

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****Original Application No. 58 of 2021**Tuesday, this the 12th day of October, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)J.C. No. 379083 Ram Shiromani Shukla, S/o Sri G.S. Shukla,
R/o Pandit Deen Dayal Upadhyay Nagar, Arjunganj, Lucknow.**.... Applicant**Ld. Counsel for the Applicant : **Shri B.B. Tripathi**, Advocate and
Shri Amit Verma, Advocate
Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi.
2. Additional Director General of Pers. Services/PS-4 (Imp II), Adjutant General's Branch, Integrated Headquarters of MoD (Army), DHQ, P.O. New Delhi-110011. .
3. Senior Record Officer, The Records Signals, PIN 908770, C/o 56 APO.
4. The Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad-211014.

... RespondentsLd. Counsel for the Respondents: **Shri Ram Saran Awasthi**, Advocate
Central Govt Counsel.**ORDER****"Per Hon'ble Mr. Justice Umesh Chandra Srivastava, 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 quash the order dated 07th September, 2013 passed by the respondent No. 3 contained in Annexure no. 1, dismissing the appeal of the applicant as time barred and order dated 31st May, 2012, contained in Annexure no. 2, passed by the respondents no. 3 denying the disability pension to the applicant with all benefit of service.*
- {b) *issue an order, direction and command to the respondents to pay disability pension to the applicant to the extent of 30% from the due date along with arrears thereof with interest @12% per annum.*
- {c) *issue an order, direction and command to the respondents to consider and decide the claim of the applicant, contained in Annexure no. 12, dated 10.07.2020 within the time frame so fixed by this Hon'ble Tribunal by granting the relief(s) as prayed for therein.*
- {d) *issue such other order/direction which may be deemed just and proper in the circumstances of the case.*
- {e) *allow the Original Application with cost against the respondents in view of the facts and circumstances, legal provisions and Grounds raised in the Application.*

2. Briefly stated, applicant was enrolled in the Corps of Signals of Indian Army on 28.02.1986 and was discharged on 29.02.2012 (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. At the time of discharge from service, the Release Medical Board (RMB) held at Military Hospital, Shillong on 12.09.2011 assessed his disability '**CSOM (LT) OPTD**' @ 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 31.05.2012. The applicant preferred First Appeal which too was rejected vide letter dated 07.09.2013. 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 Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. The disease of the applicant was contracted during the service, hence it is attributable to and aggravated by Military Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted 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%, 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 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 and, if so, whether it is above or below 20% and also whether applicant was invalidated out of service on account of the disability?

6. It is undisputed case of the parties that applicant discharged from service on 29.02.2012 (AN) on completion of terms of engagement. The applicant was in low medical category and his Release Medical Board was conducted on 12.09.2011 at Military Hospital, Shillong. The Release Medical Board assessed applicant's disability @ 15-19% for life 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, 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 12.09.2011 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 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**.
13. Pending application, if any, stands disposed of.
14. No order as to costs.

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

Dated: 12 October, 2021

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