

Court No. 1
(Ser No. 21)
RESERVED

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
 LUCKNOW**

ORIGINAL APPLICATION No. 470 of 2018

Wednesday, this the 22nd day of March, 2023

**"Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
 Hon'ble Vice Admiral Atul Kumar Jain, Member (A)"**

Ex No. SS-23864W Captain Uday Shankar Thakur, S/o
 Late Captain Ram Singh, resident of C/o Shri
 Dharmendra Kumar Dixit, 538/Ka, 892 A, Shivlok
 Triveni Nagar-III, P.O. Nirala Nagar, Lucknow.

..... Applicant

Learned counsel for the: Applicant in person.
 Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence, Government of India, South Block, New Delhi.
2. Chief of the Army Staff, New Delhi.
3. Military Secretary, Thalsena Mukhyalaya, Military Secretary Branch, Army Headquarters, New Delhi-110011.
4. Commanding Officer, 2/11 Gorkha Rifles, C/o 56 APO.
5. Lt. Col, V.K. Jain (Retd), C/o 2//11 Gorkha Rifles, C/o 56 APO.
6. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (U.P.).

.....Respondents

Learned counsel for the: **Shri RC Shukla**, Advocate
 Respondents. Central Govt. Counsel

ORDER

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

- (i) *to issue a direction to the respondent No. 1 to 4 & 6 i.e. Union of India through the Secretary, Ministry of Defence, Government of India, South Block, New Delhi, Chief of the Army Staff, New Delhi, Military Secretary, Thalsena Mukhyala, Military Secretary Branch, Army Headquarters, New Delhi, Commanding Officer, 2/11 Gorkha Rifles, C/o 56 APO and Principal, Controller of Defence Accounts(Pension), Allahabad to pay service pension apart from disability pension as well as retiral benefits such as gratuity, group insurance, leave encashment, etc. With 18% interest from attaining the age of superannuation at an appropriate deserving rank after declaring Army Headquarter's letter No. 38005/MS7A dated 26.06.1976 as void/manipulated, after summing the same from the respondents w.e.f. 19.09.1976.*
- (ii) *to issue a direction to the Respondent No. 1 to 4 & 6 i.e. Union of India through the Secretary, Ministry of Defence, Government of India, South Block, New Delhi, Chief of the Army Staff, New Delh, Military Secretary7, Thalsena Mukhyalaya, Military Secretary Branch, Army Headquarters, New Delhi, Commanding Officer, 2/11 Gorkha Rifles, C/o 56 APO and Principal, Controller of Defence Accounts(Pension), Allahabad to treat the applicant to continue in service with all consequential promotions including difference of salary with 18% interest till the attaining the age of superannuation at an appropriate deserving rank after declaring Army Headquarter's letter No. 38005/MS7A dated 26.06.1976 as void/manipulated, after summing the same from the respondents.*
- (iii) *To issue any other order or direction deemed fit and proper by this Hon'ble*

Tribunal in the facts and circumstances of the present case.

2. Brief facts giving rise to this application are that the applicant was commissioned in the Army on 14.03.1971 as Short Service Commissioned Officer (SSCO). During the course of his service he was placed in low medical category for disability 'Bronchial Asthma'. It was mandatory for a short service commissioned officer to qualify young officer's (YOs) course for grant of permanent regular commission but due to being placed in low medical category, he could not clear the aforesaid course. Prior to discharge from service, being placed in low medical category, his Release Medical Board (RMB) was conducted on 28.08.1976 and he was discharged from service w.e.f. 19.09.1976 (FN). After release from the Army, he is in receipt of disability element of pension. Applicant has filed this O.A. for grant of service element of pension, gratuity, group insurance and leave encashment etc alongwith 18% interest from the date of his superannuation.

3. Submission of learned counsel for the applicant is that the applicant was granted Short Service Commission in the Indian Army w.e.f. 14.03.1971. He further submitted that during the course of his service

the applicant having served at hazardous places in the country, suffered with 'Bronchial Asthma' and his medical category was downgraded. His other submission is that on account of hatched conspiracy by his colleagues and seniors he could not get extension in service and he was discharged from service w.e.f. 19.09.1976 (FN), denying service element of pension and other consequential benefits.

4. Learned counsel for the applicant further submitted that the applicant took active part in 1971 Indo-Pak War in which he was entrusted responsibility of a leading Company Commander and his job was well commended by Brigadier Mohinder Lal Wig of 5 Gorkha Rifles. It was further submitted that applicant being stationed at 13,620 feet fell ill in January 1972 because of exposure to extreme cold and suffered from breathlessness, with the result he was evacuated to 221 Medical Company and thereafter, transferred to 153 General Hospital, Leh and later, he was evacuated to Command Hospital, Chandigarh where after treatment he was provided sick leave. It was further submitted that despite applicant being placed in low medical category he performed the operational duties

efficiently with utmost satisfaction of his superior officers.

