

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No. 372 of 2018****Thursday, this the 25th day of March, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Shamsul Hudha (IC-42167L Col (Retd) Son of Late Bahar Ali, R/O House No 592, Adarsh Colony, Subhash Nagar, Gurunanak Road, Dehradun-248002, presently residing at House No 201, Avadh Apartment, Gola Ganj (Barood Khana), Lucknow (UP).

..... Applicant

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

Versus

1. Union of India, through, the Secretary, Ministry of Defence, Government of India, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army HQ) DHQ, Post Office, New Delhi-110011.
3. Adjutant General's Branch (MP-6(F), Integrated HQ of MoD (Army) West Block-III, RK Puram, New Delhi-110066.
4. The Chief Controller Defence Accounts, Draupadi Ghat, Allahabad-14 (UP).
5. The Chief Controller Defence Accounts, Draupadi Ghat, Allahabad-14 (UP).

..... Respondents

Ld. Counsel for the : **Shri Rajiv Pandey, Advocate**
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:-

(i) Hon'ble Tribunal may be pleased to set aside the finding of the Release Medical Board which assessed the disabilities of the applicant as neither attributable to nor aggravated by military service and further assessed percentage of disabilities as 24% for life but nil for disability pension (Annexure No A-1), Order dated 02.05.2016 (Annexure No A-2) and Order dated 06.02.2017 (Annexure No A-3).

(ii) Hon'ble Tribunal may be pleased to direct the respondents to grant disability pension with effect from 01.01.2016 for life along with the interest at the rate of 18% per annum.

(iii) Hon'ble Tribunal may be pleased further to grant benefit of rounding of disability pension @ 50 percent in terms of Ram Avtar's case.

(iv) 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. Brief facts of the case are that applicant was commissioned in Army on 09.06.1984 and superannuated on 31.01.2012 in medical category S1H1A1P1E1. On 12.03.2012 the applicant was re-employed and discharged from service w.e.f. 01.01.2016 on completion of 04 years of re-employment period. While under re-employment service, applicant suffered from two disabilities i.e. '**SENSORINEURAL HEARING LOSS (BILATERAL)**' and '**DYSLIPIDEMIA**'. Prior to discharge, applicant's Release Medical Board (RMB) was conducted at Military Hospital, Dehradun on 20.11.2015 which has assessed his both the disabilities @ 24% for life neither attributable to nor aggravated by military service (NANA). Disability pension claim was rejected vide order dated 02.05.2016 and thereafter first appeal was also rejected vide order dated 06.02.2017. Applicant has filed this O.A. for grant of disability element.

3. Learned counsel for the applicant submitted that applicant was re-employed in the Army in medical category S1H1A1P1E1 and since he has suffered from both the aforesaid disabilities while in service, these should be either attributable to or aggravated by military service. His further submission is that the aforesaid disabilities are the result of service rendered in inhospitable terrain and pleaded for disability element of pension to be granted to applicant as applicant has served in High Altitude Area prior to occurrence of disabilities. Relying upon the Hon'ble Apex Court judgment in the cases of ***Dharamvir Singh vs Union of India & Others***, 2013, AIR SCW 4236 and ***Sukhvinder Singh vs Union of India & Others***, 2014 STPL (Web) 468 SC, learned counsel for the applicant submitted that applicant be held entitled to disability element of pension with effect from date of discharge.

4. Per contra, submission of learned counsel for the respondents is that applicant is not entitled to disability pension in terms of para 72 (iii) of Pension Regulations for the Army, 2008 (Part-II) and para 25 (a) of Special Army Instruction 1/S/80 which stipulates that disability pension is applicable to those incumbents who have been invalided out/terminated on account of disability either attributable to or aggravated by military service. His further submission is that the competent authority, while considering the above aspects, has rightly rejected applicant's disability element claim. He pleaded the O.A. to be dismissed.

5. We have given our anxious considerations to the pleadings on record and submissions made by both the learned counsel.

6. While perusing para 72 (iii) of Pension Regulations for the Army, 2008 (Part-II) we find that a re-employed incumbent is entitled to disability element of pension whose services are terminated on account of any

disability being either attributable to or aggravated by military service. In the instant case since applicant was discharged from service on completion of re-employment tenure in the Army and his services were not terminated on account of any disability being either attributable to or aggravated by military service, therefore he is not entitled to disability element of pension. For convenience sake para 72 (iii) of aforesaid regulation is as under:-

72. (iii) Officers who retire from Army service on completion of age limit in medical Category SHAPE-1 and are re-employed in Army and are found to be in low medical category during such re-employment unless the reemployment is terminated on account of disability”.

7. In addition to above, para 25 (a) of Special Army Instruction 1/S/80 also stipulates that ‘disability pension to a re-employed officer is granted only when service is terminated on account of disability attributable to or aggravated by military service.

8. In view of the above, we hold that applicant is not entitled to disability element of pension since applicant’s services were not dispensed with on account of disabilities ‘**SENSORINEURAL HEARING LOSS (BILATERAL)**’ and ‘**DYSLIPIDEMIA**’, rather he was discharged from service on completion of 04 years of re-employment.

9. The O.A. is devoid of merit and is accordingly dismissed.

10. No order as to costs.

11. Pending applications, if any are disposed off.

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

rathore