

**Form No. 4**  
**{See rule 11(1)}**  
**ORDER SHEET**  
**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

Court No.1 (E. Court)

**O.A. No. 549 of 2021**

**Ex CHEA (P) Vishal Chaturvedi**

Applicant

By Legal Practitioner for the Applicant

Versus

**Union of India & Others**

Respondents

By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	<p><b><u>05.05.2022</u></b>  <b><u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u></b>  <b><u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></b></p> <p>1. Heard Shri Manish Kumar Rai, learned counsel for the applicant and Shri Amit Jaiswal, learned counsel for the respondents.</p> <p>2. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs :-</p> <p style="padding-left: 40px;">(i) <i>To issue/pass an order or direction to opposite parties to consider the assessed disability percentage of 15% as 15-19% and extend the benefit broad banding in respect of applicant's disability of assessed at 15-19% to make it 20% and thereof grant disability pension @ 20% and further round it off to 50% by giving the benefit of Govt of India, Min of Def letter dated 31.01.2001 w.e.f. the date of discharge of applicant i.e. 29.02.2020.</i></p> <p style="padding-left: 40px;">(ii) <i>To issue/pass an order or direction to opposite parties to pay arrear of disability pension along with 12% interest from the date of his discharge i.e. 29.02.2020 till it is actually paid.</i></p> <p style="padding-left: 40px;">(iii) <i>Cost of the petition.</i></p> <p style="padding-left: 40px;">(iv) <i>Any other suitable relief this Hon'ble Tribunal deems fit and proper may also be granted.</i></p>

2. Brief facts of the case are that the applicant was enrolled in the Indian Navy on 05.02.2000 and was discharged from service on 29.02.2020 on completion of 20 years and 25 days of service. He is in receipt of service pension vide PPO dated 04.03.2020. Release Medical Board (RMB) conducted on 24.07.2019 declared his medical disability 'Acromio Clavicular Ligament Tear (Lt) ICD No S 43.7' @ 15-19% for life attributable to military service as the disability was caused due while he fell down from the ship's ladder while on duty. His disability pension claim was rejected vide order dated 27.02.2020. Against rejection of his claim, he preferred first appeal dated 21.07.2020 which has not been decided as yet. It is in this perspective that this O.A. has been filed.

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 Navy and there is no note in the service documents that he was suffering from any disease/disability at the time of enrolment in the Navy. The disease/disability of the applicant was contracted during the service, hence the RMB has opined it to be attributable to Military Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability element of pension in similar cases, as such the applicant be granted disability element of pension as well as arrears thereof. In support of his contention learned counsel for the applicant has relied upon order dated 18.01.2021 passed by this Tribunal in O.A. No. 390 of 2019, **Sgt**

**Rohitash Kumar Sharma (Retd) vs Union of India & Ors** and the Hon'ble Supreme Court judgment in the case of **Union of India & Anr vs Rajbir Singh** reported in (2015) 12 SCC 264.

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 Rule 4 of Entitlement Rules for Casualty Pensionary Awards, 1982. He further submitted that since the applicant was discharged from service after completion of terms of engagement and his disability has been assessed @ below 20% he is not entitled to disability element of pension as per Regulation 105-B of the Navy Pension Regulations, 1964. In support of his contention learned counsel for the respondents has relied upon order dated 11.12.2019 passed by the Hon'ble Supreme Court in Civil Appeal No 10870 of 2018, **Union of India & Ors vs Wing Commander SP Rathore**. He pleaded for dismissal of Original Application.

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

6. It is undisputed case of the parties that applicant was enrolled in the Indian Navy on 05.02.2000 and was discharged from service on 29.02.2020 on completion of terms of engagement. The applicant was in low medical category and his Release Medical

Board was conducted on 24.07.2019 at Mumbai. The Release Medical Board has assessed applicant's disability @ 15-19% for life attributable to Navy service.

7. As per Regulation 105-B of Navy Pension Regulations, 1964, 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 i.e. below 20%, applicant does not fulfil the requirement of aforesaid regulation.