5. Applicant's learned counsel further submitted that applicant while posted at 11 Gorkha Rifles Regimental Centre, Dehradun kept endurance to improve his professional and physical standards by attending training camps with the recruits and participated in physical endurance training exercise with recruits and this fact was reflected by Col HS Mamik, the then Commandant, 11 Gorkha Rifles Regimental Centre, Dehradun in the applicant's Annual Confidential Report (ACR) that 'despite the officer being in low medical category he is physically fit as I see him doing physical endurance everyday night in front of me'. It was further submitted that due to his tireless efforts his medical category was upgraded to SHAPE-I by Military Hospital, Dehradun and therefore, he was granted extension in service but due to vested interests of his colleagues and seniors he was discharged from service in low medical category. His submission is that applicant submitted option for extension of tenure to his senior officer Maj SK Singh, the then Second-in-Command but it was not processed due to malafide intention which resulted in his discharge from service.

He pleaded for grant of service element of pension and other consequential benefits.

6. Per contra, a preliminary objection was raised by learned counsel for the respondents stating that applicant, prior to filing of this O.A., has not availed alternative remedy and has filed this O.A. after elapse of 42 years when his documents have been weeded out in terms of Para 619 (c) of Regulations for the Army, 1987 (Revised Edition). He further submitted that the applicant was commissioned as Short Service Commissioned (SSC) Officer in the Army on 14.03.1971 and he was released from service on 19.09.1976 in low medical category. It was further submitted that since the applicant was in low medical category for disability 'Bronchial Asthma (intrinsic 493)', his RMB was conducted on 28.08.1976 and he is presently in receipt of 30% disability element of pension w.e.f. next date of his release.

7. Learned counsel for the respondents further submitted that Emergency Commissioned Officers (ECO) and Short Service Commissioned Officers (SSCO) are not governed by Regulation 48 of Pension Regulations for the Army being not regular officers and their tenure of service is 05 to 10 years. It was further

submitted that they are governed by Special Army Instruction 6/S/65 read with MoD letter dated 30.11.1977 for pensionary benefits which provides two options for disability pension in respect of non-regular officers who are released in low medical category as under:-

(i) To get the disability pension admissible to them immediately after sustaining the disability viz. the service element of disability pension will be determined with reference to the service rendered till the date of getting the injury/disability only and the disability element will also be determined likewise.

Or

(ii) To get the disability element alone as in (i) above plus gratuity which is admissible to them at the end of their service in the Army/Navy whichever they consider more beneficial to them.

8. Learned counsel for the respondents further submitted that w.e.f. 30.08.2006 Govt of India has issued policy letter as per which non regular officers such as the applicant, who are found in low medical category at the time of release as against the one in

which they were commissioned initially and where disability is accepted as attributable to or aggravated by military service, will be entitled to service element of disability pension after taking into account the full commissioned service rendered by them as in the case of regular commissioned officers. It was further submitted that since non regular officers have been brought at par with the regular commissioned officers in the matter of grant of disability pension, there will be no requirement of exercising option by non-regular commissioned officers as prescribed in policy letter dated 30.11.1977. The learned counsel for the respondents further submitted that since the applicant was released prior to issuance of letter dated 30.08.2006, he is not entitled to receive service element of disability pension. In support of his contention for dismissal of O.A. on the ground of delay, which in fact is more than 42 years, learned counsel for the respondents has relied upon Civil Appeal No. 583-84 of 2017 decided by the Hon'ble Apex Court on 16.01.2017, **Union of India vs Rajwanti**, M.A. No. 142 of 2016 inre O.A. No. 90 of 2016, **Ex Capt Srinivasan Narayanan vs UOI & Ors**, decided by AFT, RB, Chennai on 09.08.2017 and O.A. No. 1915 of

2017, **Col Opendra Kumar vs UOI & Ors**, decided by Hon'ble AFT, PB, New Delhi on 21.11.2017.

9. Heard applicant in person and Shri RC Shukla, learned counsel for the respondents and perused the record.

10. The undisputed facts are that the applicant was commissioned in the Army on 14.03.1971 as SSC officer. During the course of his service he was found to be suffering from 'Bronchial Asthma'. He was admitted in Military Hospital, Dehradun and his medical category was downgraded to S1H1A1P2E1. Prior to release from service he was subjected to Release Medical Board (RMB) which assessed his aforesaid disability @ 30% for two years. Later, his Re-survey Medical Boards (RSMBs) were conducted and presently he is in receipt of disability element of pension.

