 to 06.05.2017 as it was below 20% neither attributable to nor aggravated by military service.

9. The O.A. lacks merit and is accordingly **dismissed**.

10. No order as to costs.

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

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 14.07.2021
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