

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 1130 of 2022****Tuesday, this the 4th day of July, 2023****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Atul Kumar Jain, Member (A)No. 13962092-W Ex Hav Ram Shankar
S/o Late Ganga Prasad
R/o Vill – Rampur (Dakhini), PO – Auradar,
Dist – Sant Kabir Nagar (UP) – 272165

..... Applicant

Ld. Counsel for the Applicant : **Shri Parijaat Belaura**, Advocate
Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Integrated Headquarters, Ministry of Defence, South Block, New Delhi.
3. Officer-in-Charge AMC Records Office, Lucknow – 226002.
4. The Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (UP).

..... Respondents

Ld. Counsel for the Respondents : **Shri Devesh Kumar Mishra**,
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 reliefs:-

- a. To set aside letter dated 13.08.2021 (Annexure No 1).
- b. To grant disability pension @ 60% and round of to 75% in the light of Govt. of India, MoD letter dated 31.01.2001

along with 12% interest from the date of his notional discharge i.e. 01.04.2009 till it is actually paid.

- c. Any other suitable relief this Hon'ble Court deems fit and proper may also be granted."

2. The factual matrix on record is that the applicant was enrolled in the Army on 25.03.1985 and was discharged from service on 31.07.2005 in low medical category in the rank of Havildar after completion of more than 20 years of service. The RMB of the applicant was held and assessed his disabilities (i) 'Low Backache with Degenerative Disc Disease' @ 30% for five years as attributable to military service (ii) 'Diabetes Mellitus Type II' @ 6-10% as aggravated by military service, (iii) 'Hyper Lipedemia (Non Obese) @ 6-10% as aggravated by military service, (iv) 'Cervical Spondylosis @ 6-10% as NANA and (v) 'Mild Non Proliferative Diabetic Retinopathy (Both Eye) @ 11-14% as NANA and composite assessment for all disabilities was @ 60% for five years. However, PCDA (P) Allahabad granted disability element @ 40% duly rounded off to 50% for life. Being aggrieved, the applicant has filed the present Original Application for grant of disability element of pension @ 60% duly rounded off to 75% in the light of Govt. of India, MoD letter dated 31.01.2001.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 25.03.1985 and was discharged/invalided out on 31.07.2005 after completion of more than 20 years of service in the rank of Havildar. After more than 11 years of service applicant was found to be suffering from 'Cervical Spondylosis and later on he

suffered from 'Diabetes Mellitus Type II and 'Hyper Lipedemia (Non Obese) and 'Mild Non Proliferative Diabetic Retinopathy (Both Eye). The medical board at the time of discharge/invaliding out from service assessed disabilities (i) 'Cervical Spondylosis' @ 11-14% as NANA, (ii) 'Diabetes Mellitus Type II' @ 6-10% as aggravated, (iii) 'Hyper Lipedemia (Non Obese)' @ 6-10% as aggravated, (iv) 'Low Backache with Degenerative Disc Disease' @ 30% as attributable and (v) 'Mild Non Proliferative Diabetic Retinopathy (Both Eye)' @ 11-14% as NANA and composite assessment for all disabilities was @ 60% for five years.

4. Learned counsel for the applicant further submitted that RMB has assessed composite disabilities @ 60% but MAP at PCDA (P) Allahabad has reduced disability element of the applicant from 60% to @ 40% illegally which was rounded off to 50% whereas as per judgment of the Hon'ble Apex Court in the case of **Sapper Mohinder Singh vs. Union of India and Others**, it cannot be reduced from 60% to 40% and therefore, composite disabilities of the applicant assessed by Release Medical Board @ 60% should be rounded off to 75% as per Govt. of India, Ministry of Defence letter dated 31.01.2001.

5. Learned counsel for the applicant further submitted that applicant filed OA No. 604 of 2021, Hav Ram Shankar vs. Union of India and Others before this Tribunal which was partly allowed vide order dated 04.11.2022 granting benefit of 3rd MACP (Naib Subedar) w.e.f. 01.04.2009 and prayer for grant of disability pension in the O.A.

604/2021 was not pressed being multiple prayer. He placed reliance on the judgment of this Tribunal passed in OA No. 312 of 2020, **Gajraj Singh vs. Union of India and Others**, decided on 02.07.2021 and pleaded for grant of 75% disability element for life from the date of notional discharge from service.

6. In reply, submission of learned counsel for the respondents is that applicant was enrolled in the Army (AMC) on 25.03.1985 and was discharged from service w.e.f. 01.08.2005 on being placed in low medical category and not upto the prescribed military physical standard under Rule 13 (3) III (v) of Army Rules, 1954 after rendering 20 years, 03 months and 23 days of service and was service pension vide PPO dated 30.08.2005. The RMB of the applicant was held at MH Saugor and assessed his disabilities (i) 'Low Backache with Degenerative Disc Disease' @ 30% as attributable to military service (ii) 'Diabetes Mellitus Type II' @ 6-10% as aggravated by military service, (iii) 'Hyper Lipedemia (Non Obese) @ 6-10% as aggravated by military service, (iv) 'Cervical Spondylosis @ 6-10% as NANA and (v) 'Mild Non Proliferative Diabetic Retinopathy (Both Eye) @ 11-14% as NANA and composite assessment for all disabilities was @ 60% for five years.

