

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 403 of 2020**Thursday, this the 08th day of July, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)Udai Pratap Singh (No. JC-155319P Ex Subedar)
S/o Shyam Murti Singh
R/o Village & Post – Sihuka Abirpur,
District – Azamgarh (UP)**.... Applicant**Ld. Counsel for the Applicant : **Shri Yashpal Singh** , Advocate.

Versus

1. Union of India, Through Secretary, Government of India, Ministry of Defence, New Delhi-110011.
2. Director General of Infantry/Inf-6 (Pers), General Staff Branch, Integrated HQ of MoD (Army), Sena Bhawan, DHQ PO, New Delhi-110011.
3. Officer-in-Charge, Records, The Rajput Regiment, PIN-900427, C/o 56 APO.
4. Principal Controller of Defence Account (Pension), Draupadi Ghat, Allahabad (now Prayagraj) (UP)-211014.

... RespondentsLd. Counsel for the: **Ms. Anju Singh**,
Respondents. Central Govt Counsel.**ORDER**

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 setting aside the order/letter dated 24.04.1996 passed/issued by the Principle

Controller of Defence Accounts (Pension), Allahabad rejecting the claim of the applicant for disability pension, as communicated by the letter dated 26.06.2018 (Annexure No. 1 to the Original Application), after summoning the relevant original records.

(b) Issuing/passing of an order directing the respondents to consider case of the applicant for grant of disability pension and provide the same from due date including arrears thereof with interest, and also the benefit of rounding off and other consequential benefits of ex-serviceman.

(c) Issuing/passing of any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

(d) Allowing this Application with cost.”

2. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Army on 28.11.1973. The applicant was a wrestler in the heavy weight category. In the year 1992, applicant was diagnosed as suffering from Mild Hypertension during routine medical examination. Therefore, applicant was admitted at Military Hospital, Dehradun and based on the opinion of the classified specialist, applicant was placed in low medical category CEE (Temporary) for six months w.e.f. 31.01.1992. A re-categorisation medical board was held on 06.08.1992 and applicant was placed in medical category BEE (Temporary) for six months w.e.f. 31.07.1992. Another re-categorization medical board held on 02.02.1993 and applicant was placed in medical category BEE (Temporary) for six months w.e.f. 04.02.1993. Subsequently applicant was placed in medical category BEE (Permanent) w.e.f 31.07.1993 for two years. A

Show Cause Notice dated 24.02.1995 was served to the applicant asking him to show cause as to why his services may not be terminated for being placed in low medical category BEE (Permanent). The applicant submitted his reply but before completion of term of enrolment, applicant was discharged from service w.e.f. 01.09.1995 under Rule 13 (3) III (iii) of the Army Rules, 1954 in low medical category. The applicant filed a Writ Petition No. 2555(S/S) of 1996 before the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench assailing his premature discharge from service. Consequent upon establishment of this Tribunal, petition was transferred to this Tribunal and registered as T.A. No. 197 of 2009. Vide order dated 17.02.2010, this Tribunal set aside the order of premature discharge of the applicant from service with notional reinstatement, salary and other consequential benefits and applicant was paid arrears of salary in July 2011 and his service pension was revised. Thereafter, applicant filed O.A. No. 46 of 2015 before this Tribunal for grant of promotion to the next rank of Subedar Major which was dismissed vide order dated 21.12.2015. Thereafter, applicant approached the respondents for grant of disability pension and respondents vide their letter dated 26.06.2018 intimated the applicant that his case for disability pension has already been rejected by PCDA (P) Allahabad vide letter dated 24.04.1996 being NANA. Now, the applicant has filed the present O.A. for grant of disability pension.

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 attributable to or aggravated by military service and he should be made entitled to disability pension. Learned counsel for the applicant further submitted that disability pension claim of applicant has been rejected in a cavalier manner without assigning any meaningful reason. He further submitted that applicant is entitled for disability pension under the provisions of para 173 of Pension Regulations for the Army, 1961 (Part-1) and para 423 (c) of the pension Regulations for the Army, being disability assessed @ 20% as aggravated by service. He pleaded for disability pension to be granted to applicant.

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 pension claim of the applicant has been rejected by PCDA (P) Allahabad vide letter dated 24.04.1996 being NANA and no appeal was preferred by the applicant. On the basis of petition filed by the applicant and order of this Tribunal, he was notionally reinstated in service w.e.f. 01.09.1995 and was discharged from service on 30.11.2001 on notional completion of terms of engagement of 28 years of service in the rank of Subedar in compliance of the Order

dated 17.02.2010 of this Tribunal. She further submitted that after a lapse of approx 22 years, disability of the applicant cannot be ascertained whether it is existing or not. Therefore, condition for grant of disability pension does not fulfil terms of para 173 of Pension Regulations for the Army, 1961 (Part-1) and, therefore, the competent authority has rightly denied the benefit of disability pension to applicant. She pleaded for dismissal of O.A.

5. We have given our considerable thoughts to both sides and have carefully perused the records. The question in front of us is straight; whether the disability is attributable to/aggravated by military service and, if so, whether it is 20% and also whether applicant was invalidated out of service on account of the disability or discharged from service?

6. It is not disputed that applicant was in low medical category BEE (Permanent) and accordingly, RMB was held and applicant was discharged from service in the rank of Subedar due to non availability of sheltered appointment and before completion of terms of engagement. The RMB assessed both disabilities of the applicant "Essential Hypertension" and "Obesity" @ 20% for two years and "Essential Hypertension" was considered as aggravated by military service whereas "Obesity" was considered as NANA and the disability pension claim of the applicant was rejected by PCDA (P) Allahabad treating both disabilities of the applicant as NANA. The applicant had also not preferred any

appeal/representation against rejection of disability pension claim to the Appellate Authorities.

7. Since Release Medical Board of the applicant was held in the year 1996 and applicant was notionally reinstated in service by the order of this Tribunal and finally discharged from service in the year 2001 giving all benefits of retiral dues in the rank of Subedar, therefore, disability noted in the year 1996 cannot be treated to be existed in the year 2001 when applicant was notionally discharged from service on completion of terms of engagement (notional). Therefore, at this belated stage, no purpose would be served by holding a Re-Survey Medical Board (RSMB) due to passage of 20 years from notional discharge from service.

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

9. No order as to costs.

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

Dated: July, 2021

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