

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 446 of 2020**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)Mithilesh Singh (No. 16013866W Ex Nk-TS/Inf Sol)
S/o Surendra Pratap Singh
R/o House No. B-004, IMT Estate-II,
Vivekanandpuri behind Raidas Mandir, Lucknow-226007

..... Applicant

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

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi.
2. Additional Director General Personnel Services, Adjutant General's Branch, Integrated Headquarters of Ministry of Defence (Army), DHQ PO, New Delhi.
3. Officer-in-charge Records, Rajputana Rifles, PIN – 900106, C/o 56 APO.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Prayagraj.

..... Respondents

Ld. Counsel for the Respondents : **Shri Ashish Kumar Singh**,
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 for the following relief:-

“(a) Issuing/passing of an order setting aside the latter/order dated 18.02.2020 issued on behalf of the officer-in-Charge Records (Annexure No. 1) after summoning the record; and directing the respondents to pay service element of disability

pension to the applicant from the date of discharge, i.e. 01.07.2019 and other consequential service benefits of ex-serviceman, alongwith arrears and interest at the prescribed rate.

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

(c) Allowing this Original Application with cost.”

2. Briefly stated facts are that applicant was enrolled in Indian Army on 06.06.2002. While posted in Jammu & Kashmir, applicant suffered with leg injury **“GSW (LT) LEG WITH FRACTURE PROXIMAL TIBIA AND MID SHAFT FEBULA (LT)”** during duty on 02.10.2005. He was treated in the Command Hospital, Northern Command and applicant was placed in low medical category (A2) w.e.f. 09.12.2005. In the year 2009, the applicant was granted 40 days of leave till 01.09.2009 but due to genuine family problems, applicant could not rejoin duty on expiry of leave and rejoined duty voluntarily on 12.11.2012. For this over stay of leave, applicant was punished with 21 days of rigorous imprisonment. The Release Medical Board of the applicant was held at Base Hospital, Delhi Cantt and his disability **“GSW (LT) LEG WITH FRACTURE PROXIMAL TIBIA AND MID SHAFT FEBULA (LT)”** was assessed @ 30% for life and was considered as attributable to military service. The applicant was discharged from service on 30.06.2019 under Rule 13 (3) III (i) on fulfilling his terms of engagement. However, the applicant received his Discharge Book categorised as ‘NON EX-SERVICEMAN’. Subsequently a PPO dated 16.03.2020 was issued and communicated to the applicant vide letter dated 09.05.2020 providing

disability element only w.e.f. 01.07.2009 showing net qualifying service of the applicant as 13 years, 10 months and 09 days. The applicant is in receipt of disability element w.e.f. 01.07.2020. However, applicant is not being paid service element for which various representations were sent to the respondents for payment of service element but respondents vide their letter dated 18.02.2020 informed that applicant is not entitled for service pension as he has not completed minimum 15 years of qualifying service in terms of Para 132 of Pension Regulations for the Army. Being aggrieved with the decision of the respondents, the applicant has filed the present Original Application for grant of service element also.

3. Learned counsel for the applicant submitted that applicant served with Army for more than 17 years of service and was discharged from service in low medical category on completion of terms of engagement. The disability has been assessed @ 30% for life which is attributable to military service and accordingly, applicant is in receipt of disability element. He further submitted that under the provisions of Para 173 of Pension Regulations for the Army, *'disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service and is assessed at 20 per cent or over'* and Para 179 of Pension Regulations for the Army which provides that *'An individual retired/discharged on completion of tenure or on completion of service limits or on completion of terms of engagement or attaining the age of 50 years irrespective of their period of engagement, if found suffering*

from a disability attributable to or aggravated by military service and recorded by Service Medical Authorities, shall be deemed to have been invalidated out of service and shall be granted disability pension from the date of retirement, if the accepted degree of disability is less than 20 per cent or more and service element if the degree of disability is less than 20 per cent'. Learned counsel for the applicant pleaded that in view of Para 173 and 179 of Pension Regulations for the Army, applicant should be granted service element also from the date of discharge from service.

4. Per contra, learned counsel for the respondents submitted that applicant has been discharged from service after rendering 17 years and 25 days of service including 03 years and 76 days of non qualifying service resulting net qualifying service 13 years, 10 months & 09 days. Hence, as per Para 132 of Pension Regulations for the Army, 1961 (Part-1), applicant is not eligible for grant of service pension as the minimum period of qualifying service for earning service pension is 15 years. He pleaded for dismissal of O.A.

5. Having heard the submissions of learned counsel of both sides and having gone through records, we firstly observe that Pension Regulations for the Army, 1961 (Part-1), (referred to by both Applicant and Respondents) has been superseded by Pension Regulations for the Army Part I & II, 2008. We also find that, if total service of the applicant is counted to 17 years and 25 days, then service element is entitled to the applicant being service more than 15 years as applicant has been discharged from service on completion of terms of engagement as mentioned in para 3 of counter affidavit filed by the

respondents and the case is allowed in accordance with Para 53 (a) of Pension Regulation for the Army, Part-1 (2008). Secondly, if total service is counted less than 15 years i.e. 13 years, 10 months & 09 days then keeping in view the provisions of Para 81(a) of Pension Regulations for the Army, Part-1 (2008), applicant is still entitled for service element being categorised as an invalidation case in accordance with Para 53 (a). The relevant Paragraphs 53 (a) and 81 (a) of Pension Regulations for the Army, Part-1 (2008), are quoted below :-

“53. (a) An individual released/retired/discharged on completion of term of engagement or on completion of service limits or on attaining the prescribed age (irrespective of his period of engagement), 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 or service gratuity from the date of retirement/discharge, if the accepted degree of disability is assessed at 20 percent or more.”

“81. (a) Service personnel who is invalided from service on account of a disability which is attributable to or aggravated by such service may, be granted a disability pension consisting of service element and disability element in accordance with the Regulations in this section.

6. Accordingly, O.A. deserves to be allowed and is allowed. The impugned order passed by the respondents is hereby set aside. The applicant is entitled for service element also. The respondents are directed to grant service element to the applicant from the date of discharge from service i.e. 01.07.2019. The respondents are directed to comply with the order within four months from the date of

production of a certified copy of this order. Delay shall invite interest @ 8% per annum till actual payment.

7. 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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