

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 604 of 2021**

Friday, this the 4th day of November, 2022

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

No. 13962092-W Ex Hav Ram Shankar
S/o Late Ganga Prasad
R/o Vill – Rampur (Dakhini), PO – Auradar,
Dist – Sant Kabir Nagar (UP) – 272165

..... Applicant

Ld. Counsel for the Applicant : **Shri Parijaat Belaura**, Advocate
Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Integrated Headquarters, Ministry of Defence, South Block, New Delhi.
3. Officer-in-Charge AMC Records Office, Lucknow – 226002.
4. The Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (UP).

..... Respondents

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

ORDER

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

- “(I) To re-instate the applicant in service notionally wef 01.08.2005 and discharge on 31.03.2009 on completion of 24 years of service in the light of judgment of Hon’ble Apex court in the case of Union of India vs Raj Pal Singh 2009 (1) SCC 216 and judgment of AFT Kolkata in TA No. 66/2010 No. 14559012-L Hav Hrushkesh Sutar vs. Union of India and Others.
- (II) To give benefit of 6th Central Pay Commission w.e.f. 01.01.2006.
- (III) To pay difference of arrears of pension of next higher rank i.e. IIIrd MACP (Nb Sub) along with 12% interest from the date of his notional discharge i.e. 01.04.2009 till it is actually paid.
- (IV) To grant Disability Pension @ 60% and round of to 75% in the light of Govt. of India, MoD letter dated 31.01.2001 along with 12% interest from the date of his notional discharge i.e. 01.04.2009 till it is actually paid.
- (V) Any other suitable relief this Hon’ble Court deems fit and proper may also be granted.”

2. The factual matrix on record is that the applicant was enrolled in the Army on 25.03.1985 and was discharged from service on 31.07.2005 in low medical category in the rank of Havildar after completion of more than 20 years of service. The applicant was granted service pension vide PPO dated 30.08.2005. The RMB of the applicant was held and assessed his disabilities (i) ‘Low Backache

with Degenerative Disc Disease' @ 30% for five years as attributable to military service (ii) 'Diabetes Mellitus Type II' @ 6-10% as aggravated by military service, (iii) 'Hyper Lipedemia (Non Obese) @ 6-10% as aggravated by military service, (iv) 'Cervical Spondylosis @ 6-10% as NANA and (v) 'Mild Non Proliferative Diabetic Retinopathy (Both Eye) @ 11-14% as NANA and composite assessment for all disabilities was @ 60% for five years. However, PCDA granted disability element @ 40% duly rounded off to 50% for life. Being aggrieved, the applicant has filed the present Original Application, praying for notional reinstatement in service in service till completion of 24 years of service as on 31.07.2009 in view of judgment of the Hon'ble Apex Court in Sapper Mohinder Singh case and he should be granted benefit of 3rd MACP of Nb Sub and pension of next higher rank i.e. Nb Sub w.e.f. 01.04.2009 alongwith disability element @ 60% duly rounded off to 75%.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 25.03.1985 and was discharged/invalided out on 31.07.2005 after completion of more than 20 years of service in the rank of Havildar. After more than 11 years of service applicant was found to be suffering from 'Cervical Spondylosis and later on he suffered from 'Diabetes mellitus Type II and 'Hyper Lipedemia (Non Obese) and 'Mild Non Proliferative Diabetic Retinopathy (Both Eye).

The medical board at the time of discharge/invalidating out from service assessed disabilities (i) 'Cervical Spondylosis' @ 11-14% as NANA, (ii) 'Diabetes Mellitus Type II' @ 6-10% as aggravated by military service, (iii) 'Hyper Lipedemia (Non Obese)' @ 6-10% as aggravated by military service, (iv) 'Low Backache with Degenerative Disc Disease' @ 30% as attributable to military service and (v) 'Mild Non Proliferative Diabetic Retinopathy (Both Eye)' @ 11-14% as NANA and composite assessment for all disabilities was @ 60% for five years.

