

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 418 of 2021**

Friday, this the 12<sup>th</sup> day of November, 2021

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

Ex. Sep. 4574623A Kamble Ganesh Chhabila S/o Chhabila,  
 resident of Village Kalyan Nagar, Post Office – Rukmani Nagar,  
 District Amrawati, Maharashtra, PIN Code – 446602.

.... **Applicant**

Ld. Counsel for the : **Shri Nand Kishore**, Advocate and  
 Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), South Block, DHQ PO New Delhi.
3. The Chief Controller of Defence Accounts (Pension), Draupadighat, Allahabad now Prayagraj.
4. The Senior Record Officer for Officer-in-Charge Record, The Mahar Regiment Center, Sougar, Madhya Pradesh.
5. Additional Director General Personnel Services/P.S.-4, Second Appellate Committee on Pension (SACP Adjutant General's Branch, I.H.Q. of MOD (Army), PIN-900256 C/o APO.

... **Respondents**

Ld. Counsel for the: **Shri Alok Kumar Mishra**, Advocate  
 Respondents. Central Govt Counsel.

**ORDER**

**“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, 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:-

- (i) *That Hon’ble Tribunal may kindly be pleased to quash the impugned order dated 1<sup>st</sup> February, 17.07.2019 and 23.04.2021 along with letter dated 08.04.2021 and 03.08.2020 passed by the opposite party No. 5 contained as Annexure Nos. 1, 2 and 3.*
- (ii) *That Hon’ble Tribunal may kindly be pleased to direct the respondents to grant the disability pension to the applicant for 50% disability w.e.f. 31 Jan. 2019 along with arrears including interest thereon.*
- (iii) *Any other appropriate order or direction which this Hon’ble Tribunal may deem just and proper in the facts and circumstances of the case.*

2. Briefly stated, applicant was enrolled in the 13 Mahar Regiment Centre of Indian Army on 06.01.2002 and was discharged on 31.01.2019 (AN) in Low Medical Category on fulfilling the conditions of his enrolment under Rule 13 (3) Item III (i) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at 170 Military Hospital on 10.09.2018 assessed his disability ‘**FROST BITE (LT) HAND WITH AMPUTATION DISTAL PHALANX MIDDLE FINGER (T – 34)**’ @ 6-10% for life opined the disability to be attributable to military service. The applicant’s claim for grant of disability pension was rejected vide letter dated 01.02.2019. The applicant

preferred First Appeal which too was rejected vide letter dated 04.07.2019 which was communicated to the applicant vide letter dated 17.07.2019. The applicant preferred Second Appeal dated 09.09.2019. The applicant filed Original Application No. 577 of 2019 which was disposed off by this Tribunal with direction to the respondents to decide applicant's second appeal dated 09.09.2019 vide order dated 19.02.2021. In compliance of the said order the applicant's second appeal was decided and rejected by the respondents vide letter dated 03.08.2020. It is in this perspective that the applicant has preferred the present Original Application.

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 Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. The injury/disease of the applicant was contacted during the service, it is opined as attributable to military service by the RMB. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension 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 disability of the applicant has been opined by the RMB as attributable, but since the assessment of

the disability element is 6-10% i.e. below 20%, therefore, condition for grant of disability element of pension does not fulfil in terms of Regulation 53(a) of Pension Regulations for the Army, 2008 (Part-I) 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 and, if so, whether it is above or below 20% and also whether applicant was invalidated out of service on account of the disability?

6. It is undisputed case of the parties that applicant was enrolled in the Indian Army on 06.01.2002 and was discharged from service on 31.01.2019 on completion of terms of engagement. The applicant was in low medical category and his Release Medical Board was conducted at the time of discharge at 170 Military Hospital. The Release Medical Board assessed applicant's disability @ 6-10% for life attributable to military service as the injury was sustained on 10.01.2001 during operation 'MEGHDOOT' while moving from Camp II to Camp III as per Injury Report and Court of Inquiry dated 03.02.2011.

7. As per Regulation 53(a) of Pension Regulations for the Army, 2008 (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 6-10% for life, applicant does not fulfil the requirement of Regulation 53(a) of Pension Regulations for the Army, 2008 (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 held at the time of discharge to the extent of holding the applicant's disability at 6-10% 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<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 53(a) of Pension Regulations for the Army, 2008 (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 lacks merit and same is accordingly **dismissed**.

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

14. No order as to costs.

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

Dated: 12 November, 2021

AKD/-