11. Applicant's contention is that he is eligible for grant of disability pension consisting of service element and disability element which the respondents have opposed stating that the applicant is not entitled to disability pension in terms of policy letter dated 30.08.2006 as per which those who were discharged from service prior to issuance of the aforesaid letter are not entitled to service element of disability pension.

12. Further, SSC officer are not governed by Regulation 48 of Pension Regulations for the Army, 1961 as they are not regular officers and their tenure of service is ranging from 5 to 10 years. We find that these non regular officers are governed by Special Army Instruction 6/S/65 for pensionary benefits. The applicant being discharged in low medical category was granted disability element of pension plus gratuity at the time of release as at that time there was no provision to provide service element of disability pension.

13. The policy for grant of disability pension in respect of non-regular officers released in low medical category was revised vide Govt of India, Min of Defence letter No 1(9)/2006/D (Pen-C) dated 30.08.2006. As per this letter, non regular officers, who were found in low medical category at the time of release as against the one in which they were recruited initially and where disability was accepted as attributable to or aggravated by military service, will be entitled to service element of disability pension after taking into account the full commissioned service rendered by them as in the case of regular commissioned officers. Since non-regular officers have been brought at par with the regular

commissioned officers in the matter of grant of disability pension, there will be no requirement of exercising option by non-regular commissioned officers as prescribed in policy letter dated 30.11.1977.

14. Further, the service element of disability pension in respect of non-regular commissioned officers who retired before the date of issue of the Govt order dated 30.08.2006 and who had exercised their option to get disability pension comprising of disability element plus service element shall be revised prospectively in accordance with these orders. In the case of aggravation, the benefit of service element as per these orders will be applicable only to those who retire on or after the date of issue of the letter i.e. on or after 30.08.2006. Since the applicant had retired prior to issuance of letter dated 30.08.2006, he is not entitled to receive service element of disability pension. For convenience sake, extract of policy letter dated 30.08.2006 is reproduced as under:-

"1. I am directed to say that the issue relating to counting of full length of service rendered by Emergency Commissioned Officers/Short Service Commissioned Officers in determining service element of disability pension to them has been under consideration of the Government for quite some time. The President is pleased to decide that non-regular officers viz. Emergency Commissioned Officers, Short Service Regular Commissioned Officers and Short Service Commissioned Officers,

who are found in lower medical disability is accepted as attributable to or aggravated by Military service, will be entitled to service element of disability pension after taking into account the full commissioned service rendered by them as in the case of Regular Commissioned Officers. The rate of service element will be the same as admissible to the Regular Commissioned Officers. Since non regular officers have been brought at par with the Permanent Regular Commissioned Officers in the matter of grant of Disability pension, there will be no requirement of exercising option by non regular commissioned officers as earlier prescribed under Para 1 of this Ministry's letter No. F. 210795/74/Pen-C dated 30.11.1977. The Special Army Instruction No. 6/S of 1965 and this Ministry's letter No. F. 210795/74/Pen-C dated 30th November 1977 will stand modified to that extent.

2. Service element of disability pension in respect of non-regular commissioned officers retired before the date of issue of these orders shall be revised prospectively in accordance with these orders. In the case of aggravation, the benefit of service element as per these orders will be applicable only to those who retire on or after the date of issue of this letter. Past cases will not be re-opened.

3. The PSAs concerned shall be required to work out service element of disability pension notionally as admissible from the date of commencement of pension and will be further revised/updated under various orders issued by the Government from the date of issue of these orders. No arrears, however, will be payable due to notional fixation of revised pension for the period for the period prior to the effective date of these orders. No commutation will be admissible on account of additional amount of pension accruing as a result of revision under these orders. There will be no change in the amount of retirement gratuity already paid to the pensioners.

4. The pensioners shall apply for revision of service element of disability pension in terms of these orders as per enclosed proforma, to their respective PDAs, who will refer the cases to PSAs concerned for notification of the modified award.

5. These orders will be applicable from the date of issue.

6. This issues with the concurrence of Def (Finance) vide their UO No 3001/Fin/P/06 dated 30.08.2006.”

15. In view of the above, we are of the considered opinion that applicant being released on 19.09.1976 does not deserve to be granted service element of disability pension as per policy letter dated 30.08.2006.

16. With the aforesaid observation, we find that the applicant is not entitled to service element of disability pension which he is claiming.

17. The O.A. is **dismissed**, accordingly,

18. No order as to costs.

19. Miscellaneous application(s), pending if any, stand disposed of.

(Vice Admiral Atul Kumar Jain)
Member (A)
Dated: 22.03.2023
rathore

(Justice Umesh Chandra Srivastava)
Member (J)