7. Learned counsel for the respondents further submitted that disability pension claim of the applicant was adjudicated and disability element was passed @ 40% for life w.e.f. 01.08.2005 by PCDA (P) Allahabad vide PPO dated 31.03.2006 which was rounded off to 50% for life w.e.f. 01.08.2005. The disabilities No. (iv) and (v) of the

applicant being NANA were not considered by the PCDA (P) Allahabad while adjudicating the claim, as per rules. The applicant submitted an application dated 09.03.2012 for grant of War Injury Pension which was rejected by the competent authority vide letter dated 31.03.2012. Thereafter, applicant filed OA No. 267 of 2019 before this Tribunal for grant of war injury pension which was dismissed by this Tribunal vide order dated 26.03.2021. Thereafter, applicant filed Writ No. 3519/2022 before the Hon'ble High Court at Allahabad, Lucknow Bench against the order dated 26.03.2021 of this Tribunal for grant of war injury pension and the same is under subjudice before the Hon'ble High Court. Thereafter, the applicant preferred a petition dated 24.07.2021 for grant of 60% disability pension which was suitably replied vide letter dated 13.08.2021. Thereafter, applicant filed OA No. 604 of 2021 before this Tribunal seeking relief, "To reinstate in service notionally w.e.f. 01.08.2005 and discharge on 31.03.2009, benefit of 6th CPC w.e.f. 01.01.2006, to pay arrears of pension of next higher rank of 3rd MACP (Naib Subedar rank) and to grant disability pension @ 60% duly rounded off to 75% from the date of his notional discharge. The Original Application No. 604 of 2021 was allowed vide order dated 04.11.2022 giving the benefit of notional reinstatement from 01.08.2005 to 31.07.2009 granting benefit of 3rd MACP of Naib Subedar rank w.e.f. 01.08.2009.

8. Learned counsel for the respondents further submitted that in the instant case, 40% disability element was granted by the pension sanctioning authority as per attributability/aggravation of disabilities

which was rounded off to 50% for life in terms of Govt. of India, Ministry of Defence letter dated 31.01.2001 and therefore, claim of the applicant for considering his disabilities @ 60% to be rounded off to 75% is not tenable and Original Application deserves to be dismissed.

9. We have heard learned counsel for the parties and have perused the material placed on record.

10. We observe that this is third Original Application filed by the applicant for grant of difference of disability element percentage and its rounding off from the date of notional discharge from service. Learned counsel for the applicant has made wrong statement that plea with regard to grant of disability element @ 60% with benefit of rounding off to 75% in place of 40% rounded off to 50% as granted by the PCDA (P) Allahabad, was not pressed during the final hearing of the O.A., whereas this plea was taken, prayer was made and it was argued by learned counsel for the applicant during the final hearing but the same was not considered/accepted by the Court. Hence, prayer in this regard was rejected.

11. Before this, applicant filed first O.A. No. 267 of 2019 for grant of war injury pension in which issue regarding grant of percentage of disability element was also discussed and Original Application was dismissed by this Tribunal vide order dated 26.03.2021 being disabilities suffered by the applicant not falling under any entitled Category of Battle Casualty/Battle Accident as per Govt. of India, Ministry of Defence letter dated 31.01.2001.

12. The applicant filed second O.A. No. 604 of 2021 before this Tribunal praying multiple reliefs which was decided vide order dated 04.11.2022 with following direction to the respondents:-

“(a) To treat the applicant notionally in service w.e.f. 01.08.2005 in the rank of Havildar till notional discharge from service as on 31.07.2009 on completion of his terms of engagement of service of 24 years.

(b) To grant benefit of 3rd MACP in the rank of Nb Sub on completion of 24 years of service from the date of notional discharge from service, i.e. w.e.f. 01.08.2009.

(c) That the applicant shall not be entitled for back wages for the period he is notionally treated in service in the rank of Havildar, i.e. w.e.f. 01.08.2005 till he is notionally discharged from service in the rank of MACP Nb Sub, i.e. 31.07.2009 on the principle of ‘no work, no pay’.

(d) That applicant will be granted service pension in the rank of MACP Nb Sub w.e.f. 01.08.2009 for which a fresh PPO in the rank of MACP Nb Sub to be generated.

(e) The disability element @ 50% for life being granted to the applicant w.e.f. 01.08.2005 to be adjusted accordingly while granting disability element @ 50% for life from the date of notional discharge from service in the rank of MACP Nb Sub, i.e. w.e.f 01.08.2009.

(f) 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.”

13. We also find that RMB has assessed composite assessment for all disabilities @ 60% for five years in which first, second and third disabilities of the applicant are considered as attributable to/aggravated by military service and fourth and fifth disabilities of the applicant are considered as neither attributable to nor aggravated by military service (NANA) and accordingly, PCDA (P) Allahabad has granted disability element of pension to the applicant @ 40% for life duly rounded off to 50% for life rightly as per rules based on the

attributability/aggravation of the first three disabilities. Since, the applicant is already in receipt of 50% disability element of pension as per rules as sanctioned by the pension sanctioning authority, applicant's prayer to grant 60% disability element duly rounded off to 75% is not justified. Therefore, **Sapper Mohinder Singh** (supra) case law is not applicable in the present case.

14. In view of above, we do not find any arbitrariness or illegality in granting disability element @ 40% for life, rounded off to 50% for life to the applicant based on attributability/aggravation of the disabilities. Since, this issue has already been discussed in previous Original Applications filed by the applicant, therefore, present Original Application needs to interference.

15. Resultantly, Original Application is **dismissed**.

16. No order as to costs.

17. Pending Misc. Application(s), if any, shall stand disposed off.

(Vice Admiral Atul Kumar Jain) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: July, 2023

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