

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW****Original Application No 731 of 2022**Thursday, this the 06<sup>th</sup> day of April, 2023**“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”****“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

743258 JWO Mukesh Kumar Singh Bist (Retd) s/o Brij Mohan Singh Bist, R/o H. No. 145/7, THDC, Sector-04, Ranipur, BHEL, Distt. Haridwar, Uttarakhand - 249407.

-----Applicant

Ld. Counsel for the Applicant: **Shri Bipin Kumar Sharma, Advocate**  
**Shri Kapil Sharma, Advocate**  
**Shri Raj Kumar Mishra, Advocate**

Versus

1. Union of India through the Secretary, Ministry of Defence, South Block, DHQ PO, New Delhi - 110 011.
2. The Chief of Air Staff, Air Headquarters, Vayu Bhavan, Rafi Marg, New Delhi - 110 106.
3. The Principal Director, Directorate of Air Veterans, Air Headquarters (SP), Subroto Park, New Delhi - 110010.
4. The JCDA (Air Force), 2<sup>nd</sup> Floor, AFCAO Building, Subroto Park, New Delhi – 110010.

..... Respondents

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

**ORDER (ORAL)**

**“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, 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 for the following reliefs:-

- “(i) Summon the RMB proceedings dated 23.01.2018, order dated 16.04.2019 of Competent Authority, order dated 14.08.2020 for the First Appellate Committee and E-mail dated 14.03.2022 conveying the decision of the Second Appellate Committee.*
- (ii) Issue/ pass order(s) or direction(s) of appropriate nature setting aside/ quashing all the orders/ findings as stated in sub-para (a) above.*
- (iii) Issue /pass order(s) or direction(s) of appropriate nature to the respondents directing to grant disability pension from the next date of discharge i.e. 01.01.2019 and interest thereon at the rate of 18% per annum.*
- (iv) Issue/pass order(s) or direction(s) to the respondents to round off the disability pension from 15-19% to 50% for life in terms of benefit of broad-banding as held in Ram Avtar’s case.*
- (v) Issue/pass any other order(s) or direction(s) which this Hon’ble Tribunal may deem just and*

*proper in the nature and circumstances of the case including cost of the litigation.*

*(vi) Allow this application with exemplary costs.*

2. Ld. Counsel for the respondents filed counter affidavit which is taken on record.

3. The facts of the case, in brief, are that applicant was enrolled in the Indian Air Force on 17.12.1998 and was retired from service on 31.12.2018 (AN) in low medical category after serving 20 years of service. The Release Medical Board (RMB) assessed his disability "**CSOM (RT) OPTD**" @ 15-19% for life. The composite assessment of disability is @ 15-19% whereas the net assessment has been assessed as NIL for life. The RMB has opined that the disability of the applicant was attributable to service as infection acquired while being in service but considered it as not aggravated by military service. The applicant's claim for grant of disability pension was rejected by the respondents vide order dated 16.04.2019. Thereafter, applicant submitted first appeal dated 12.07.2019 which has also been rejected by the respondents. The applicant preferred the second appeal which has been responded through e-mail stating therein that '*second appeal has been considered by SACP and rejected. Decision letter will be forwarded to you shortly*'. Applicant submitted that no decision letter has been received to him by the respondents. Being aggrieved with denied by disability pension, the instant Original Application has been filed.

4. Learned Counsel for the applicant submitted that applicant was medically fit when he was enrolled in the service and any disability not recorded at the time of enrolment should be presumed to have been caused subsequently. The action of the respondents in not granting disability pension to the applicant is illegal. In this regard, he relied on the decision of the Hon'ble Supreme Court in the case of ***Dharamvir Singh vs. Union of India and others***, (2013) AIR SCW 4236 and ***Sukhvinder Singh vs. Union of India & Others*** (2014 STPL (Web) 468 SC and submitted that for the purpose of determining attributability of the disease to military service, what is material is whether the disability was detected during the initial pre-commissioning medical tests and if no disability was detected at that time, then it is to be presumed that the disabilities arose while in service, therefore, the disability of the applicant may be considered as aggravated by service and applicant be granted disability pension @ 20% which may be rounded off to 50%.

5. On the other hand, learned counsel for the respondents submitted that the RMB had assessed the disabilities of the applicant **CSOM (RT) OPTD @15-19%** for life and opined that the disability is Attributable to service but not aggravated and net assessment qualifying disability is NIL. He pleaded that the as per Rule 153 of Pension Regulations for IAF 1961 (Part 1), disability

pension may be granted to an individual who is invalidated from service on account of disability which is attributable to or aggravated by Air Force service and is assessed at 20% or over. In the present case, RMB has assessed the composite disability @ 15-19%, so his claim for disability pension has rightly been rejected by the respondents. He submitted that the instant Original Application does not have any merit and the same is liable to be dismissed.

6. We have heard submissions of Id. Counsels for both the parties and also gone through the Release Medical Board proceedings as well as the records. The question which needs to be answered are of two folds:-

(a) Whether the applicant is entitled for disability pension despite disability being less than 20%

(b) Whether the applicant is entitled for the benefit of rounding off the disability pension?

7. In the instant case, the medical board has opined the disability of the applicant as attributable to Air force service. So far as disability which is shown to be assessed as less than 20-% is concerned, various Trubunals and Courts have found that the assessment of disability to the tune of 15% to 19% itself is a doubtful assessment and cannot be final for the simple reason that there is

no barometer which can assess the disability percentage to the extent of 1% and therefore the percentage of disability which has been assessed as 15% to 19% may be 20% also and there may be variation of at least two percent plus also. In case of doubt as per the Pension Regulations, the benefit should always be given to the applicant. Probably because of this reason the Union of India must have issued the order dated 31.01.2001 to provide for giving the benefit of rounding off the disability pension to 50% to the persons who are having less than 50% of the disability. Further, on page 5 of Medical Board Proceedings, percentage of disability assessed as 20% has been amended to 15% to 19%. In the judgment of Sukhvinder Singh vs. Union of India (supra), it is clearly mentioned that “whenever 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 percent and as per extant Rules/Regulations, disability leading to invaliding out of service would attract the grant of fifty percent disability.” In this case, Medical Board has opined that disability is attributable to Air force service, even otherwise in view of judgment of Dharamvir Singh vs. Union of India & others reported in (2013) SC 316, the disability has to be considered as attributable to Air Force service because the applicant was enrolled in medically fit condition and there is no note of any disability at the time of

enrolment and he has been discharged in low medical category after approx 20 years of service.

8. After going through the opinion of the medical board, we have noted that the disability has been opined as attributable as per Para 57 of GMO MIL Pension (Amendment) 2008 because the infection acquired while in service.

9. We have observed that this disability was detected in Sep 2005, after about 07 years of service. We have also noticed that RMB has not explained the reason for assessing disability as 15% to 19%. Hence, we are inclined to give benefit of doubt in favour of the applicant. