

**Court No. 1**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**Original Application No. 235 of 2024**

Wednesday, this the 16<sup>th</sup> day of April, 2025

**“Hon’ble Mr. Justice Anil Kumar, Member (J)  
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

748428-F Sgt. Ajay Kumar Upadhyay, Rdo Fit (Retd.), S/o Shri Hari Prasad Upadhyay, R/o Village + Post – Gahmar, District – Ghazipur, Uttar Pradesh-232327.

**.... Applicant**

Ld. Counsel for the : **Shri Mahendra Kumar Singh**, Advocate  
Applicant **Shri Satya Narayan Mishra**, Advocate

Versus

1. Union of India, through Secretary, MoD (IAF), South Block, New Delhi-06.
2. Chief of Air Staff, Air Hqrs, Vayu Bhawan, New Delhi-110011.
3. Dte of Air Veterans, Air HQrs, Subroto Park, New Delhi-110010.
4. Jt CDA (Air Force), Subroto Park, New Delhi-110010.

**... Respondents**

Ld. Counsel for the: **Shri Ashish Kumar Singh**, Advocate  
Respondents. Central Government Standing Counsel.

**ORDER**

**“Per Hon’ble Mr. Justice Anil Kumar, 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:-

- A. to quash and set aside the Respondent No. 3 letter No. Air HQ/99798/5/1<sup>st</sup> Appl/748428/DP/DAV dated 10.11.2023 (Annexure A-01 of OA) and Respondent No. 3 letter No. Air HQ/99798/1/748428/07/13/DAV (DP/RMB) dated 29.08.2013 (Annexure A-3 of OA), wherein applicant’s initial claim for grant of disability element of disability pension was rejected as ineligible being a case of less than 20% and Applicant’s appeal was not considered, respectively.*
- B. to issue/pass an order or directions of appropriate nature to the respondents to consider the Applicant’s disability @20% for life as attributable and aggravated due to Air Force Service and accordingly grant disability element of disability pension to the applicant from the next date of his discharge from service i.e. with effect from 01.08.2013 and pay the arrears along with suitable rate of interest as deem fit by this Hon’ble Tribunal.*
- C. to grant the benefit of rounding off the disability element of disability pension from @20% to @50% from the next date of his discharge from service (p1.08.2013) in terms of Govt of India letter dated 31 Jan 2001 and to pay the arrears along with suitable rate of interest as deem fit by this Hon’ble Tribunal.*
- D. Any other relief as considered proper by the Hon’ble Tribunal be awarded in favour of the applicant.*

2. Briefly stated, applicant was enrolled in the Indian Air Force on 13.07.1993 and discharged on 31.07.2013 (AN) in Low Medical Category on fulfilling the conditions of his enrolment. The applicant is in receipt of Service Pension. Before discharge from service, the Release Medical Board (RMB) held at 77 SU, Air Force on 22.09.2012 assessed his disability '**NON-UNION FRACTURE (RT) SCAPHOID Z-09.9**' @15-19% for life and opined the disability to be **attributable to service** as injury sustained due to fall while on active military duty. The applicant's claim for grant of disability element of disability pension was rejected vide letter dated 29.08.2013 being disability less than 20%. The applicant preferred Appeal dated 16.08.2023 which too was rejected vide letter dated 10.11.2023. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that the RMB has opined the applicant's disability as attributable to service but its degree has wrongly been assessed @15-19% for life which ought to have assessed @30%. Ld. Counsel for the applicant further submitted that Scaphoid is weight bearing bone and the applicant's fracture remained non-union thus, it cannot be assessed less than @30% in terms of "Assessment of Bone and Specific Injuries" mentioned in Chapter VII of Para 31 of Guide to Medical Officers (Military Pensions), 2008. He further submitted that applicant was an Airmen of technical trade (Rdo Fit) and his

right hand weight bearing bone was fractured, therefore, in the light of aforesaid para of Guide to Medical Officers (Military Pensions), 2008 the RMB has wrongly assessed the disability percentage. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability element of disability pension, its rounding off to @50% 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 although the applicant's disability has been opined as attributable to service by the RMB but 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 the Pension Regulations for the Indian Air Force, 1961 (Part-I) which provides that *"Unless otherwise specifically provided, disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by Air Force service and is assessed at 20% or over"* 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 military service, whether it is above or below 20% and whether applicant was invalidated out of service on account of the disability or was discharged on completion of terms of engagement?

6. It is undisputed case of the parties that applicant was enrolled in the Indian Air Force on 13.07.1993 and discharged from service on 31.07.2013 on completion of terms of engagement. The applicant was in low medical category and his Release Medical Board was conducted on 22.09.2012 at 77 SU, Air Force. The Release Medical Board assessed applicant's disability @15-19% for life as attributable to service.

7. With regard to submission of Ld. Counsel for the applicant that the applicant's disability cannot be assessed less than @30% we find that there is no mention of applicant's disability i.e. '**NON-UNION FRACTURE (RT) SCAPHOID Z-09.9**' in para 13 of Chapter – VII of Guide to Medical Officers (Military Pensions), 2008. As such it cannot be said that the applicant's disability cannot be assessed less than @30%.

8. As per Regulation 153 of Pension Regulations for the 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 military service. Since, applicant's disability element is @15-19 % for life, applicant does

not fulfil the requirement of Regulation 153 of Pension Regulations for the Indian Air Force, 1961 (Part-I).

8. 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.”*

9. Further, contrary view to Release Medical Board dated 22.09.2012 to the extent of holding the applicant's disability @ 15-19% for life is not tenable in terms of Hon'ble Apex Court judgment in the case of **Bachchan Prasad vs Union of India &**

**Ors**, Civil Appeal No. 2259 of 2012, decided on 04<sup>th</sup> 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)

10. 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.

11. In addition to above, a bare reading of Regulation 153 of Pension Regulations for the 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.”*

12. In view of the discussions made above, **Original Application No. 235 of 2024** lacks merit and same is accordingly **dismissed.**

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

14. No order as to costs.

**(Vice Admiral Atul Kumar Jain)**  
**Member (A)**

**(Justice Anil Kumar)**  
**Member (J)**

Dated: 16 April, 2025

AKD/-