

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
CIRCUIT BENCH AT NAINITAL**

Original Application No. 728 of 2022

Friday, this the 22nd day of September, 2023

**“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

Pancham Singh, Ex. Sep. 14372632W S/o Sri Ganga Singh, R/o Mohalla – Madhuwan Colony, Peerumadara, P.O. – Peerumadara, District Nainital (Uttarakhand).

.... **Applicant**

Ld. Counsel for the Applicant : **Shri Kishore Rai**, Advocate
Holding brief of
Shri Suresh Chandra Bhatt, Advocate
Shri Abhishek Dutt, Advocate
Versus

1. Union of India, through Secretary, Ministry of Defence, Secretariat, New Delhi.
2. The Director Pension and Pensionary Welfare, Room No. 320, 3rd Floor, Lok Nayak Bhawan, Khan Market, New Delhi.
3. The Nodal Grievances Officer, Ministry of Defence, Room No. 154, B Wing, Sena Bhawan, New Delhi.
4. Pension Grievance Cell, Ministry of Defence, Room No. 206, A Wing, Sena Bhawan, New Delhi-110011.
5. The Senior Accounts Officer (AT-1), Office of the Controller General of Defence Accounts, Ulan Batar Road, Palam, Delhi Cantt-10.
6. The Public Grievance Officer (PGO), Office of the Pr. CDA (Pension), Draupadi Ghat, Allahabad-211014.
7. The Senior Record Officer, EME, Secunderabad-500021.
8. The PCDA (P), Allahabad.

... **Respondents**

Ld. Counsel for the Respondents: **Shri Rajesh Sharma**, Advocate
Central Govt 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) *Set aside the impugned orders dated 11.01.2019 passed by First Appellate Authority and order dated 04.11.2019 passed by Second Appellate Authority.*
- b) *Issue a direction to the respondents to calculate the pensionary benefits payable to the petitioner on the basis of his service length of more than 24 years.*
- c) *Issue a direction to the respondents to pay the pension and other benefits to the petitioner on the basis of his service length of more than 24 years.*
- d) *Issue any other or further direction which this Hon’ble Tribunal may deem fit and proper in the circumstances of the case.*
- e) *To award the cost of the petition in favour of the petitioner.*

2. Briefly stated, applicant was enrolled in the Indian Army on 27.07.1983 and was discharged on 31.08.2007. The applicant was re-enrolled in Defence Security Corps (DSC) on 11.03.2008 and was discharged on 31.03.2018 in Low Medical Category on initial terms of engagement after rendering 10 years and 21 days of under Rule 13 (3) Item III (i) of the Army Rules, 1954. He was not granted extension of service beyond initial terms of engagement due to unacceptable medical criteria. At the time of discharge from DSC service, the Release Medical Board (RMB) assessed his disability ‘**CAVERNOMA (RT) CEREBELLUM**’ @6-

10% 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 19.03.2018. The applicant preferred First Appeal which too was rejected vide letter dated 11.01.2019. The applicant preferred Second Appeal which too was rejected vide letter dated 04.11.2019. 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/injury 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 element of disability pension and it's rounding off to 50%.

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 @6-10% i.e. below 20% as NANA, 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. The question in front of us is straight; whether the disability is attributable to/aggravated by military service, whether it is above or below 20% and whether applicant was invalidated out of service on account of the disability or was discharged on completion of terms of engagement?

6. It is undisputed case of the parties that applicant was enrolled in the Indian Army on 27.07.1983 and discharged from service on 31.07.2007. He was re-enrolled in DSC on 11.03.2008 and discharged from DSC service on 31.03.2018 (AN) on completion of initial terms of engagement. The applicant was in low medical category and his Release Medical Board was conducted at the time of discharge. The Release Medical Board assessed applicant's disability @6-10% 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 @6-10% 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 initial terms of engagement of DSC, 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 to the extent of holding the applicant's disability @6-10% 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)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated: 22 September, 2023

AKD/-