

Court No. 1 (E-Court)**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 866 of 2021**Friday, this the 29th day of April, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)IC-45516P Col. Eftekhar Ali Khan S/o Shri Ethesham Ali Khan
R/o House No. 5/573, Sector-5, Water Tank, Vikas Nagar,
Lucknow-226022.**.... Applicant**Ld. Counsel for the Applicant : **Shri Anand Yadav**, Advocate
Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi-110011.
3. Additional Directorate General Personal Service, Adjutant General's Branch/ Integrated Headquarter of the Ministry of Defence (Army), Room No.11, Plot No. 108 (West), Brassy Avenue, Church Road, New Delhi-110001.
4. Additional Directorate General Personal Service, Adjutant General's Branch/PS-4 (Imp-II), Integrated Headquarter of the Ministry of Defence (Army), Plot No. 108 (West), Brassy Avenue, Church Road, New Delhi-110001.

... RespondentsLd. Counsel for the Respondents : **Shri Yogesh Kesarwani**, Advocate
Central Govt Counsel.

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, 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) Issue/pass an order or direction of appropriate nature whereby commanding the respondents to produce the record in original and thereafter quash the orders by which the claim of the applicant for disability pension was rejected.

(b) Issue/Pass an order or direction of appropriate nature whereby commanding the respondents to decide the second appeal of the applicant filed against the rejection of First Appeal for disability pension.

(c) Issue/pass an order or direction of appropriate nature whereby commanding the respondents to grant the disability pension to the applicant forthwith.

(d) Allow the application with all consequential benefits with exemplary cost.

2. Briefly stated, applicant was commissioned in the Indian Army on 09.03.1985 and was retired from service on 30.06.2016 (AN) on superannuation in Low Medical Category. At the time of retirement from service, the Release Medical Board (RMB) held at Military Hospital Agra, Agra Cantt. on 13.01.2016 assessed his disability ‘**PRIMARY OPEN ANGLE GLAUCOMA BOTH EYES WITH NON ISCHEMIC CRVO (RT) EYE (I.C.D..H 40.1H 34.8)**’ @**15-19** % for life opined the disability to be neither attributable to nor aggravated by service. The applicant’s claim for grant of

disability pension was rejected vide letter dated 05.04.2016. The applicant preferred First Appeal which too was rejected vide letter dated 28.09.2018. The applicant also preferred Second Appeal 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 at the time of commission, 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 commission in Army. The disease 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 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 since the assessment of the disability element is 15-19% i.e. below 20% as NANA, therefore, condition for grant of disability element of pension does not fulfil in terms of Regulation 37 of Pension Regulations for the Army, 2008 (Part-I) and, therefore, the competent authority has rightly denied the benefit of disability 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 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 retired on superannuation?

6. It is undisputed case of the parties that applicant was commissioned in the Indian Army on 09.03.1985 and was retired from service on 30.06.2016 on superannuation. The applicant was in low medical category and his Release Medical Board was conducted on 13.01.2016 at Military Hospital Agra, Agra Cantt.. The Release Medical Board assessed applicant's disability @ 15-19% for life neither attributable to nor aggravated by military service.

7. As per Regulation 37 of Pension Regulations for the Army, 2008 (Part - I), disability 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 15-19% for life as NANA, applicant does not fulfil the requirement of Regulation 37 of Pension Regulations for the Army, 2008 (Part-I).

8. Since applicant was retired from service on superannuation, 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 13.01.2016 to the extent of holding the applicant's disability at 15-19% for life as NANA 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 37 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 pension 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.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 29 April, 2022

AKD/-