4. Learned counsel for the applicant further submitted that MAP at PCDA (P) Allahabad has reduced disability element of the applicant from 60% to @ 40% which was rounded off to 50% whereas as per judgment of the Hon'ble Apex Court in the case of Sapper **Mohinder Singh vs. Union of India and Others**, it cannot be reduced from 60% to 40% and therefore, composite disabilities of the applicant assessed by Release Medical Board @ 60% should be rounded off to 75% as per Govt. of India, Ministry of Defence letter dated 31.01.2001.

5. Learned counsel for the applicant further submitted that applicant was discharged from service before completion of his terms of engagement in low medical category without recommendation of Invaliding Medical Board. Hence, his premature discharge from

service in the rank of Havildar in low medical category without holding IMB is bad in law. In this regard, applicant represented his case vide letter dated 24.07.2021 but it was rejected by respondent no. 3 vide order dated 13.08.2021. He placed reliance on the judgment of the Hon'ble Apex Court in **Union of India vs. Raj Pal Singh 2009 (1) SCC 216** and pleaded that applicant to be deemed in service till completion of his tenure in the rank of Havildar as held by this Tribunal in OA No. 261/2013, **Dinesh Kumar Singh vs. Union of India and Others**, decided on 18.08.2015. The similar matter has been decided by AFT (RB) Kolkata in the case of TA No. 66 of 2010, **Hav Hrushikesh Sutar vs. Union of India and Others**, decided on 07.06.2013. Therefore, applicant to be notionally treated in service till completion of 24 years of service as on 31.07.2009 and he should be granted benefit of 3rd MACP of Nb Sub and pension of next higher rank i.e. Nb Sub w.e.f. 01.08.2009.

6. Learned counsel for the respondents submitted that applicant was enrolled in the Army (AMC) on 25.03.1985 and was discharged from service w.e.f. 01.08.2005 on being placed in low medical category and not upto the prescribed military physical standard under Rule 13 (3) III (v) of Army Rules, 1954. The applicant was granted service pension vide PPO dated 30.08.2005. The applicant being placed in LMC was served with a Show Cause Notice dated

05.04.2005 and on receipt of reply dated 08.04.2005 in which applicant stated that "he has no objection to proceed on release with all consequential benefits". Therefore, RMB of the applicant was held at MH Saugor and assessed his disabilities (i) 'Low Backache with Degenerative Disc Disease' @ 30% for five years as attributable to military service (ii) 'Diabetes Mellitus Type II' @ 6-10% as aggravated by military service, (iii) 'Hyper Lipedemia (Non Obese) @ 6-10% as aggravated by military service, (iv) 'Cervical Spondylosis @ 6-10% as NANA and (v) 'Mild Non Proliferative Diabetic Retinopathy (Both Eye) @ 11-14% as NANA and composite assessment for all disabilities was @ 60% for five years.

7. Learned counsel for the respondents further submitted that disability pension claim of the applicant was adjudicated and disability element was passed @ 40% for life w.e.f. 01.08.2005 by PCDA (P) Allahabad vide PPO dated 31.03.2006 which was rounded off to 50% for life w.e.f. 01.08.2005. Two disabilities of the applicant being NANA were not considered by the PCDA (P) Allahabad while adjudicating the claim, as per rules. The applicant submitted an application dated 03.07.2018 seeking reasons for reduction in percentage of disability pension from 60% to 40% which was suitably replied by AMC Records vide letter dated 31.07.2018. Thereafter, applicant submitted an application dated 22.09.2018 asking reasons for reduction of

disability pension and submitted an appeal dated 24.07.2021 which were suitably replied by AMC Records vide letter dated 13.08.2021.

