

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 629 of 2021**Thursday, this the 5th May, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)Ex LOG I (SC) Uday Kumar (No. 400352-T)
S/o Shri Ranvir Singh
R/o Saroth, Post Office – Mai, Tehsil – Sadabad,
Dist – Hathras (UP) – 281302

..... Applicant

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

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Naval Staff, Integrated HQ of MoD (Army), PDPA, New Delhi – 110011.
3. Naval Pension Office, C/o INS Tanaji Sion Trombay Road, Mankhurd, Mumbai – 400088.
4. PCDA (N), No. 1 Co-operage Road, Colaba, Mumbai – 400001.

..... Respondents

Ld. Counsel for the Respondents : **Ms. Anju Singh**,
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) Direct the respondents to grant service element of disability pension w.e.f. the date of discharge, i.e. 25.08.2016.
- (b) Direct respondents to pay the due arrears of service element of disability pension of pension with interest @

12% p.a. from the date of retirement with all the consequential benefits.

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

2. The factual matrix on record is that the applicant was enrolled in the Indian Navy on 03.04.2008. The applicant suffered with disability “L4-5 DISC DEGENERATION WITH FACETAL SYNDROME” while in service.. Due to disability, applicant requested for discharge on medical grounds and was discharged from service in low medical category on 24.08.2016 after rendering 08 years, 04 months and 22 days of service. The disability of the applicant was assessed @ 20% for life and was considered as Aggravated by military service. The applicant was granted disability element of disability pension vide PCDA (N) PPO dated 22.12.2017 whereas he was entitled for disability pension including service element in light of Regulations 101 and 107 of Navy (Pension) Regulations, 1964. The applicant sent legal notice-cum-representation/appeal dated 16.03.2021 for grant of service element of disability pension which has not been replied by the respondents so far. Being aggrieved, the applicant has filed the present Original Application for grant of service element of disability pension.

3. Learned counsel for the applicant submitted that applicant suffered disability “L4-5 DISC DEGENERATION WITH FACETAL SYNDROME” while in service.. Due to disability, applicant requested for discharge on medical grounds and was discharged from service in

low medical category on 24.08.2016 after rendering 08 years, 04 months and 22 days of service. The disability of the applicant was assessed @ 20% for life and was held 'Aggravated by military service'. The applicant was granted disability element of disability pension vide PCDA (N) PPO dated 22.12.2017 whereas he was entitled for disability pension which includes service element, in light of Regulations 101 and 107 of Navy (Pension) Regulations, 1964. The applicant sent a representation/appeal dated 16.03.2021 for grant of service element of disability pension which has not been replied by the respondents till filing of Original Application.

4. Learned counsel for the applicant further submitted that as per Regulation 279 of Regulations for the Navy, Part-III, the applicant was discharged from service under clause Service No Longer Required and the said clause does not disqualify him from getting service element of disability pension. There is no provision in the Pension Regulations for the Navy, 1964 by which the applicant's service element of disability pension can be withheld. He pleaded for grant of service element to the applicant from the date of his discharge from service.

5. Learned counsel for the respondents submitted that applicant was enrolled in the Navy on 03.04.2008 and was discharged from service on 24.08.2016 as 'Service No Longer Required' (SNLR) after rendering of 08 years, 04 months and 21 days of service. While in service, the ex-sailor was tried summarily by the Commanding Officer, INS Agrani for an offence under Section 51 and 74 of the Navy Act 1957. The applicant was not willing to work in the Ship's

gallery and continued to avoid work and for which he was counselled many times to show improvement in his performance and attitude. However, there being no improvement in the sailor, he was boarded out of Navy for inefficacy in accordance with Regulation 279 (b) of Regulations for the Navy, Part-III. At the time of discharge from service, the applicant was suffering from disability 'L4/5 Disc Degeneration with Facetal Syndrome'. His disability was assessed @ 20% for life as Aggravated by service. The applicant was discharged from service on 25.08.2016. The applicant was granted disability element @ 20% for life vide PPO dated 22.12.2017. Since the applicant was discharged from service as SNLR under Regulation 279 (b) of Regulations for the Navy, Part III for inefficiency and not as invalided out from service due to disability, therefore, he is not eligible for service element of disability pension in accordance with the existing pension rules and regulations.

6. Learned counsel for the respondents further submitted that minimum qualifying service of 15 years is an essential criteria to earn service pension as per Regulation 78 of Navy (Pension) Regulations, 1964. However, personnel who are invalided out of service on account of disability, due to service factor get disability pension irrespective of length of service. In the instant case, the applicant was discharged from service as 'Service No Longer Required', due to inefficiency and he was not invalided out from service due to disability, hence, he is not eligible for service element of disability pension. He pleaded for dismissal of O.A.

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

8. We find that applicant was discharged from service in low medical category after rendering 08 years, 04 months and 21 days of service. The disability of the applicant was assessed @ 20% for life and it was considered as 'Aggravated by military service'. Since disability pension consists two parts, service element and disability element but the applicant has been granted only disability element, therefore, we feel it proper to grant service element of disability pension to the applicant as he is entitled for disability pension and not only disability element as he suffered disability during service which originated in July 2012 after four years of service.

9. In the result, the O.A. deserves to be allowed, hence **allowed**. The applicant is entitled to disability pension from the next date of discharge from service. Since, the applicant is in receipt of disability element only, the respondents are directed to grant service element also to the applicant from the next date of discharge from service and thus, his disability pension @ 20% is rounded off to 50% for life in terms of the decision of the Hon'ble Supreme Court in ***Union of India and others v. Ram Avtar*** (Civil Appeal No 418 of 2012 decided on 10.12.2014). However, due to law of limitations settled by the Hon'ble Supreme Court in the case of ***Shiv Dass v. Union of India and others*** (2007 (3) SLR 445), the arrears of service element of disability pension will be restricted to three years preceding the date of filing of the instant O.A. The date of filing of this O.A is 12.10.2021. The respondents are directed to give effect to this order within four months

from the date of receipt of a copy of this order. Default will invite interest @ 8% per annum till actual payment.

10. No order as to costs.

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

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

Dated: May, 2022
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