

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 11 of 2022**Monday, this the 23rd day of May, 2022**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 2691235F Ex. Hav. Dushyant Kumar Singh,
S/o Late Sant Kumar Singh,
R/o Village–Sakra, Post-Sakra,
District-Hardoi - 241001 (U.P).

..... Applicant

Ld. Counsel for the Applicant : **Shri R. Chandra**, Advocate.

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi-11.
2. Chief of Army Staff, Integrated Headquarters of Ministry of Defence (Army) DHQ Post Office New Delhi-11.
3. The Officer In-Charge, The GRENADIERS, Pin -910803, C/o 56 APO.
4. Commanding Officer 3 GRENADIERS, Pin -910803, C/o 56 APO.
5. The Chief Controller Defence Accounts, Draupadi Ghat, Allahabad (U.P).

.....**Respondents**

Ld. Counsel for the Respondents : **Shri Anurag Mishra**, Advocate
Central Govt. Counsel

ORDER (Oral)

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs :-

- (I) *Hon’ble Tribunal may be pleased to set aside the impugned order dated 20/07/2021 (Annexure No.A-1).*

- (II) *Hon'ble Tribunal may be pleased to direct the respondents to grant Disability Element with effect 01.10.2018 to 30.09.2020 (intervening period) with the interest at the rate of 185 per annum.*
- (III) *Any other appropriate order or direction which the Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case.*

2. Briefly stated, applicant was enrolled in the Indian Army of GRENADIERS Regiment on 25.06.1997 and was discharged from service on 30.09.2018 in Low Medical Category on fulfilling the conditions of his enrolment under Rule 13 (3) Item III (iii)(a)(i) of the Army Rules, 1954. The applicant while returning from leave from his home to new duty station, sustained injury to his left leg on 27.08.2014 and was placed in low medical category for which a Court of Inquiry was also conducted which opined the injury sustained by the applicant as 'Attributable to military service'. The RMB of the applicant could not be held before discharge from service for want of copy of Court of Inquiry and thus, applicant was discharged from service on 30.09.2018 due to non availability of sheltered appointment in the unit without holding RMB. Thereafter, applicant filed OA No. 503/2018 before this Tribunal for holding his RMB and to grant disability element of disability pension which was disposed of by this Tribunal vide order dated 01.03.2019 with direction to the respondents to pass an order on the application dated 31.05.2018 moved by the applicant within a period of two months. Applicant's delayed/belated RMB was conducted at Base Hospital, Delhi Cantt on 01.10.2020 and disability of the applicant

“CHIP FRACTURE MEDIAL ASPECT OF TALUS (LT)” was assessed @ 30% for life and considered as ‘Attributable to military service’. Accordingly, PCDA (P) Allahabad granted disability element w.e.f. 01.10.2020 vide PPO dated 30.12.2020 and not from the date of discharge from service. Thereafter, GRENADIERS Records approached PCDA (P) Allahabad for grant of disability element from the date of discharge i.e. w.e.f. 01.10.2018 which was rejected by PCDA (P) vide letter dated 08.06.2021. Being aggrieved, the applicant has preferred the present Original Application for grant of disability element for the intervening period from 01.10.2018 to 30.09.2020.

3. Learned Counsel for the applicant submitted that applicant was suffering from the disability from Aug 2014 due to his leg injury which was attributable to military service and applicant was placed in low medical category A2 (Permanent) from March 2015. Due to non availability of sheltered appointment, applicant was discharged from service on 30.09.2018 without conducting Release Medical Board which was the duty of respondents to conduct RMB and thus applicant cannot be denied disability element for the intervening period from 01.10.2018 to 30.09.2020 without any fault on the part of him for his disability which he had at the time of discharge from service.

4. Learned Counsel for the applicant further submitted that case of the applicant for holding belated RMB was processed by the respondents on the direction of this Tribunal order dated

01.03.2019 and his delayed/belated RMB was conducted at Base Hospital, Delhi Cantt on 01.10.2020 and disability of the applicant **“CHIP FRACTURE MEDIAL ASPECT OF TALUS (LT)”** was assessed @ 30% for life and it was considered as ‘Attributable to military service’. Accordingly, disability element claim of the applicant was processed and PCDA (P) Allahabad granted disability element @ 30% rounded off to 50% w.e.f. 01.10.2020 vide PPO dated 30.12.2020. This proves that applicant was having same degree of disablement at the time of discharge from service also and therefore, he is entitled disability element @ 30% duly rounded off to 50% for the intervening period from 01.10.2018 to 30.09.2020 also.

