

Court No. 1 (E. Court)**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 751 of 2021**Friday, this the 04th day of March, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No. 13888680M, Ex. Hav/MT Dvr. Mohammad Aziz Khan, S/o Shri Imam Bux, R/o 544/1470/1, Gali No. 2, Mohalla Samnan Garden, Compbell Road, Lucknow (U.P.) – 226003.

.... ApplicantLd. Counsel for the: **Shri Vijay Kumar Pandey**, Advocate and Applicant
Shri Girish Tiwari, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, R.K. Puram, New Delhi.
2. OIC Records, Records ASC Centre, South Bangalore, Karnataka.
3. Principal Controller of Defence Accounts (P), Draupadi Ghat, Allahabad (U.P.)-211014.

... RespondentsLd. Counsel for the: **Shri Rajesh Shukla**, Advocate Respondents.
Central Govt Counsel.**ORDER****“Per Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

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) *That this Hon'ble Tribunal may kindly be pleased to direct the opposite parties to grant the disability pension to the applicant @55% for life w.e.f. 01.07.2001 to actual date of payment and also onwards, and provide the interest on the aforesaid delayed amount of disability pension with 18% p.a. since due date to actual date of payment in the interest of justice.*
- (ii) *That this Hon'ble Tribunal may kindly be awarded the cost Rs.20,20,000/- (Rs. Twenty Lac and Twenty Thousand) to the applicant against the opposite parties.*
- (iii) *That this Hon'ble Tribunal may be pleased to pass any other order or direction which this Hon'ble Court may deem just and proper be passed in favour of the applicant.*

2. Briefly stated, applicant was enrolled in the Army Supply Corps (ASC) of Indian Army on 22.01.1981 and was discharged on 30.06.2001 (AN) in Low Medical Category on his own request before completion of terms of engagement under Rule 13 (3) Item III (iv) of the Army Rules, 1954. According to the applicant while he was posted at 5021 ASC Battalion, in the year 1986, and inter Coy. wrestling game was going on in 5021 ASC Battalion in which applicant participated and during wrestling applicant's left hand was dislocated, but after getting treatment applicant became fit for his further army service and, started the same. In the year 1988 while applicant posted in 825 ASC Battalion (Air Maintenance) on receipt of order in the morning from his superiors parked the vehicle for loading the armed forces related supply goods from

Tipper and load the goods carrier N-32, some people loaded the vehicle of the applicant, after that applicant went to count the goods/equipment's and, he did the same, after counting/calculating the goods applicant was getting down from the vehicle, his foot slipped and he fell badly due to which his left hand was dislocated and injured. Thereafter, he admitted in 05 Air Force Hospital where he was treated, after the medical examination and X-ray, the doctor recommended for the surgery on 21.09.1989 stating that now your left hand is 55% disabled but if the surgery is not successful, it will not work at all, so the applicant refused to undergo the surgery because his right hand was already damaged for which he is also getting fifty percent disability pension. At the time of discharge the applicant had two disabilities, but the Release Medical Board (RMB) held at 158 base Hospital on 08.03.2091 considered only one disability i.e. **'RECURRENT DISLOCATION RT SHOULDER V-67, N-83 AND E-818'** @20% for five years and opined the disability to be **attributable** to service and the other disability i.e. **'DISLOCATION OF LEFT SHOULDER'** @55% for life was not considered. Accordingly, the applicant has been granted disability element of disability pension @20% for five years. The Re-Survey Medical Board held at Base Hospital, Lucknow on 06.10.2004 assessed applicant's first disability @20% for life. Accordingly, the applicant has been granted disability element @20% for life. The applicant preferred Original Application No.322 of 2015 before this Tribunal for rounding of disability element which was allowed vide order

dated 23.03.2017. In compliance to said order of this Tribunal the applicant's disability element has been rounded off to @50% for life with effect from three years prior to filing of the said Original Application. Thereafter, applicant preferred petition dated 18.10.201 for grant of disability pension for second disability i.e. **'DISLOCATION OF LEFT SHOULDER'** @55% for life which was rejected vide letter dated 09.11.2021. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that disability/ injury i.e. **'DISLOCATION OF LEFT SHOULDER'** of the applicant was also contacted during the service, hence it is also attributable to and aggravated by Military Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability element of disability pension, its rounding off to 100% as well as arrears thereof.

4. On the other hand, learned counsel for the respondents submitted that in the earlier Original Application the applicant has not mentioned towards the second disability i.e. **'DISLOCATION OF LEFT SHOULDER'**. It shows that it is an afterthought. He pleaded for dismissal of Original Application.

5. During the course of hearing, Ld. Counsel for the applicant submitted that this Original Application has been filed for the grant of disability element for second disability i.e. **'DISLOCATION OF LEFT SHOULDER'** @55% for life which has not been considered

by the RMB at the time of discharge. He further submitted that since it is for another disability which has not been claimed by the applicant in his earlier Original Application, this Original Application may be allowed for the grant of second disability.

6. Upon hearing submissions of Ld. Counsel of parties we find that the second disability is neither mentioned in the Release Medical Board which was conducted at the time of discharge nor in the earlier Original Application applicant had filed in respect of his right soldier. It shows that it is a afterthought on being granted disability element of disability pension @20% to be rounded off to 50%.

7. In view of the discussions made above, Original Application lacks merit and same is accordingly **dismissed**.

8. Pending application, if any, stands disposed of.

9. No order as to costs.

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

Dated: 04 March, 2022

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