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 31.07.2014 to the extent of holding the applicant's disability at 15-19% for life 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 04.09.2019 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. Learned counsel for the applicant has filed rejoinder affidavit and submitted that in earlier page number 8 of the RMB, applicant's disability percentage was assessed @ 20% and it was signed by Surg Lt Swati (Member), Sug Lt Cdr Ankush Chhabra (Medical Officer) and Surg Capt Saumit Roy (President) whereas later this page was changed reducing his disability percentage to be 15-19% and member of the board was changed i.e. Surg Lt Cdr Atul Vij in place of Surg Lt Swati. In this regard submission of learned counsel for the applicant is that if Sug Lt Cdr Atul Vij was the member of the board, he ought to have signed all pages of the RMB and not a single sheet of paper in which the disability percentage has been reduced to below 20%. He submitted that this act of the respondents is deliberate and is illegal in the eyes of law. In regard

to this during course of hearing it was submitted by learned counsel for the respondents that in accordance with HQ Western Naval Command policy letter dated 10.08.2016 medical officers comprising medical officers from FOMA, INS Angre, NOIC (SPB), Flotilla & K 22 are to be members of any Medical Board conducted at MBO, INS Angre. All amendments and corrections of page 7A and 8 were done as per HQ Western Naval Comd letter dated 21.08.2019 and were signed by the board of the day.

11. With regard to change of disability percentage, the relevant policy letter that speaks of the authority to finally accept the percentage of disability, is GoI, MoD (Dept. of Ex-servicemen Welfare) letter dated 01.09.2005. The relevant paras are reproduced below for the sake of reference.

*“No.1(2)/2002/D(Pen-C)  
Government of India  
Ministry of Defence  
(Dept. Of Ex-Servicemen Welfare)*

*New Delhi, Dated 1<sup>st</sup> September, 2005*

To

*The Chief of Army Staff,  
The Chief of Naval Staff,  
The Chief of Air Staff*

*Subject: **Restructuring of the stages of decision for grant of disability pension/special pension to Armed Forces Personnel/NOKs.***

Sir,

*In continuation of this Ministry's letter No. 1(2)/97-D(Pen-C), dated the 7<sup>th</sup> February, 2001 according sanction to the modifications to the rules and regulations concerning findings of the Medical Board, attributability/aggravation and adjudication of cases of disability/special family pension cases. I am directed to convey the sanction of the President to the following modifications to the said letter as indicated below:-*

	Policy before 2005	Policy after 2005
6	Assessment – The assessment with regard to percentage of disability as recommended by the IMB/RMB and as adjudicated by MA(P) in respect of PBOR and MoD in case of Commissioned Officers would be treated as final and for life unless the individual himself requests for review, except in cases of disabilities which are not of a permanent nature. In the event of substantial difference of opinion between the initial award given by the medical boards and MA(P), the case will be referred to a Review Medical Board. The opinion of the Review Medical Board, which will be constituted by DGAFMS as and when required shall be final.	Assessment with regard to percentage of disability as recommended by the IMB/RMB and as approved by the next higher medical authority in respect of PBOR and Service HQs in case of Commissioned Officers would be treated as final unless the individual himself requests for a review except in cases of disabilities which are not of a permanent nature. In the event of substantial difference of opinion between the initial award given by the medical board and approving authority, the case will be referred to a Review Medical Board which will be constituted by DGAFMS as and when required shall be final.

12. A plain reading of the said policy letter shows that even prior to 2005 the authority was given to Medical Advisor in PCDA (P), Allahabad (for PBOR) and MoD (for officers) to finally adjudicate/accept the percentage of disability recommended by the IMB/RMB. Later vide the ibid policy letter this authority was delegated to “next higher Medical authority” in respect of PBOR and Service HQ in respect of Commissioned Officers.

13. It thus appears that the action of the respondents i.e. HQ WNC (being the next Higher Medical Authority) to suggest amendments to the opinion/recommendation of the medical board held on 27.10.2017 has been guided by the policy letter dated 01.09.2005. Therefore, the factual position is that this policy is not in contravention of any rules nor has the applicant placed on record any rule that disallows such a policy to be framed by the MoD.

14. In addition to above, a bare reading of Regulation 105-B of

Navy Pension Regulations, 1964 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**, (in which case also the officer had retired on superannuation) 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.”*

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

16. Pending application (s), if any, stands disposed of.

17. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

rathore