

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 76 of 2021**Wednesday, this the 13th day of October, 2021**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Ex. 14406239H Nk. (Hony. Hav.) Sushil Kumar of Artillery Regiment, S/o Shri Yogendra Singh, R/o Mohalla Indra Nagar, Post and Tehsil – Chhibramau, District Kanpur (UP)-209721.

..... Applicant

Ld. Counsel for the : **Shri R.N. Tripathi**, Advocate
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi.
2. OIC, The Artillery Reocrd. .
3. PCDA (P), Prayagraj (Allahabad).

.....**Respondents**Ld. Counsel for the : **Shri Arun Kumar Sahu**, Advocate
Respondents. Central Govt. Counsel**ORDER****“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs :-

- (a) *An order or direction quashing the order passed by the OP No. 3 dated 11 Nov 2014 mentioned in the Annexure No. A-1 and directing the respondents to pay the disability pension to the applicant since the date of his discharge (01 Jan 2014).*
- (b) *To allow the OA with the costs.*
- (c) *Any other or further order or direction which this Hon'ble Court may deem just, fit and proper in the circumstances of the case.*

2. Briefly stated, applicant was enrolled in the Indian Army on 18.12.1991 and was discharged on 31.12.2013 (AN) in Low Medical Category on fulfilling the conditions of his enrolment under Rule 13 (3) Item III (i) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at Military Hospital, Jalandhar on 13.08.2013 assessed his disability **'SECONDARY GLAUCOMA (RE) AGV (FP-7) DONE WITH PSEUDOPHAKIO RIGHT EYE'** @ 15-19% for life and opined the disability to be neither attributable to nor aggravated by military service. On being preferred First Appeal, First Appeal Medical Board was held at Base Hospital, Delhi Cantt. On 06.08.2018, wherein degree of disablement has been assessed at 30% for life and opined the disability as **attributable to military service**. Accordingly, the applicant has been granted disability element pension @30% for life with effect from 06.08.2016 vide PCDA (P) Allahabad PPO dated 24.01.2019. The applicant has not been granted disability element from the date of his discharge. 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. The disease of the applicant was contacted during the service and it is opined by the RMB as attributable to military service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant is entitled to rounding off of disability element from 30% to 50% from the date of discharge to 05.08.2016 also.

4. On the other hand, Ld. Counsel for the respondents contended that on the application being submitted by the applicant the disability element @30% for life has been granted with effect from 06.08.2016 i.e. date on which First Appeal Medical Board was held. He pleaded for dismissal of the Original Application.

5. We have heard Ld. Counsel for the respondents. We have also gone through the records and we find that the only question which needs to be answered is whether the applicant is entitled for the grant of disability element of disability pension from the date of his discharge to 05.08.2016?

6. It is observed that claim for pension is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. In the case of **Shiv Dass vs. Union of India**, reported in 2007 (3) SLR 445, Hon'ble Apex Court has observed:

“In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”

7. As such, in view of the decision of Hon'ble Supreme Court in the case of **Shiv Dass (supra)**, we are of the considered view that benefit of disability element @ 30% may be extended to the applicant only from three preceding years from the date of filing of the Original Application and the date of filing of Original Application is 15.11.2019. We further observed that the applicant's disability element has already been granted from 06.08.2016 in terms of First Appeal Medical Board recommendation. As such the applicant is not entitled for grant of disability element from the date of discharge to 05.08.2016.

8. In view of the above, the Original Application is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**

9. No order as to costs.

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

Dated : 13 October, 2021

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