8. Learned counsel for the respondents further submitted that as far as benefit of MACP is concerned, the applicant was discharged from service on 01.08.2005 and MACP policy came into existence w.e.f. 01.01.2006, i.e. well before his discharge from service, hence, applicant is not entitled for MACP benefit. The disability element of the applicant was granted @ 40% for life by pension sanctioning authority which has already been rounded off to 50% for life, hence, the claim of the applicant to consider his disability @ 60% and further to be rounded off to 75% is not tenable. The applicant was discharged from service on 01.08.2005 in low medical category with all applicable consequential benefits, hence his claim to reinstate into service is not tenable.

9. However, during the course of hearing, learned counsel for the respondents conceded that applicant was discharged from service without holding Invaliding Medical Board and hence, his discharge from service is illegal in view of judgment of the Hon'ble Apex Court in **Raj Pal Singh** (supra). Therefore, applicant will be notionally treated in service as per terms of engagement of service in the rank of Havildar upto 24 years of service and applicant will also be eligible for MACP benefit of the rank of Nb Sub on completion of 24 years of

service as per MACP policy from the date of notional discharge from service w.e.f. 01.08.2009.

10. We have heard learned counsel for the parties and have perused the material on record.

11. Since, learned counsel for the respondents during the course of final hearing conceded that applicant was discharged from service without holding IMB and hence, his discharge from service being illegal in view of judgment in **Raj Pal Singh** (supra), the applicant to be notionally treated in service w.e.f. 01.08.2005 as per terms of engagement of service in the rank of Havildar upto 24 years of service and to be notionally discharged from service as on 31.07.2009 (AN). The applicant will also be eligible for MACP benefit of the rank of Nb Sub on completion of 24 years of service from the date of notional discharge from service, i.e. w.e.f. 01.08.2009.

12. In view of the judgment of Hon'ble the Supreme Court in **Union of India and others Vs. Jaipal Singh, 2004(1) SCT 108 = 2003 Supp(5) SCR 115**, applicant cannot claim back wages for the period he was not in service. Accordingly, applying the said principle of 'no work, no pay, applicant is not entitled for back wages for the period he is notionally treated to be in service, i.e. w.e.f. 01.08.2005 till he is notionally discharged from service, i.e. 31.07.2009.

13. The applicant will be granted service pension in the rank of MACP Nb Sub w.e.f. 01.08.2009. Since, the applicant is already in receipt of disability element @ 50% for life from the date of discharge from service in the rank of Havildar w.e.f. 01.08.2005, as approved by the pension sanctioning authority, the disability element already granted to the applicant to be adjusted accordingly while granting disability element from the notional discharge from service in the rank of MACP Nb Sub w.e.f 01.08.2009.

14. In the result, the Original Application is **partly allowed**. The respondents are directed :-

(a) To treat the applicant notionally in service w.e.f. 01.08.2005 in the rank of Havildar till notional discharge from service as on 31.07.2009 on completion of his terms of engagement of service of 24 years.

(b) To grant benefit of 3rd MACP in the rank of Nb Sub on completion of 24 years of service from the date of notional discharge from service, i.e. w.e.f. 01.08.2009.

(c) That the applicant shall not be entitled for back wages for the period he is notionally treated in service in the rank of Havildar, i.e. w.e.f. 01.08.2005 till he is notionally discharged from service in the rank of MACP Nb Sub, i.e. 31.07.2009 on the principle of 'no work, no pay'.

(d) That applicant will be granted service pension in the rank of MACP Nb Sub w.e.f. 01.08.2009 for which a fresh PPO in the rank of MACP Nb Sub to be generated.

(e) The disability element @ 50% for life being granted to the applicant w.e.f. 01.08.2005 to be adjusted accordingly while granting disability element @ 50% for life from the date of notional discharge from service in the rank of MACP Nb Sub, i.e. w.e.f 01.08.2009.

(f) To comply with the order within four months from the date of production of a certified copy of this order. Delay shall invite interest @ 8% per annum till actual payment.

15. No order as to costs.

16. Pending Misc. Application(s), if any, shall stand disposed off.

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

Dated: November, 2022
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