

COURT No.1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 290 of 2022**

Friday, this the 07th day of October, 2022

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

No 14911261A Ex Naik Anjani Kumar, son of Shri Ram Narayan,
 Resident of Village and Post-Babai, District-Jalaun (UP).

..... Applicant

Learned counsel for the : **Shri R Chandra**, Advocate
 Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi-11.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), DHQ, PO-New Delhi-11.
3. The Officer-in-Charge, Records The Mechanised Infantry Regiment, Ahmednagar-414110.
4. The Chief Controller Defence Accounts, Draupadi Ghat, Allahabad (UP).

.....Respondents

Learned counsel for the : **Mrs Amrita Chakraborty**, Advocate
 Respondents. Central Govt. Counsel

ORDER (Oral)

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

- (a) *Hon'ble Tribunal may be pleased to set aside the impugned order dated 05.10.2000 (Annexure NoA-1).*
- (b) *Hon'ble Tribunal may be pleased to direct the respondents to grant disability element with effect from 08.06.2000 with the interest at the rate of 18% per annum.*
- (b) *Hon'ble Tribunal may be pleased further to grant benefit of rounding of disability pension @ 50% in terms of Ram Avtar's case.*
- (d) *Any other appropriate order or direction which the Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case.*

2. The brief facts of the case are that the applicant was enrolled in the Indian Army on 12.11.1983 and was discharged from service w.e.f. 30.09.1995 (AN) in low medical category under Rule 13 (3) III (v) of Army Rules, 1954. Release Medical Board (RMB) held on 08.06.1995 considered his disability 'Bubonocoele (It) (550-V/67)' @ 15-19% for two years and aggravated by military service. After discharge from service he was granted service pension vide PPO No D/002090/96 dated 28.01.1997. His claim for grant of disability element of pension was rejected vide order dated 28.01.1997 on the ground of disability being below 20%. His first appeal was rejected vide order dated 31.03.1999. Meanwhile, applicant's Re-survey Medical Board (RSMB) was conducted on 13.03.2000 which assessed his disability @ Nil for life. Feeling aggrieved with the outcome of RSMB the applicant applied for Review Medical Board which was held on 20.07.2007 at Army Hospital (R&R) and his medical disability was assessed as Nil for life. Being dissatisfied with the result of RSMB applicant has filed this O.A. for grant of disability element of pension.

3. Learned Counsel for the applicant submitted that at the time of enrolment the applicant was examined by the Medical Board and was found medically and physically fit for a service in the Indian Army and there is no note, whatsoever, in his service documents that he was suffering from any disease/disability at the time of entry into service. Ld. Counsel for the applicant further submitted that the applicant was first detected to be suffering from the aforesaid disability w.e.f. 01.08.1989 i.e. after completion of more than six years of service. He further submitted that the applicant had to undergo frequent Re-categorization Medical Boards and he was finally placed in low medical category CEE (permt) for the disability 'Bubonocoele (It) (550-V/67)' and was assessed @ 15-19% for two years aggravated by military service. He pleaded that the applicant should be granted disability element of pension duly rounded off to 50% for life as per recommendation of the initial RMB.

4. Per contra, Ld. Counsel for the respondents submitted that the PCDA (P), Allahabad has rejected disability element of pension claim of the applicant on the ground that though the disability 'Bubonocoele (It) (550-V/67)' is aggravated by military service but it is below 20%. As such his claim for disability element of pension has been rightly rejected in accordance with Para 173 of the Pension Regulations for the Army, 1961 (Part-I) which clearly states that disability pension is admissible to an individual who is invalided out from service on account of disability, which is attributable to or aggravated by military service and is assessed at 20% or more. He pleaded for dismissal of O.A. on the ground of disability being below 20%.

5. Heard Shri R Chandra, Ld. Counsel for the applicant and Mrs Amrita Chakraborty, Ld. Counsel for the respondents and perused the records. We have also perused the RMB and RSMB proceedings.

6. It is undisputed fact of the parties that the applicant was enrolled in the Army on 12.11.1983 and he suffered the disability 'Bubonocoele (It) (550-V/67)' in the year 1989. The applicant served in the Army in sheltered appointment and on non-availability of the same he was discharged from service on 30.09.1995 (AN). Prior to discharge he underwent RMB as per which his disability percentage was 15-19% for two years. Claim for disability element of pension was rejected by PCDA (P), Allahabad on 28.01.1997 being below 20%. Feeling aggrieved applicant preferred first appeal which too was rejected vide order dated 31.03.1999. Thereafter, his RSMB was conducted on 13.03.2000 which assessed his disability as Nil for life. Against decision of the RSMB applicant applied for Review Medical Board which was held at Army Hospital (R&R), Delhi Cantt on 20.07.2007 and assessed his medical disability @ Nil for life. It was further mentioned in the RMB that the medical disability has been fully cured.

7. Further, Since the applicant's services were cut short and he was removed from service on medical grounds by the RMB, his discharge will be deemed to be a case of invalidation out in terms of Regulation 173-A of Pension Regulations for the Army, 1961 which reads as under:-

"173-A. Individuals who are placed in a lower medical category (other than 'E') permanently and who are discharged because no alternative employment in their own trade/category suitable to their low medical category could be provided or who are unwilling to accept the alternative employment or who having retained in alternative appointment are discharged before completion of their engagement, shall be deemed to have been invalided from service for the purpose of the entitlement rules laid down in Appendix II to these Regulations.

Note. *The above provision shall also apply to individuals who are placed in a low medical category while on extended service and are discharged on that account before the completion of the period of their extension".*

8. Since it is a deemed case of invalidation, his disability of 15-19% for two years will be presumed to be 20% for two years which the applicant is entitled to receive from his date of discharge. Applicant has also pleaded in the O.A. for rounding off of disability element. In this regard we observe that since provision with regard to rounding off of disability element came into existence w.e.f. 01.01.1996 and since the applicant was discharged from service w.e.f. 30.09.1995, this provision is not applicable in his case.

9. In view of the above, the Original Application No. 290 of 2022 deserves to be partly allowed, hence **partly allowed**. The impugned order dated 05.10.2000 is set aside. The respondents are directed to grant disability element of pension to the applicant @ 20% for two years w.e.f. 01.10.1995. It is further clarified that since disability element in respect of the applicant was assessed as NIL in RSMB and Review Medical Board, he is not entitled to further disability element of pension as claimed. The respondents are directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 8% p.a. till actual payment.

10. No order as to costs.

11. Miscellaneous application(s), pending if any, stand disposed of.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 07.10.2022

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