

**Court No. 1**

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

**ORIGINAL APPLICATION No. 995 of 2022**

Tuesday, this the 21<sup>st</sup> day of February, 2023

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

MS 19411N Maj Uma Shankar, C/o Sita Devi, House No. 21, Shakuntala Enclave, Chhapraula, Gautam Budh Nagar, Gaziabad, Uttar Pradesh -201009.

..... **Applicant**

Ld. Counsel for : **Shri J L Joel, Advocate.**  
the applicant

**Versus**

1. Union of India through the Secretary, Government of India, Ministry of Defence, South Block, New Delhi -110011.
2. Chief of Army Staff, IHQ of MoD (Army), New Delhi - 110011.
3. MPRS (O), ORO/MP-7, Adjudication Cell, West Block III, R.K. Puram, New Delhi -110066.
4. The PCDA (Pension), Draupadi Ghat, Allahabad (U.P) - 211014.

.....**Respondents**

Ld. Counsel for the: **Shri Shailendra Sharma Atal,**  
Respondents. **Central Govt Counsel.**

**ORDER (ORAL)**

**“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”**

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

- A. *To quash or set aside Respondents letter bearing No. MS-19411N/MPRS (O)/162/2022/ AG/MP (ORO) dated 14.09.2022 intimating about the initial rejection and / or*
- B. *To direct the Respondents to grant Disability Pension to the Application from the date of release from service with effect from 30.10.2022 and to pay arrears along with rounding off benefits @50% as per rules with suitable rate of interest as deemed fit and proper by this Hon’ble Tribunal and/or*
- C. *Any other relief as this Hon’ble Tribunal may deem fit in the interest of justice and good conscience.*

2. The brief facts of the case are that the applicant was commissioned in the Army on 31.10.2017 and retired from service on 30.10.2022 in Low Medical Category after completion of contractual period. At the time of retirement, Release Medical Board (RMB) held at Military Hospital, Ahmednagar on 17.06.2022 assessed his disabilities (i) **GRADE I ANTEROLISTHESIS L5 OVER S1 WITH SPONDYLOLYSIS LVS (M47.9)** @20% for life (ii) **PSORIASIS VULGARIS WITH NAIL PSORIASIS WITH PSORIATIC ARTHRITIS (L40.0)** @30% for life composite

disabilities assessed @ 44% for life and considered as aggravated by military service. Applicant's claim for grant of disability element of disability pension was rejected vide letter dated 14.09.2022. The applicant preferred First Appeal dated 07.10.2022 against the rejection of disability pension which has not been replied by the respondents. It is in this perspective that the applicant has preferred the present Original Application.

3. Ld. Counsel for the applicant pleaded that the applicant was fully fit at the time of commission and the said disabilities suffered by the applicant were assessed by the RMB as aggravated by military service. Ld. Counsel for the applicant has relied upon the Hon'ble Apex Court judgment in the case of **Sukhwinder Singh vs Union of India & Ors**, reported in (2014) STPL (WEB) 468 SC and contended that applicant deserves to be granted disability element of disability element. Learned Counsel for the applicant further pleaded that at the time of commissioning, the applicant was found mentally and physically fit for service in the Army and there is no note in the service documents that he was suffering from any disease at the time of commission in Army. The diseases of the applicant were contracted during the service and considered as aggravated by Military Service, hence applicant

deserves to be granted disability element of disability pension with its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents submitted that as the disability of applicant has been assessed @ 44% for life and opined as aggravated by military service, the applicant is not entitled to disability element of pension in terms of para 81 of Pension Regulations for the Army, 2008 (Part-I) and Para 37 of Pension Regulations for the Army, 2008 (Part – I) and his claim was rightly denied by the respondents. His further submission is that since the applicant is a Short Service Commissioned officer, hence he is not entitled for grant of disability element of disability pension. He pleaded for dismissal of the Original Application.

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

6. For adjudication of the controversy involved in the instant case, we need to address only two issues; firstly, whether the applicant who is a Short Service Commissioned Officer is entitled for grant of disability pension and secondly, if the applicant is granted disability pension whether he is entitled for its rounding of or not.

7. As far as grant of disability pension to Short Service Commissioned Officer is concerned, Govt of Indian, Min of Def letter No 1 (9)/2006/D(Pen-c) dated 30 August, 2006, granted the benefit of service element of disability pension to Short Service Commissioned Officer whose disability is accepted as attributable to or aggravated by military service. The relevant extract of Para 1 of said letter reads as under:-

*“The president is pleased to decide that non regular officer viz, Emergency Commissioned Officers, Short Service Commissioned Officers, who are found in lower medical category at the time of release then the one in which they were recruited and whose disability is accepted as attributable to or aggravated by military service will be entitled to service element of disability pension after taking into account the full commissioned service rendered by them as in the case of Regular Commissioner Officer. The rate of service element will be the same as admissible to the Regular Commissioned Officers since non regular officers have been brought at par with the permanent Regular Commissioned Officers in the matter of grant of disability pension, there will be no requirement of exercising option by non regular commissioned officers as earlier prescribed under Para 1 of the Ministry letter No F-210795/74/Pen-C dated 30 November 1977.*

8. From the above mentioned Rule on disability pension and ratio of law emerging out of above Hon'ble Apex Court's

judgment, it is clear that Short Service Commissioned officer are entitled for grant of disability pension. Once a person has been enrolled/ commissioned in a fit medical category, the benefit of doubt will lean in his favour unless cogent reasons are given by the Medical Board as to why the disease could not be detected at the time of enrolment.

9. As such, in view of the decision of Hon'ble Supreme Court in the case of ***Shiv Dass / Sukhwinder Singh vs Union of India & Ors.*** (supra) as well as Government of India, Ministry of Defence letter No. 17(01)/2017(01)/D(Pen/Policy) dated 23.01.2018, we are of the considered view that benefit of rounding off of disability pension @ 44% for life to be rounded off to 50% for life may be extended to the applicant from the next date of his retirement.

10. Additionally, consequent upon the issue of Government of India, Ministry of Defence letter No. 17(01)/2017(01)/D(Pen/Policy) dated 23.01.2018, Principal Controller of Defence Accounts (Pensions), Prayagraj has issued Circular No. 596 dated 09.02.2018 wherein it is provided that the cases where Armed Forces Pensioners who were retired/discharged voluntary or otherwise with disability and they were in receipt of Disability/War Injury Element as on 31.12.2015, their extent of disability/War

Injury Element shall be re-computed in the manner given in the said Circular which is applicable with effect from 01.01.2016.

11. In view of the above, the **Original Application No. 995 of 2022** deserves to be allowed, hence allowed. The impugned order, rejecting the applicant's claim for grant of disability pension is set aside. Both the disabilities of the applicant are held as 44% for life. The applicant is entitled to get disability element @ 44% for life which would be rounded off to 50% for life from the next date of his retirement. The respondents are directed to grant disability element to the applicant @ 44% for life which would stand rounded off to 50% for life from the next date of his retirement. The respondents are further directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 8% per annum till the actual payment

12. No order as to costs.

**(Vice Admiral Atul Kumar Jain) (Justice Ravindra Nath Kakkar)**  
**Member (A) Member (J)**

Dated: 21 February, 2023  
UKT/-