

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 631 of 2020**Thursday, this the 23rd day of September, 2021**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 13809418 Ex. Sep. Surendra Kumar S/o Late Sate Salik Ram, R/o Village – Chawan, PO – Amita Mau, District Sita Pur (UP).

..... **Applicant**Ld. Counsel for the Applicant : **Shri Parijaat Belaura**, Advocate.

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi.
2. Addl. Dte. Gen. Personnel Services, Adjutants General’s Branch, Integrated Head Quarters, Ministry of Defence (Army), Room No. 11, Plote No. 108 (West), Barassey Avenue, Church Road, New Delhi-110001.
3. Officer-in-Charge, ASC Records (South/MT), Bangalore, Karnataka.
4. The Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (UP).

.....**Respondents**Ld. Counsel for the Respondents. : **Shri Ashish Kumar Singh**, Advocate
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 :-

- (I) To grant disability Pension @20% and round of the same to 50% giving the benefit of Govt. of India, Min. of Def. Letter dated 31.01.2001, w.e.f. date of discharge of applicant i.e. 10.01.1978.*
- (II) to pay arrear of Disability Pension along with 12% interest from the date of his discharge i.e. 10.01.1978 till it is actually paid.*
- (III) Any other suitable relief this Hon'ble Court deems fit and proper may also be granted.*

2. Briefly stated, applicant was enrolled in the Indian Army on 21.10.1973 and was invalided out from service on 19.11.1977 in Low Medical Category days of service under Rule 13 (3) Item III (ii)(a)(i) of the Army Rules, 1954. As per Original Application, at the time of invalidation from service, the Release Medical Board assessed his disability '**SEIZURE DISORDER**' @ 20% for life and 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 03.11.1978. The applicant preferred representation dated 28.01.2020 but all in vain. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned counsel for the applicant submitted that applicant was found fit in all respects at the time of enrolment in the army and there was no note in his primary service documents with regard to any disease/disability. Therefore, whatever disease with which applicant suffered during service is attributable to military

service. Learned counsel for the applicant also relied upon judgment of the Hon'ble Apex Court in the case of ***Union of India and Another Versus Rajbir Singh***, Civil Appeal No. 2904 of 2011, decided on 13.02.2015, and Govt of India letter dated 31.01.2001 and pleaded that disability pension be granted to the applicant and benefit of rounding off to 50% from the date of discharge.

5. On the other hand, learned counsel for the respondents submitted that disability pension of the applicant was rejected by the respondents stating that disability of the applicant is neither attributable to nor aggravated by military service and does not fulfil the conditions. He further submitted that applicant was non pensioner, therefore, his medical documents including constituents thereof have been destroyed after expiry of retention period as per para 595 of Regulations for the Army 1987. Long Roll in respect of pensioners and non- pensioners are retained for a period of 50 years and 25 years respectively from the date of becoming non-effective. Further submission of learned counsel for the respondents is that since documents relating to applicant have been destroyed on expiry of mandatory retention period of 25 years being a non-pensioner, therefore, degree of disablement cannot be ascertained at this stage. He pleaded the Original Application to be dismissed being devoid of merit.

6. Heard Ld. Counsel of both sides and perused the records and we find that documents relating to ex army person have been

destroyed after mandatory retention period in terms of para 595 of Regulations for the Army, 1987. We could have decided the case, had there been related medical documents pertaining to the applicant and applicant could have been benefitted, but we are unable to impart justice in the absence of requisite medical documents.

8. In view of the above, we are unable to decide the case in vacuum after a prolonged gap of more than 42 years from the date of invaliding out from service. Original Application is devoid of merit and is liable to be dismissed. It is accordingly dismissed.

9. Pending misc. applications, if any, are disposed off.

12. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 23 September, 2021

AKD/-