

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 724 of 2020

Tuesday, this the 29th day of November, 2022

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Ex AC (U/T) Brij Kishore Singh
R/o Village - Pahuri, Post – Pahuri,
Distt, Raibareli (UP) Pin-229201

.... **Applicant**

Ld. Counsel for the Applicant: **Shri Satendra Kumar Singh**, Advocate

Versus

1. Union of India, through Chief of Air Staff, Vayu Bhawan, New Delhi.
2. Central Command Headquarter, I.A. Vayu Sena Nagar, Nagpur.
3. Air Headquarters, Directorate of Air Veterans, Subroto Park, New Delhi – 110010.
4. Air Officer Commanding 402 Air Force Station, Chakeri, Kanpur.
5. Chief Account Officer, Pension Office of the P.C.D.A. (P) Draupdi Ghat, Prayagraj – 211014.

... **Respondents**

Ld. Counsel for the Respondents : **Dr. Gyan Singh**,
Central Govt Counsel

ORDER (Oral)

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 kindly please to quash/set aside order dated 06.05.2020, 29.10.2019 issued by opposite party i.e. Wg Cdr Air headquarter director of Air Veterans New Delhi and order dated 22.03.2019 which has mentioned regarding discharge of applicant on dated 10.10.2005 from Indian Airforce service issued by the concerning authority of Air HQ training command Indian Airforce Hebbal J.C. Nagar Post Bangalore is hereby as contained in Annexure No. 1 jointly with the O.A. application.
- (ii) To issue order or direction to the authorities concern for release of disability pension in favour of the applicant for the disability as tumour in brain arises due to hematoema disease which has been arises during service as observed by medical doctor concern during treatment at base hospital Bangalore and given discharge on 10.10.2005 without detail of medical document and discharge certificate to the applicant.
- (iii) To issue order or direction to the authorities concern to provide disability pension in favour of the applicant since discharge from service @ 18% interest inspite of medical doctor concern given consideration for disability permanent for life and further authorities concern direct opposite party to provide all the medical records of the applicant during treatment for the aggravation of disease hematoema arises during service at posting place not properly diagnosed by the authorities concern which is still prevailing symptoms of the hematoema.

- (iv) Any such other order or direction which this Hon'ble Tribunal may deem fit and proper may also be passed in favour of the applicant on the basis of circumstances of the case.
- (v) Allow the petition with cost in favour of the applicant."

2. Brief facts of the case are that the applicant was enrolled in the Indian Air Force on 28.09.2004 in medically and physically fit condition. The applicant completed his basic training at Belgaum and later on transferred to CTI, Air Force Jalahalli, Bangalore for radio fitter training and completed successfully. Due to stress and strain of work and his disease 'Hematoema', the applicant was not in position to perform his duties satisfactorily. Hence, he submitted an application for voluntary discharge from service being unable to adjust with physical activities of PT & Parade and cope-up with his trade work. Accordingly, his application was processed and competent authority considered/decided to discharge him from service. The RMB of the applicant was held on 10.10.2005 and applicant was discharged from service on 10.10.2005 (AN) in fit medical condition having no disability under the provisions of Rule 15 (2) (i) of the Air Force Act, 1950, thus, he was not entitled to disability pension. Being aggrieved with discharge, applicant has filed the present Original Application to grant him disability pension.

3. Learned counsel for the applicant submitted that applicant has joined Indian Air Force on 28.09.2004 in medically and physically fit condition. The applicant completed his basic training at Belgaum and later on transferred to CTI, Air Force Jalahalli, Bangalore for radio fitter training and completed successfully. Due to stress and strain of work, the applicant was not in position to maintain competency in duty. The applicant during his treatment at Base Hospital was recommended for X-ray and MRI for investigation of his disease 'Hematoema' which affected his brain adversely. The doctors allowed him to continue in hospital for further treatment. However, on 10.10.2005 without providing further treatment Medical Officer of Air Force Station recommended for invalidment/release in low medical category but no documents have been provided to the applicant for his medical treatment, advice and release from the hospital due to his disease Hematoema which converted in tumour in brain as observed by the MRI report. The applicant has been discharged from service on 10.10.2005 without issuing discharge certificate. Thus, the authorities concern have violated Air Force Rule 11 & 12 regarding discharge certificate.

