

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

ORIGINAL APPLICATION No. 715 of 2021

Monday, this the 30 May, 2022

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

No. 4165505 Ex Nk Arjun Chand, Son of Lachhman Chand,
R/o Village Aam Bag, Neaqr High School, P.O.- Tanakpur,
Tehsil Sri Purnagiri, Disgtrict- Champawat- 262309.

..... Applicant

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

Versus

1. Union of India, Ministry of Defence through its Secretary,
South Block, New Delhi – 110001.
2. PCDA (P) Allahabad, Uttar Pradesh.
3. Senior Record Officer, The Kumaun Regiment Records,
Ranikhet, District- Almora.
4. Chief of the Army Staff, Integrated Headquarters of
Ministry of Defence, South Block, New Delhi –
110001.

.....**Respondents**

Ld. Counsel for the : **Shri Neeraj Upreti,**
Respondents. **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) A direction to grant the disability pension to the applicant from the date of his retirement i.e. 25.06.1979 along with rounding of to the tune of 50%.*
- “(ii) To summon the entire records of the applicant pertaining to computation of his disability pension.*
- “(iii) Any other relief to which the applicant is found entitled may also very kindly be granted to the applicant.*

2. Briefly stated, applicant was enrolled in Indian Army on 11.09.1973 and was discharged on 25.06.1989 in Low Medical Category CEE (Permanent) on his own request under Army Rule 13 (3) III (ii). At the time of retirement from service, the Release Medical Board (RMB) assessed his disability **‘CLOSED HEARD INJURY EFFECTS OF N-8 @ 20%** for two years and opined the disability to be attributable to military service. The applicant is getting service element. The claim of disability element was rejected by the Principal Controller of Defence

Accounts (Pensions), Allahabad on 27.05.1994 on the ground that applicant was discharged on his own request. It is in this perspective that the applicant has preferred the present O.A.

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 Indian 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 service and it was assessed @ 20% for two years and considered as attributable to Military Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability element in similar cases, as such the applicant be granted disability element as well as arrears thereof. He further submitted that in similar cases, Hon'ble Apex Court and various Benches of the Armed Forces Tribunals have granted disability element, as such the applicant is entitled to disability element and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that as per Note to Para 8 of Gol letter dated 31.01.2001, "An armed forces personnel who retires voluntarily/ or seek discharge on request shall not be eligible for any award

on account of disability.” Disability of the applicant was regarded @ 20% for two years by RMB and opined to be attributable to by military service but applicant was discharged from service on his own request, hence he is not entitled for grant of disability element. He pleaded for dismissal of the O.A.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the RMB and we find that the questions which need to be answered are of two folds :-

- (a) Whether the applicant is entitled for grant of disability element while discharged from service on his own request?
- (b) Whether the applicant is entitled for the benefit of rounding off of his disability element, if yes, from which date?

6. We have given our anxious consideration to the views expressed by Ld. Counsel for the parties and hold that the applicant is entitled for disability element in view of Govt of India, Ministry of Defence letter dated 29.09.2009 which stipulates as under:-

“In pursuance of Government decision on the recommendations of the Sixth Central Pay Commission vide Para 5.1.69 of their Report, President is pleased to decide that Armed Forces personnel who are retained in service despite disability, which is accepted as attributable to or aggravated by military service and have foregone lump-sum compensation in lieu of that disability, may be given disability element/war injury element at the time of their retirement/discharge whether voluntary or otherwise in addition to retiring/service pension or retiring/service gratuity.

The provisions of this letter shall apply to the armed forces personnel who are retired/discharged from service on or after 01.01.2006.”

7. We may add here that through judicial pronouncement by AFT Principal Bench order dated 07.02.2012 made in O.A. No. 336 of 2011, ***Maj (Retd) Rajesh Kumar Bhardwaj vs Union of India & Ors*** and upholding of the order by Hon'ble Supreme Court in CA No 318111 of 2013, the benefit of above letter has been extended to pre 2006 retirees also.

8. As far as the benefit of Broad Banding is concerned, since benefit of broad banding has been extended w.e.f. 01.01.1996, and applicant was discharged from service on 25.06.1989 hence, prima facie the applicant is not entitled to broad banding of disability element.

9. Since the applicant's RMB was valid for two years from the date of discharge, hence, the respondents will now have to conduct a fresh RSMB for him to decide his future eligibility to disability element.

10. In view of the above, the **O. A.** deserves to be allowed, hence, **allowed**. The impugned order passed by the respondents rejecting the claim of disability element is set aside. The applicant is entitled to get disability element @ 20% for two years from the next date of discharge of the applicant i.e. 26.06.1989. The respondents are further directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement of disability element. Respondents are further directed to give effect to the order within four months from the date of receipt of a certified copy of this order failing which the respondents shall have to pay interest @ 8% per annum till the date of actual payment.

11. No order as to costs.

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

Dated : 30 May, 2022

Ukt/-