

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 1518 of 2023**

Tuesday, this the 12th day of November, 2024

“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”

P. No. 117845F, AG PO UCI, Akhilesh Kumar Rai, Son of Markandey Rai, Resident of Village – Bhainsa, P.O. – Chandauli and Tehsil – Chandauli, District – Chandauli, U.P., PIN-232106.

.... Applicant

Ld. Counsel for the : **Ms. Mamta Pandey**, Advocate and
 Applicant

Versus

1. Union of India, through its Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Directorate of Ex-Servicemen Affairs, IHQ of MoD (Navy), Chanakya Bhawan, Chanakypuri, New Delhi.
3. Directorate of Pay and Allowances, IHQ of MoD (Navy), Room No. 108, Naval Headquarters Annexe, Talkatora Stadium, New Delhi-110004.
4. Flat Officer Commanding-in-Chief, Southern Naval Command, Kochi-682004.
5. Commanding Officer, INHS Sanjeevani Hospital, INHS Sanjeevani Naval Base, Kochi, Enrakulam-682004.
6. Commanding Officer, INS Vendututhy, Naval Base, Kochi-682004.
7. The Principal Controller of Defence Accounts (Navy), pension cell, Shahid Bhagat Singh Road, Mumbai-400001.

... Respondents

Ld. Counsel for the: **Ms. Anju Singh**, Advocate
 Respondents. Central Government Standing Counsel.

ORDER

“Per Hon’ble Mr. Justice Anil Kumar, 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:-

- A. To issue pass an order to set-aside/quash the letter/order rejecting the disability element of disability pension of the applicant after summoning the original copy of same.*
- B. To issue/pass the direction and order to the respondents to Grant disability element of disability pension @15-19% deemed to be 20% for life from date of SOS i.e. 01.09.2010 (Date of Release 31.08.2010) along with 12% interest on arrear in light of Hon’ble Apex Court Judgment.*
- C. To issue/pass an order or directions to the respondents to Grant benefit of broad banding/rounding off disability pension to the tune of @50% for life from date of SOS i.e. 01.09.2010 (Date of Release 31.08.2010) along with 12% interest on arrear in light of Hon’ble Apex Court Judgments and Government letter dated 31.01.2001.*
- D. Any other relief which the Hon’ble Tribunal may deem fit and proper in the fact and circumstances of the case is also granted along with cost of the OA.*
- E. To allow this original application with costs.*

2. Briefly stated, applicant was enrolled in the Indian Navy on 03.08.1995 and discharged on 31.08.2010 (AN) in Low Medical Category after completion of 15 years and 28 days of service. The applicant is in receipt of Service Pension. Before discharge from service, the Release Medical Board (RMB) held at Kochin on 22.05.2010 assessed his disability ‘**MACULOPATHY BOTH**

EYES ICD NO. H31' @15-19% for life opined the disability to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected vide letter dated 26.08.2010. The applicant preferred First Appeal dated 15.05.2023 which too was rejected vide letter dated 02.05.2024. It is in this perspective that the applicant has preferred the present Original Application.

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 Indian Navy and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Navy. The disease of the applicant was contracted during the service, hence it is attributable to and aggravated by Naval Service. Ld. Counsel for the applicant further submitted that the respondents have ignored the relevant instruction contained in Para 19, Para 24(a) and Para 24 (d) (iv) of Amendment to Chapter VI & VII Guide to Medical officers (Military Pensions), 2008. She further submitted that as per Para 24 (d) (iv) of Chapter VII of Amendment to Chapter VI & VII Guide to Medical officers (Military Pensions), 2008 the applicant's disability (Defective Vision) cannot be assessed less than 20% because 20% is a minimum percentage. She pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant's disability be deemed to be @20%

and applicant be granted disability element of disability pension @20% to be rounded off to @50% for life.

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 Regulation 105-B of The Navy (Pension) Regulations, 1964, therefore, the competent authority has rightly denied the benefit of disability element of pension to applicant. She pleaded for dismissal of Original Application.

5. We have given our considerable thoughts to both sides and have carefully perused the records including Release Medical Board proceedings. The question in front of us is straight; whether the disability is attributable to/aggravated by military service, whether it is above or below 20% and whether applicant was invalidated out of service on account of the disability or was discharged on completion of terms of engagement?

6. It is undisputed case of the parties that applicant was enrolled in the Indian Navy on 03.08.1995 and was discharged from service on 31.08.2010 on completion of terms of engagement. The applicant was in low medical category and his Release Medical Board was conducted on 22.05.2010 at Kochin. The Release Medical Board assessed applicant's disability @15-19 % for life as NANA by Naval service.

7. With regard to submission of Ld. Counsel for the applicant that applicant's disability cannot be assessed less than 20% because 20% is a minimum percentage we have gone through the Para 24 (d) (iv) of Chapter VII of Amendment to Chapter VI & VII Guide to Medical officers (Military Pensions), 2008 wherein we do not find any mention with regard to applicant's disability i.e. '**MACULOPATHY BOTH EYE ICD H 31**'. As such it is incorrect to say that applicant's disability cannot be assessed less than 20%.

8. As per Regulation 105-B of The 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, applicant does not fulfil the requirement of Regulation 105-B of The Navy (Pension) Regulations, 1964.

9. 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.”

10. Further, contrary view to Release Medical Board dated 22.05.2010 to the extent of holding the applicant's disability @15-19% for life is not tenable in terms of Hon'ble Apex Court judgment in the case of **Bachchan Prasad vs Union of India & Ors**, Civil Appeal No. 2259 of 2012, decided on 04th 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)

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

12. In addition to above, a bare reading of Regulation 105-B of The 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.”

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

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

15. No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated: 12 November, 2024

AKD/-