4. Learned counsel for the applicant further submitted that applicant received information from Air Force Account Office, Subroto Park, New Delhi on 15.02.2017 regarding finalization and remittance

of IRLA balance of Rs. 1234/- which was sent to him through cheque. On 16.02.2019 and 20.08.2019, applicant sent representations through RTI asking medical documents and treatment provided to him regarding his disease Hematoema but nothing has been provided. The applicant has been discharged from service unlawfully due to his permanent disability Hematoema which is assessed @ 40% by the medical board as aggravated and therefore, applicant should be granted disability pension in view of observation made by the Hon'ble Apex Court in several judgments in **Union of India & Others vs. Rajveer Singh** (CA No 2904 of 2011 decided on 13.02.2015), **Union of India & Others vs. Manjit Singh** (CA No. 4357-58 of 2015) arising out of SLP (c) No. 13732-33 of 2015), decided on 12.05.2015, **Union of India vs. Angad Singh** (CA No., 2208 of 2011, decided on 24.02.2015), **KJS Butter vs. Union of India** (CA No. 5591 of 2006), decided on 31.03.2011 and many other judgments. He pleaded to grant disability pension to the applicant from the date of discharge from service alongwith interest.

5. On the other hand, Ld. Counsel for the respondents submitted that applicant was enrolled in the Indian Air Force on 28.09.2004 and was discharged from service on 10.10.2005 under clause "At his own request before fulfilling the conditions of his enrolment" after rendering 1 year and 21 days of service. A legal notice dated

02.12.2019 served by the applicant was suitably replied by the respondents vide letter dated 06.05.2020. As per Rule 153 of Pension Regulations for Air Force, 1961, disability pension is granted if the disability is attributable to or aggravated by service and degree of disablement is assessed @ 20% or more but in the instant case, RMB of the applicant was held on 10.10.2005 and no disability was detected as per opinion of the medical specialist and thus, applicant was medically fit to be released in medical category A4G1 which was approved by the Dy PMO, hence, applicant is not entitled to any disability pension.

6. Learned counsel for the respondents further submitted that applicant submitted an application before his Commanding Officer CT 1 Air Force Jalhalli East, Bangalore on 24.09.2005 for voluntary discharge from service requesting that "he may please be given voluntary discharge from service as he is not able to adjust with physical activities (PT and parade) and cope-up with technical subject in Radio Fitter trade". Accordingly, it was processed and his RMB was held on 10.10.2005 and applicant was discharged from service on 10.10.2005 at his own request under the provisions of Rule 15 (2) (i) of Air Force Act 1950. He pleaded that since the applicant has been discharged from service in fit medical condition having no disability,

he is not entitled to disability pension. He pleaded for dismissal of Original Application.

7. We have heard learned counsel for both sides and perused the material placed on record.

8. Before advertng to rival submissions of learned counsel of both sides, it is pertinent to mention that judgments relied upon by the applicant in Para 4 referred above are not relevant in the present case being based on different facts and circumstances and therefore, applicant cannot be given the benefit of aforesaid judgments.

9. We find that applicant has submitted his application for voluntary discharge from service being unable to adjust with physical activities of PT & Parade and cope-up with technicality of his trade. Accordingly, his application was processed and competent authority considered/decided to discharge him from service. The RMB of the applicant was held on 10.10.2005 and applicant was discharged from service on 10.10.2005 (AN) at his own request under the provisions of Rule 15 (2) (i) of the Air Force Act, 1950. Thus, he was discharged from service in fit medical condition having no disability and therefore, applicant being discharged from service in SHAPE-1 medical condition, is not entitled to disability pension.

10. In the result, we do not find any illegality or illogicality in discharging the applicant from service. There is also no violation of any rules/regulations as discharge of the applicant has been made in A4G1 medical category which is a SHAPE-1 medical category. The O.A. lacks merit, deserves to be dismissed. It is accordingly **dismissed.**

11. No order as to costs.

12. Pending Misc. Applications, if any, shall stand disposed off.

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

Dated: November, 2022
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