

Reserved
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 581 of 2023

Monday, this the 08th day of April, 2024

“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”

No. 132340 Z Bimal Kumar Roy, Ex-CHMECH (P), S/o Sri Baleshwar Roy, Resident of House No. T-9, 903, Mandakini Enclave, Awadh Vihar Yojana, Lucknow, Uttar Pradesh-226003.

.... Applicant

Ld. Counsel for the : **Shri Manish Kumar Rai**, Advocate
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi-110011.
2. Chief of the Naval Staff, Ministry of Defence (Navy), Integrated Headquarters, Sena Bhawan, New Delhi-110011.
3. Logistic Officer In-Charge, Naval Pension Office (NAVPEN) INS Tana Ji, Sion – Trombay Road, Mankhurd, Mumbai-400088.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad, Uttar Pradesh-211014.

... Respondents

Ld. Counsel for the: **Shri Arun Kumar Sahu**, Advocate
Respondents. Central Govt Standing Counsel.

ORDER

“Per Hon’ble Mr. Justice Anil Kumar, 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 Quash or set aside the Impugned order No. PEN/600/D/LRDOI : 01/2022/132340Z dated 06 Jan 2022 passed by respondent, by which the claim for grant of disability pension in respect of applicant has been rejected, contained as Annexure 1 to this Original Application.*
- (b) *To issue/pass an order or directions to opposite parties to grant the disability element of pension to the applicant @20% for life from the next date of his discharge i.e. 01.02.2022 by considering the disability percentage @20% and further round it off to 50% by giving the benefit of Govt. of India, Ministry of Defence letter dated 31.01.2001.*
- (c) *To issue/pass an order or directions to opposite parties to pay arrear of disability element of pension along with 12% interest from the next date of his discharge i.e. from 01.02.2022 till it is actually paid.*
- (d) *Any other relief which the Tribunal may deem fit and proper in the facts and circumstances of the case in favour of the applicant.*

2. Briefly stated, applicant was enrolled in the Indian Navy on 31.01.2002 and was discharged on 31.01.2022 (AN) in Low Medical Category on fulfilling the conditions of his enrolment. At the time of discharge from service, the Release Medical Board (RMB) held at Command Hospital (Eastern Command), Kolkata

on 05.11.2021 assessed his disability '**FRACTURE DISTAL END OF CLAVICLE (LT) (ICD-S42.0)**' @10% for life and opined the disability to be **attributable to the service**. The applicant's claim for grant of disability pension was rejected vide letter dated 06.01.2022. The applicant preferred First Appeal dated 17.03.2022 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 the applicant's disability has been opined as **attributable to service** by the RMB. He further submitted that Initial Medical Categorization Board held at Military Hospital, Jamnagar on 07.12.2018 and Re-Categorization Medical Board held at INS, Valsura on 03.06.2019 assessed the applicant's disability @20% but the RMB without giving any plausible justification has reduced the disability percentage of said injury @10% which is incorrect and not tenable in eye of the law. He further submitted that as per Para 31 of Amendment to Chapter VII Assessment - Guide to Medical Officers-2008 (Military Pensions) the degree of disablement in case of applicant's injury cannot be assessed less than 20%. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension and its 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

10% i.e. below 20%, therefore, condition for grant of disability element of pension does not fulfil in terms of Regulations 101 and 105-B of Navy (Pension) Regulations, 1964 (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 cannot be assessed less than 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 Navy on 31.01.2002 and was discharged from service on 31.01.2022 on completion of terms of engagement. The applicant was in low medical category and his Release Medical Board was conducted on 05.11.2021 at Command Hospital (Eastern Command), Kolkata. The Release Medical Board assessed applicant's disability @10% for life as attributable to military service.

7. In Para 31 of Amendment to Chapter VII Assessment - Guide to Medical Officers-2008 (Military Pensions) the name of the applicant's disability i.e. **'FRACTURE DISTAL END OF CLAVICLE (LT) (ICD-S42.0)'**, which is a collar bone fracture, has

not been mentioned, as such it cannot be said that the applicant's disability cannot be assessed less than 20%.

9. On perusal of records we find that the applicant was injured on 28.09.2018. The Initial Categorisation Medical Board held on 07.12.2018 assessed the applicant's disability @20%. The Re-categorisation Medical Board held on 03.06.2019, in para 20 (II) against the column "*Present Disablement %*" it has been mentioned that "*TO BE DECIDED LATER ON*". The RMB was held on 05.11.2021 after more than two and half years of Initial Medical Board. After the lapse of more than two and half years the degree of disablement (injury) may be reduced, as such we do not find any reason to interfere with the assessment of applicant's disability held by the RMB.

10. As per Regulation 101 and 105-B of Navy (Pension) Regulations 1964, 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 10% for life, applicant does not fulfil the requirement of Regulation 105-B of Navy (Pension) Regulations, 1964.

11. 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.”

12. Further, contrary view to Release Medical Board dated 05.11.2021 to the extent of holding the applicant's disability at 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)

13. 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.

14. In addition to above, a bare reading of Regulation 105-B) of Navy (Pension) Regulations, 1964, 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.”

15. In view of the discussions made above, Original Application lacks merit and the same is accordingly **dismissed**.

16. Pending application, if any, stands disposed of.

17. No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated: 08 April, 2024

AKD/-