

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 57 of 2024

Friday, this the 22nd day of November, 2024

“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Lt. Gen. Anil Puri, Member (A)”

JC-703769P Sub/AA Sanjay Kumar Singh (Retd) son of Kanhaiya Prasad Singh, Resident of Village Mainpur, District Gazipur, Present Address H. No. 11/15-S, Yamuna Nagar Colony, Tarna, Shivpur, Varanasi, Uttar Pradesh-221003.

.... Applicant

Ld. Counsel for the : **Shri Satendra Kumar Singh**, Advocate
 Applicant **Shri Shailendra Kumar**, Advocate
(None is present at the time of hearing)

Versus

1. The Chief of the Army Staff, Army Headquarters, D.H.Q., south Block, New Delhi-110011.
2. Dte Gen of EME (EME Pers) Master General of Ordinance Branch, Integrated HQ of MoD (Army), DHQ PO, New Delhi-110105.
3. Senior Record Officer, Army Medical Corps Record Office, C/o 56 A.P.O., Lucknow.
4. Authorized Officer of P.C.D.A. (Pension), Draupadi Ghat, Prayagraj.

... Respondents

Ld. Counsel for the: **Shri Ashish Kumar 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:-

1. *issue a direction to quash the order dated 31.03.2022 passed by competent authority as contained in Annexure No. 1 for not consider **POSTERIOR POLAR CATEARACT (RE)** disease neither attributable to nor aggravated by Military service as recorded in release medical board proceedings.*
2. *issue a direction to competent authority concerned to provide disability pension to the applicant for the medical category **S1H1A1P1E2 for POSTERIOR POLAR CATERACT (RE) H-26.8** as assessed by release medical board in 2018 during army service which is prevailing till date.*
3. *issue any other order or direction which this Hon’ble Court may deem fit and proper may also be passed on the basis of the aforesaid case in favour of the applicant.*
4. *Award the cost of petition/O.A.*

2. Briefly stated, applicant was enrolled in the Army Medical Corps of Indian Army on 15.02.1994 and discharged with effect from 28.02.2022 (AN) in Low Medical Category on fulfilling the conditions of his enrolment under Rule 13 (3) Item I (i) (a) of the Army Rules, 1954 after rendering 28 years and 14 day of service. The applicant is in receipt of Service Pension. Before discharge from service, the Release Medical Board (RMB) held at Military

Hospital, Agra on 17.12.2021 assessed his disability **‘POSTERIOR POLAR CATARACT (RE) (H-26.8)’ @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 31.03.2022. The applicant preferred First Appeal dated 05.03.2022 which too was rejected vide letter dated 12.01.2023 which was communicated to the applicant vide letter dated 21.01.2023. The applicant preferred Second Appeal dated 11.03.2023 which returned by the respondents vide letter dated 03.04.2023. It is in this perspective that the applicant has preferred the present Original Application.

3. The applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. His disease was contracted during the service, hence it is attributable to and aggravated by Military Service. On the basis of low medical category the authorities concerned have discharged the applicant from service on 28.02.2022 without providing disability for the aforesaid disease which was diagnosed in the year 2018 during army service. The applicant pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability element of disability 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% as NANA, therefore, condition for grant of disability element of pension does not fulfil in terms of Regulation 53(a) of Pension Regulations for the Army, 2008 (Part-I) and, therefore, the competent authority has rightly denied the benefit of disability element of pension to applicant. He pleaded for dismissal of Original Application.

5. We have heard Ld. Counsel for the respondents 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 Army on 15.02.1994 and discharged from service on 28.02.2022 on completion of terms of engagement. The applicant was in low medical category and his Release Medical Board was conducted on 17.12.2021 at Military Hospital, Agra. The Release Medical Board assessed applicant's disability @15-19% for life as neither attributable to nor aggravated by military service.

7. As per Regulation 53(a) of Pension Regulations for the Army, 2008 (Part - I), 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 as NANA, applicant does not fulfil the requirement of Regulation 53(a) of Pension Regulations for the Army, 2008 (Part-I).

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 17.12.2021 to the extent of holding the applicant's disability @15-19% for life as NANA 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)

10. 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.

11. In addition to above, a bare reading of Regulation 53(a) of Pension Regulations for the Army, 2008 (Part-I), 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 on merit**.

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

14. No order as to costs.

(Lt. Gen. Anil Puri)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated: 22 November, 2024

AKD/-