

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

Original Application No. 435 of 2021

Thursday, this the 24th day of February, 2022

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

No. 14409628N Ex Rect Prithvi Pal Singh Adhikari
S/o Sri Shri Ram Singh Adhikari
R/o State Bank Building, Majkhali, PO – Majkhali,
Tehsil – Ranikhet, District – Almora

.... **Applicant**

Ld. Counsel for the Applicant : **Shri Digvijay Singh Bisht** holding
brief of **Shri C.S. Rawat**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, Central Civil Secretariat, New Delhi.
2. Chief of the Army Staff, Integrated Headquarters, Ministry of Defence (Army), New Delhi.
3. Additional Director General Adjutant Generals Branch, West Block III R.K.Puram, New Delhi.
4. In-charge Pension and Entitlement Directorate of Indian Army Adjutant Generals Branch, Maudelines, 104 Cavalry Road Delhi Cantt.
5. Senior Record Officer, Artillery, Nasik Road Camp, Maharashtra.
6. P.C.D.A.P. (Pension), Allahabad.

... **Respondents**

Ld. Counsel for the Respondents : **Shri Rejesh Sharma**,
Central Govt Counsel

ORDER

1. The instant Original Application has been filed on behalf of the petitioner under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the petitioner has sought following reliefs:-

“That this Hon’be Tribunal may graciously be pleased to summon the entire records and direct the respondents to sanction and grant the disability pension to the petitioner from 06.06.1994 with arrear, otherwise petitioner shall suffer irreparable loss and injury.

Such other suitable order is deemed fit and proper in the facts and circumstances of the case also kindly be pleased to meet in the interest of justice.”

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 25.02.1994 and was invalided out of service during recruit training w.e.f. 05.06.1994 (AN) in low medical category ‘EEE’ due to disability “**CORNEAL OPACITY (RT) EYE (371)**”, assessed @ 1-5% for life and considered it neither attributable to nor aggravated by military service (NANA). The applicant submitted a representation dated 29.11.2018 which was rejected by the respondents vide order dated 25.01.2019 denying disability pension to the applicant. Being aggrieved, applicant has filed this 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 of the applicant was contacted during the training period after completion of 102 days of training, hence, it is attributable to and aggravated by Military Service. The applicant is entitled for disability pension under the provisions of Rule 173 and 179 of Pension Regulations for the Army, 1961 (Part-1). 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 during re-medical at Military Hospital, Deolali on 21.03.1994 during recruit training, applicant was found to be suffering from eye sight defect. The applicant was recommended unfit for retention in service. Accordingly, applicant was invalidated out from service w.e.f. 05.06.1994 (AN). Since, the disability of the applicant was assessed @ 1-5% i.e. below 20%, therefore, condition for grant of disability pension does not fulfil in terms of Regulation 173 of Pension Regulations for the Army, 1961 (Part-I) revised as Regulation 53(a) 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 Invaliding Medical Board (IMB) proceedings. The question in front of us is straight; whether the disability is attributable to/aggravated by military service and, if so, whether it is above or below 20% and also whether applicant was invalidated out of service on account of the disability?

6. It is undisputed case of the parties that applicant was enrolled in the Indian Army on 25.02.1994. The said disability was just detected

by the Senior Medical Officer, Artillery Centre, Nasik and he was immediately referred to Military Hospital, Deolali on 21.03.1994. The applicant was invalided out of service w.e.f. 05.06.1994 (AN) in low medical category 'EEE' due to disability "**CORNEAL OPACITY (RT) EYE (371)**", assessed @ 1-5% for life and considered it neither attributable to nor aggravated by military service (NANA). Thus, it is clear that the disability was noticed within approx one month of his enrolment and he was invalided out of service after approx 4 months.

7. As per Regulation 53(a) 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 1-5% for life as neither attributable to nor aggravated by military service, applicant does not fulfil the requirement of Regulation 173 Pension Regulations for the Army, 1961 (Part-1) as revised vide Regulation 53(a) of Pension Regulations for the Army, 2008 (Part-I).

8. The applicant was invalided out of service being low medical category 'EEE' as recommended by IMB. Further, the competent authority while adjudicating the disability pension claim of the applicant has also examined applicant's disability in the light of relevant rules and finally rejected being neither attributable to nor aggravated by military service. We are in agreement with the opinion of IMB proceedings. Additionally, a recruit is akin to a probationer and hence, prima facie the respondents as an employer have a right to discharge a recruit who is not meeting the medical requirement of

military service. We are in agreement with the opinion of IMB that the applicant's disability is neither attributable to nor aggravated by military service and he is not entitled to disability pension.

9. 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 pension. 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."

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

11. Pending Misc. Application(s), if any, shall be treated to have been disposed off.

12. No order as to costs.

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

Dated: February, 2022

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