

**Court No. 1 (E Court)****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 630 of 2021**

Thursday, this the 05<sup>th</sup> day of May, 2022

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Ex MC ERAII Raj Kumar (No 180647-N) s/o Shri Rajveer Singh,  
presently residing at Village & Post-Sarangpur, Tehsil-Khurja,  
Distt-Bulandsahar, Uttar Pradesh-203132.

..... Applicant

Ld. Counsel for the : **Shri Ved Prakash**, Advocate  
Applicant **Shri Devendra Kumar**, Advocate

Versus

1. Union of India through Ministry of Defence.
2. Lt Colonel, Chief Record Officer.
3. Dte Gen of Inf/Inf-6 (Pers), General Staff Branch, Army Headquarters, DHQ PO-New Delhi-110011.
4. Dy DAGPS-4, Adjutant General's Branch, Army Headquarters, DHQ PO-New Delhi-110011.
5. PCDA (P), Allahabad (UP).
6. The Chief of Army Staff, Army Headquarters, New Delhi.

.....Respondents

Ld. Counsel for the : **Shri Amit Jaiswal**, 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 :-

*(a) Quash the impugned order No PEN/600/D/LRDO I:09/2015/197952T dated 30.09.2015.*

*(b) Direct the respondents to grant disability element of pension duly rounded off to 50% w.e.f. his date of discharge i.e. 01.08.2014.*

*(c) Direct respondents to pay the due arrears of disability element of pension with interest @ 12% p.a. from the date of retirement with all the consequential benefits.*

*(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case along with cost of the application in favour of the applicant and against the respondents.*

2. Brief facts of the case are that the applicant was enrolled in the Indian Navy on 31.07.1999 and was discharged from service on 31.07.2014 on expiry of his engagement of 15 years qualifying service. He is in receipt of service pension vide PPO dated 25.07.2014. Release Medical Board (RMB) conducted on 31.07.2014 declared his medical disability 'Central Serous Chorioretinopathy (Lt) Eye, ICD No H35' @ 15-19% attributable to military service. His disability pension claim was rejected vide order dated 31.07.2014 on the ground of disability being below 20%. Thereafter, applicant preferred legal notice-cum-representation/appeal dated 15.02.2021 which has not been decided as yet. It is in this perspective that this O.A. has been filed.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Navy and there is no note in the service documents that he was suffering from any disease/disability at the time of enrolment in Navy. The disease/disability of the applicant was contracted during the service, hence the RMB has opined it to be attributable to Military Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability element of pension in similar cases, as such the applicant be granted disability element of pension as well as arrears thereof.

4. On the other hand, learned counsel for the respondents opposed the submissions of learned counsel for the applicant and submitted that since the assessment of the disability element is 15-19% i.e. below 20%, therefore, condition for grant of disability element of pension does not fulfil in terms of Rule 4 of Entitlement Rules for Casualty Pensionary Awards, 1982. He further submitted that since the applicant was discharged from service after completion of terms of engagement and his disability has been assessed @ below 20% he is not entitled to disability element of pension as per Regulation 105-B of the Navy Pension Regulations, 1964. He pleaded for dismissal of Original Application.

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

6. It is undisputed case of the parties that applicant was enrolled in the Indian Navy on 31.07.1999 and was discharged from service on 31.07.2014 on completion of terms of engagement.

The applicant was in low medical category and his Release Medical Board was conducted on 31.07.2014 at Lonavla. The Release Medical Board assessed applicant's disability @ 15-19% for life attributable to Navy service.

7. As per Regulation 105-B of Navy Pension Regulations, 1964, disability element of pension is eligible only when the disability is assessed at 20% or more and accepted as attributable to or aggravated by military service. Since, applicant's disability element is 15-19% for life i.e. below 20%, applicant does not fulfil the requirement of aforesaid regulation.

8. Since applicant was discharged from service on completion of terms of engagement, his case does not fall within the category of invalidation in which circumstance he would have become eligible for grant of disability element of pension @ 20% in terms of reported judgment in the case of **Sukhwinder Singh vs Union of India & Ors**, (2014) STPL (WEB) 468 where the operative part of the order reads:-

*"9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Thirdly, there appears to be no provisions authorising the discharge or invaliding out of service where the disability is below twenty per cent and seems to us to be logically so. Fourthly, wherever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension."*

9. Further, contrary view to Release Medical Board dated 31.07.2014 to the extent of holding the applicant's disability at 15-19% for life is not tenable in terms of Hon'ble Apex Court judgment in the case of **Bachchan Singh vs Union of India & Ors**, Civil Appeal Dy No. 2259 of 2012 decided on 04<sup>th</sup> September, 2019 wherein their Lordships have held as under:-

*“..... After examining the material on record and appreciating the submissions made on behalf of the parties, we are unable to agree with the submissions made by the learned Additional Solicitor General that the disability of the appellant is not attributable to Air Force Service. The appellant worked in the Air Force for a period of 30 years. He was working as a flight Engineer and was travelling on non pressurized aircrafts. Therefore, it cannot be said that his health problem is not attributable to Air Force Service. However, we cannot find fault with the opinion of the Medical Board that the disability is less than 20%.”*

(underlined by us)

10. In light of the above judgment, an inference may be drawn that Medical Board is a duly constituted body and findings of the board should be given due weightage and credence.

11. In addition to above, a bare reading of Regulation 105-B of Navy Pension Regulations, 1964 makes it abundantly clear that an individual being assessed disability below 20% is not entitled to disability element irrespective of disability being attributable to or aggravated by the military service. The Hon'ble Supreme Court in Civil Appeal No 10870 of 2018 **Union of India & Ors vs Wing Commander SP Rathore**, has made it clear vide order dated 11.12.2019 that disability element is inadmissible when disability percentage is below 20%. Para 9 of the aforesaid judgment being relevant is quoted as under:-

*“9. As pointed out above, both Regulation 37 (a) and Para 8.2 clearly provide that the disability element is not*

*admissible if the disability is less than 20%. In that view of the matter, the question of rounding off would not apply if the disability is less than 20%. If a person is not entitled to the disability pension, there would be no question of rounding off."*

12. In view of the discussions made above, Original Application lacks merit and same is accordingly **dismissed**.
13. Pending application (s), if any, stands disposed of.
14. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated : 05.05.2022

rathore