

Court No. 1 (E. Court)**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 541 of 2021**

Monday , this the 07th day of February, 2022

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

No. 692145-T Ex. Sgt./Radar Fitter Anjani Kumar Singh, Son of Late Lal Parikshit Singh, R/o 231, Shri Sai City (Semara), IIM Road, Lucknow-226013 (UP).

.... **Applicant**

Ld. Counsel for the : **Shri R. Chandra**, Advocate and
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi-110011.
2. The Chief of the Air Staff, Air Headquarters, New Delhi-110011.
3. Directorate of Air Veterans, Air Headquarters, SMC Building, 1st Floor, Subroto Park, New Delhi-110010.
4. Joint CDA (Air Force), Subroto Park, New Delhi-110010.

... **Respondents**

Ld. Counsel for the: **Ms. Prerna Singh**, Advocate
Respondents. 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:-

- (I) *The Hon'ble Tribunal may be pleased to set aside the rejection order dated 27.08.2004 (Annexure No. A-1) and order dated 20.04.2005 (Annexure No. A-2).*
- (II) *The Hon'ble Tribunal may be pleased to direct the respondents to grant disability pension with effect from 01.01.2004 along with its arrears and interest thereon at the rate of 18% per annum.*
- (III) *Hon'ble Tribunal may be pleased further to grant benefit of rounding off disability pension @50 Percent in terms of Ram Avtar's Case.*
- (IV) *Any other appropriate order or direction which the Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case.*

2. Briefly stated, applicant was enrolled in the Indian Air Force on 29.12.1983 and was discharged on 31.12.2003 (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 Air Force Station, Agra on 10.04.2003 assessed his disability '**COMMUNITED FRACTURE TIBIA (RT) UPPER END OLD N-67**' @ 15-19% for five years 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 09.08.2004 which was communicated to the applicant vide letter dated 27.08.2004. The applicant preferred First Appeal which too was rejected vide letter dated 20.04.2005. The applicant also preferred Second Appeal which too was rejected vide letter dated 25.06.2007. 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 Air Force and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Air Force. The disease/injury of the applicant was contracted during the service, hence it is attributable to and aggravated by Air Force 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. Ld. Counsel for the applicant relied upon the Order dated 03.05.2012 passed by this Tribunal in T.A. No. 92 of 2011, ***Signalman Jayant Bagchi Versus Union of India & Others***.

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%, therefore, condition for grant of disability element of pension does not fulfil in terms of Regulation 153 of Pension Regulations for Indian Air Force, 1961 (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 disability is attributable to/aggravated by Air Force 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 Air Force on 29.12.1983 and was discharged from service on 31.12.2003 on completion of terms of engagement. The applicant was in low medical category and his Release Medical Board was conducted on 10.04.2003 at Air Force Station, Agra. The Release Medical Board assessed applicant's disability @ 15-19% for five years neither attributable to nor aggravated by Air Force service on the basis of injury report dated 14.06.2000.

7. As per Regulation 153 of Pension Regulations for Indian Air Force, 1961 (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 Air Force service. Since, applicant's disability element is 15-19% for five years, applicant does not fulfil the requirement of Regulation 153 of Pension Regulations for Indian Air Force (Part-I).

8. The Order passed by this Tribunal in the case of **Signalman Jayant Bagchi** (Supra) is not applicable in the instant case as in that case the applicant was invalidated out from service due to low medical category which is not the case of the applicant as he has not been invalidated out from service rather he has been discharged

from service in low medical category on fulfilment of terms and conditions of enrolment.

9. 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.”

10. Further, contrary view to Release Medical Board dated 10.04.2003 to the extent of holding the applicant's disability at 15-19% for five years 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)

11. 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.

12. In addition to above, a bare reading of Regulation 153 of Pension Regulations for Indian Air Force, 1961 (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.”

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

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

15. No order as to costs.

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

Dated: 07 February, 2022

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