

Court No.1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

Original Application No. 476 of 2018

Tuesday this the 24th day of November 2020

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

Service No. 1057456, Ex. SWR Chandra Bhan Singh, sonof Sri Hukum Singh, resident of Village and Post baseri Chahar, Village Kirawali, District – Agra, U.P.

..... Applicant

Ld. Counsel for the: **Shri V.P. Pandey, Advocate**
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence Government of India, New Delhi-110011.
2. Chief Controller of Defence Account (Pension), Dropadi Ghat, Allahabad.
3. Officer Incharge Records, The Armoured Corps, Ahmednagar-414002.

..... Respondents

Ld. Counsel for the
Respondents

: **Shri D.K. Pandey,**
Central Govt Counsel.
Assisted by Maj. Sini Thomas,
Departmental Representative

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

1. Heard Shri V.P. Pandey, Ld. Counsel for the applicant and Shri D.K. Pandey, Ld. Counsel for the respondents assisted by Major Sini Thomas, Department Representative.
2. Being aggrieved with the denial of disability pension applicant had filed Writ Petition No. 38710 of 1997 before the Hon’ble High Court of Judicature at Allahabad, which after constitution of the Armed Forces Tribunal was transferred to this Tribunal and registered as T.A. No. 31 of 2013. The applicant in the said petition had sought relief for payment of disability pension @20% for two years with prayer for rounding off the same to 50%.
3. The case of the applicant in the Transferred Application was that he was enrolled in the Indian Army on 05.05.1976 and after having rendered four years, four months and twelve days of service was discharged from service on 17.09.1980 in low medical category “EEE” due to disease “**IDIOPATHIC EPILEPSY**” under Rule 13 (3) item III (iii) of the Army Rules, 1954 with disability for two years which according to medical board was not attributable to army service. Applicant had preferred disability pension claim which was rejected by the Principal Controller of Defence Accounts (Pension), Allahabad

vide order dated 22.04.1981 and Appeal against the same was also rejected vide order dated 23.09.1983 where after Writ Petition (now T.A.) was filed.

4. In the Transferred Application it was submitted by the applicant that he was not suffering from any disease before joining the army nor there was any note of such disease or disability in his service record at the time of enrollment and, therefore, he was entitled to disability pension.

5. The T.A. was vehemently opposed by the respondents inter-alia on the ground that applicant's disability being not attributable to military service claim for disability pension was rightly rejected as per paragraph 173 of Pension Regulations, 1961, which says that pension may be granted to an individual who is invalided out from service on account of disability, which is attributable to or aggravated by military service and percentage of disablement is assessed as 20% or more.

6. This Tribunal, after having heard the Ld. Counsel of both sides and having gone through relevant provisions relating to disability pension and keeping in view the Judgment of Hon'ble Apex Court in the case of **Sukhvinder Singh vs Union of India & Ors**, Civil Appeal No. 5604 of 2010, decided on 25.06.2014, allowed the T.A. vide order dated 08.05.2017 and directed the respondents to grant disability pension to the

applicant @20% for two years from the date of discharge, which would stand rounded off to 50%. The respondents were further directed to refer the petitioner's case to Re-Survey Medical Board for reassessing the medical condition of the petitioner for further entitlement of disability pension, if any.

7. In compliance of the order passed by this Tribunal, applicant was given disability pension @20% for a period of two years and Re-Survey Medical Board was also conducted in his matter on 10.04.2018 in which despite applicant's disability was found 20% for life as earlier, however, his claim for disability pension was rejected on account of Net Assessment of disability being assessed Nil. Being aggrieved with the same, applicant has filed this Original Application to quash the order of net assessment in Re-Survey Medical Board, contained in Annexure No. A-1 to the Original Application and to pass suitable order regarding grant of disability pension to applicant.

8. Ld. Counsel for the applicant submitted that finding of Net Assessment as Nil by the Re-Survey Medical Board, which became the cause for rejecting the claim for disability pension to the applicant, is contrary to the percentage of disability recorded as 20% for life, as earlier and applicant's condition static is factually incorrect and is liable to be

quashed. He further submitted that if applicant's condition is static and his disability is 20% as recorded in the Re-Survey Medical Board proceedings, finding of net assessment as Nil is not only surprising but against the fact, hence liable to be discarded and applicant is liable to be allowed disability pension @20% for life.

9. Ld. Counsel for the respondents has not denied the fact that in Re-Survey Medical Board proceeding applicant's condition was found static and his disability was also assessed at 20% for life as earlier. He also not denied that in view of static condition of the applicant and disability being the same as earlier, it would not be true to say that applicant is not suffering with the same disability as earlier. However, he submitted that net assessment of disability being assessed Nil by the Re-Survey Medical Board, applicant is not entitled to disability pension and his claim for disability pension has been rightly rejected.

10. After having heard the submissions of Ld. Counsel of both sides and having gone through the report dated 10.04.2018 of the Re-Survey Medical Board, which clearly states that applicant's condition was static and he was having disability as 20% for life like earlier, there could be no occasion for Re-Survey Medical Board for recording net

assessment of the disability as Nil as reported in the report. This assessment of Re-Survey Medical Board being against the factual position regarding applicant's disability is not only liable to be discarded, but applicant is also liable to get disability pension @20% for life with effect from the date of Re-Survey Medical Board i.e. 10.04.2018 which would stand rounded off to 50%.

11. Accordingly, Original Application is **allowed** and applicant is held entitled to get disability pension @20% for life which would be rounded off to 50% w.e.f. 10.04.2018. The entire exercise including payment of arrears shall be completed by the respondents within four months from the date of production of a certified copy of this order, failing which the respondents shall be liable to pay interest at the rate of 9% to the applicant on the amount accrued till the date of actual payment.

12. No order as to costs.

(Vice Admiral Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 24 November 2020

AKD/-