

Court No. 1 (E-Court)**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****Original Application No. 134 of 2019**

Monday, this the 12th day of July, 2021

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

Prabhunath Singh, Army No. 14480253K, R/o 356/318/120
Manas Vihar Colony, Saripura, Alamnagar, Lucknow.

.... **Applicant**

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

Versus

1. Chief of the Army Staff, Integrated Head Quarter of the Ministry of Defence (Army), South Block, Delhi-110011.
2. Integrated H.Q. of MoD (Army), Adjutant General's Branch, Addl. Directorate General MP/8 (1 of R), West Block, R.K. Pragam, New Delhi.
3. Commanding Officer, Topkhana Abhilekh Artillery Records, Nasik Road Camp 422102.
4. Sr. Officer Pension Office of the P.C.D.A. (P), Draupadi Ghat, Allahabad, U.P. 211014.

... **Respondents**

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

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:-

- (i) *That Hon'ble Tribunal may kindly please to quash the order dated 10 September 2003 passed by authorities concern for rejection of disability pension to the applicant is hereby annexed as Annexure No. 1 with O.A. application.*
- (ii) *Issue a order or direction to the authorities concern for release of disability pension in favour of the applicant which has been arises during service as observed by medical board proceeding on 22 June 2002 for disease of classical migraine about 20% to the applicant.*
- (iii) *Issue order or direction to authorities concern to provide disability pension since discharge from service @ rate of 18% in favour of the applicant as authorities concern has not observed Apex court observation provided in catena of judgment in favour of the Army personal who has been disable during Army service.*
- (iv) *Any such other order or direction which this Hon'ble Tribunal may deem fit and proper may also be passed in favour of the applicant circumstances of the case.*

2. Briefly stated, applicant was enrolled in the Indian Army on 10.09.1982 and was discharged on 30.11.2002 in Low Medical Category on fulfilling the conditions of his enrolment under Rule 13 (3) Item III (v) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at Military Hospital, Jodhpur on 12.09.2002 assessed his disability '**CLASSICAL MIGRAINE V-67**' @ 11-14% for life and opined the disability to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected vide letter dated 10.09.2003. 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 disease of the applicant was contracted during the service, hence it is attributable to and aggravated by 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 11-14% i.e. below 20%, therefore, condition for grant of disability element of pension does not fulfil in terms of para 173 of Pension Regulations for the Army, 1961, 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 is attributable to/aggravated by military service and, if so, whether it is above or below 20% and also whether applicant was invalidated out of service on account of the disability?

6. It is undisputed case of the parties that applicant discharged from service on 30.11.2002 on completion of terms of engagement. The applicant was in low medical category and his Release Medical Board was conducted on 12.09.2002 at Military Hospital, Jodhpur. The Release Medical Board assessed applicant's disability @ 11-14% neither attributable to nor aggravated by military service. In para 3 and 4 of Counter Affidavit the respondents have pleaded the aforesaid facts to which no rebuttal has been given by the applicant.

7. As per para 173 of Pension Regulations for the Army, 1961, 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 11-14% for life, applicant does not fulfil the requirement of para 173 of the Pension Regulations for the Army, 1961, Part-I.

8. Since applicant was discharged from service on completion of 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. Further, contrary view to Release Medical Board dated 12.09.2002 to the extent of holding the applicant’s disability at 11-14% is not tenable in terms of Hon’ble Apex Court judgment 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)

10. 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.

11. In addition to above, a bare reading of para 173 of Pension Regulations for the Army, 1961, 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.”

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

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

14. No order as to costs.

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

Dated: 12 July, 2021

AKD/-