

ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI

Original Application No. 10 of 2016

Wednesday, this the 24th day of August, 2022

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)

Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

1. Sanjay Sahebrao Pathare
S/o Ex. Sep Sahebrao Pathare
Residing at Patil Galli, Vaijapur,
Aurangabad, Maharashtra - 423701
2. Anil Sahebrao Pathare
S/o Ex. Sep Sahebrao Pathare
Residing at Dhangar Galli, Vaijapur,
Aurangabad, Maharashtra - 423701
3. Ravindra Sahebrao Pathare
S/o Ex. Sep Sahebrao Pathare
Residing at Dhangar Galli, Vaijapur,
Aurangabad, Maharashtra - 423701

..... Applicants

Ld. Counsel for the Applicants : **Mr. Satendra Kumar**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, Aayakar Bhavan, New Marine Lines, Mumbai.
2. The Chief of the Army Staff, Sena Bhawan, DHQ PO, New Delhi – 110011.
3. Officer-in-Charge, Mahar Regiment Records, Saugor (MP) – 470001.

..... Respondents

Ld. Counsel for the Respondents : **Mr. B.K. Ashok**,
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:-

- “A. That this Hon’ble Tribunal after going through the records and proceeding and testing its legality be pleased to declare that letter dated 26th July, 1983 is illegal and non est and set aside.
- B. That this Hon’ble Tribunal be pleased to direct the respondents to grant disability pension to the applicant from the date of retirement, i.e. 13th April, 1980.
- C. That this Hon’ble Tribunal be pleased to direct the respondents to grant service pension with arrears.
- D. That this Hon’ble Tribunal be pleased to direct the respondents to grant such other reliefs in the facts and circumstances of this case deemed fit and proper.
- E. That this Hon’ble Tribunal be pleased to grant arrears of the disability pension to the legal heirs of the deceased and such other relief and benefit if any.”

2. The present O.A. was filed by Ex Sep Sahebrao Pathare who died on 20.04.2021 during pendency of Original Application and, after his death, his sons, Sanjay Sahebrao Pathare, Anil Sahebrao Pathare and Ravindra Sahebrao Pathare have been substituted in his place by Tribunal’s order dated 24.08.2021.

3. Brief facts of the case giving rise to this application are that deceased soldier was enrolled in the Indian Army on 21.01.1968 and was discharged from service on 13.04.1980 in low medical category having more than four red ink entries being service no longer required under Rule 13 (3) III (v) of Army Rules, 1954 after rendering 11 years, 02 months and 16 days of service. The Release Medical Board assessed his disability ‘FRACTURE FEMUR SHAFT RT (OPTD)

CHRONIC OSTEOMYELITIS (RT)' @ 40% for one year as attributable to service. Therefore, as per Appendix C to IHQ of MoD (Army) letter dated 20.07.2006, deceased soldier being discharged from service as undesirable soldier was denied disability pension by the respondents. It is in this perspective that applicant (deceased soldier) has filed this O.A for grant of disability pension.

4. Learned counsel for the applicants submitted that the deceased soldier was enrolled in the Army on 21.01.1968. On 15.07.1977, he was injured when a branch of tree fell on him and fractured his Femur Right and he was placed in low medical category. The Invaliding Medical Board of the soldier was held on 13.12.1979 and his disability 'FRACTURE FEMUR SHAFT RT (OPTD) CHRONIC OSTEOMYELITIS (RT)' was assessed @ 40% for one year as attributable to service. The applicant was discharged from service on 13.04.1980 without serving a Show Cause Notice which is contrary to Army Order 46/80 as permanent low medical category personnel will be retained in service till completion of 15 years service. The respondents did not follow the Army Order and therefore, order of discharge is illegal and invalid. However, present applicants have prayed for grant of disability pension @ 40% for life from the date of retirement of his deceased father as per Re-Assessment Medical Board held on 19.01.2019 in view of various pronouncement by the Hon'ble Apex Court as well as by the various benches of Armed Forces Tribunal.

5. On the other hand, learned counsel for the respondents submitted that applicant was discharged from service on 13.04.1980 in low medical category having more than four red ink entries being service no longer required i.e. on administrative ground under Rule 13 (3) III (v) of Army Rules, 1954 after rendering 11 years, 02 months and 16 days of service. The Release Medical Board of the applicant was held on 13.12.1979 and his disability 'FRACTURE FEMUR SHAFT RT (OPTD) CHRONIC OSTEOMYELITIS (RT)' was assessed @ 40% for one year as attributable to service. Therefore, as per Appendix C to IHQ of MoD (Army) letter dated 20.07.2006, deceased soldier being discharged from service as undesirable soldier is not eligible for grant of disability pension.

6. We have heard learned counsel for the parties and perused the material placed on record. We have also gone through the RMB and RAMB proceedings.

7. Since the disability of the deceased soldier was initially assessed @ 40% for one year and was considered as attributable to military service and later on in RAMB dated 19.01.2019, disability of the deceased soldier has been assessed @ 40% for life and is treated as attributable to military service, therefore, we are of the view that present applicants, i.e. sons of the deceased soldier are entitled arrears of disability element. In view of the law on limitation the said arrears will be restricted to three years before filing of this Original Application. This Original Application was filed on 14.01.2016. We make it clear that since the soldier was discharged as service no

longer required, and not for reason of low medical category, he cannot be considered to be invalided out of service due to his medical condition. Nevertheless the factum of his continuing disability @40% for life, as assessed by the RSMB held in 2019, shows that his disability (which was considered as attributable to service), has persisted for nearly 41 years from discharge till his death. Therefore, under these circumstances, we feel it proper to allow only disability element of disability pension to the deceased soldier.

8. In view of the above, deceased soldier is held entitled to 40% disability element from three years before filing of this Original Application till date of death, i.e. on 20.04.2021. Since father (deceased soldier) of the present applicants has died on 20.04.2021, therefore, present applicants will be entitled arrears of disability element from three years before filing of this Original Application till the date of death of deceased soldier, i.e. on 20.04.2021, duly rounded off from 40% to 50% in view of Govt. of India, Ministry of Defence letter dated 31.01.2001.

9. In the result, the Original Application is **partly allowed**. The impugned order denying disability pension, if any, is set aside. Since the soldier has died, therefore, respondents are directed to grant 40% disability element duly rounded off to 50% from three years before filing this Original Application (Original Application was filed on 14.01.2016) till 20.04.2021 (date of death of soldier) only and distribute amount of arrears of disability element equally between all three sons of the deceased soldier. The respondents are further

directed to give effect to this order within four months from the date of receipt of copy of this order. Default will invite interest @ 8% per annum from the date of this order till actual payment.

10. No order as to costs.

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

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

Dated: 24 August, 2022
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