5. On the other hand, Ld. Counsel for the respondents submitted that applicant was discharged from service on 30.09.2018 in Low Medical Category on fulfilling the conditions of his enrolment under Rule 13 (3) Item III (iii)(a)(i) of the Army Rules, 1954. The applicant while returning from leave from his home to new duty station, sustained injury to his left leg on 27.08.2014 and was placed in low medical category for which a Court of Inquiry was also conducted which opined the injury sustained by the applicant as ‘Attributable to military service’. The RMB of the applicant could not be held before discharge from service for want of copy of Court of Inquiry and thus, applicant was discharged from service on 30.09.2018 due to non availability of sheltered appointment in the unit without holding RMB. Thereafter, applicant

filed OA No. 503/2018 before this Tribunal for holding his RMB and to grant disability element of disability pension which was disposed of by this Tribunal vide order dated 01.03.2019 with direction to the respondents to pass an order on the application dated 31.05.2018 moved by the applicant within a period of two months.

6. Learned counsel for the respondents further submitted that case of the applicant for holding RMB was processed by the respondents and on receipt of sanction from the competent authority for holding RMB, his delayed/belated RMB was conducted at Base Hospital, Delhi Cantt on 01.10.2020 and disability of the applicant "**CHIP FRACTURE MEDIAL ASPECT OF TALUS (LT)**" was assessed @ 30% for life and considered as 'Attributable to military service'. Accordingly, disability element claim of the applicant was processed and PCDA (P) Allahabad granted disability element w.e.f. 01.10.2020 vide PPO dated 30.12.2020 stating that "*Records Office has accorded sanction for grant of disability element of disability pension @ 30% (50% rounding off) with effect from 01 Oct 2018 for life, which not seems to be correct, as medical board has assessed individual's with effect from 01 Oct 2020 for life*". Thereafter, GRENADIERS Records approached PCDA (P) Allahabad for grant of disability element w.e.f. 01.10.2018 vide letter dated 12.02.2021 and 07.03.2021, however, PCDA (P) Allahabad rejected the same vide letter dated 08.06.2021. The facts were communicated to the

applicant vide Records letter dated 20.07.20215. He pleaded for dismissal of O.A.

7. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the belated Release Medical Board proceedings as well as the records.

8. We find that applicant was discharged from service in low medical category A2 (Permanent) due to non availability of sheltered appointment without holding Release Medical Board. It was the responsibility of respondents to hold RMB of the applicant but due to non finalisation/availability of copy of Court of Inquiry, it was delayed. Thereafter, after a gap of approx 2 years, delayed RMB was conducted as directed by this Tribunal and on receipt of sanction from IHQ of MoD (Army) and disability of the applicant was assessed @ 30% for life and applicant is in receipt of disability element w.e.f. 01.10.2020 for life.

9. Since, the applicant was discharged from service in low medical category A2 (Permanent) and later his gravity of disablement in delayed RMB was assessed @ 30% for life as attributable to military service, it will be presumed that applicant was having same degree of disablement and attributability at the time of discharge from service as on 30.09.2018. Therefore, in our view, applicant is held entitled to disability element @ 30% for the intervening period from 01.10.2018 to 30.09.2020 also which was denied by the PCDA (P) Allahabad.

10. In view of the above, the Original Application deserves to be allowed, hence **allowed**. The impugned order passed by the respondents, rejecting the applicant's claim for grant of disability element for the intervening period from 01.10.2018 to 30.09.2020 is set aside. The disability of the applicant is held as aggravated by military Service. The applicant is entitled to get disability element @30% for the intervening period from 01.10.2018 to 30.09.2020 which would be rounded off to 50%. The respondents are directed to grant disability element to the applicant @ 50% for the intervening period from 01.10.2018 to 30.09.2020. The respondents are further directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 8% per annum till the actual payment

11. No order as to costs.

12. Pending Misc. Application(s), if any, shall stand disposed of.

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

Dated : 23 May, 2022

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