

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 254 of 2023**

Monday, this the 16th day of October, 2023

Hon'ble Mr. Justice Ravindra Nath Kakkar, Member (J)
Hon'ble Vice Admiral Atul Kumar Jain, Member (A)

No. 15397444W, Ex. Hav. Yogesh Pal, S/o Late Sumer Pal,
 Resident of Village – Sunasi Madiya, Post – Mallawan, Tehsil –
 Bilgram, District – Hardoi -241303.

.... **Applicant**

Ld. Counsel for the: **Shri Girish Chandra Tripathi**, Advocate
 Applicant Holding brief of
Shri Manoj Kumar Awasthi, Advocate

Versus

1. Union of India, through its Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. The Officer – in- Charge, Records Officer, The Records Signals, PIN – 908770 C/o 56 APO.
3. The Appellate Committee on First Appeal (ACFA), Dir PS-4 (Imp-II), AG's Branch, Integrated Head Quarters of MoD (Army), New Delhi -110011.
4. The PCDA (Pension), Draupadhi Ghat, Allahabad (Prayagraj).

... **Respondents**

Ld. Counsel for the: **Shri Adesh Kumar Gupta**, Advocate
 Respondents. Central Govt Standing Counsel.

ORDER

“Per Hon'ble Mr. Justice Ravindra Nath Kakkar, 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 or directions to set aside/ quash the rejection order dated 08.05.2022, which is annexed as Annexure No.1 to this original application.*
- B. *to issue/ pass an order or directions to the respondents for grant of disability element of disability pension from date of Discharge i.e 30.04.2022 and rounding of disability pension up to 50% along with 12% interest of the arrear from the date of discharge i.e. 30.04.2022.*
- C. *To issue pass an order or directions to respondents to grant benefit of Rounding off Disability Element of disability pension @05% to @ 50% for life to the applicant and pay due arrear interest including consequential benefits with interest @12% p.a. till final payment is made in light of Hon'ble Apex Court judgments and 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 Original Application.*

2. Briefly stated, applicant was enrolled in the Corps of Signals Indian Army on 25.04.1996 and discharged on 30.04.2022 (AN) in Low Medical Category on fulfilling the conditions of his enrolment after rendering 26 years and 06 days of service 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 181 Military Hospital on 22.03.2022 assessed his disability '**INTRA OCULAR FOREIGN BODY LEFT EYE (OPTD) (ICD CODE H44.7)**' @5% for life opined the disability to be **Attributable** to military service. The applicant's claim for grant of disability pension was rejected vide letter dated 08.05.2022. The applicant preferred First Appeal

dated 28.07.2022 but of no avail. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that applicant's disability has been opined as attributable to military service by the RMB but it has been wrongly assessed @5% for life which is against the existing rules and regulations. He relied upon the law laid down by the Hon'ble Apex Court in the case of **Sukhwinder Singh Vs. Union of India & Others** (Civil Appeal No. 5605 of 2010, decided on 25.06.2014). He further 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 although the applicant's disability has been opined as attributable to military service but since the assessment of the disability element is @5% 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 applicant's disability 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 was enrolled in the Indian Army on 25.04.1996 and discharged from service on 30.04.2022 on completion of terms of engagement. The applicant was in low medical category and his Release Medical Board was conducted on 22.03.2022 at 181 Military Hospital. The Release Medical Board assessed applicant's disability @5% for life is **attributable** to 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. Although the applicant's disability is attributable to military service but since, applicant's disability element is @5% 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 22.03.2022 to the extent of holding the applicant's disability at @5% 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.

15. Ld. Counsel for the applicant orally submitted to grant Leave to Appeal against the above order which we have considered and no point of law of general public importance being involved in the case the plea is rejected.

(Vice Admiral Atul Kumar Jain)
Member (A)

Dated: 16 October, 2023

AKD/Ashok/-

(Justice Ravindra Nath Kakkar)
Member (J)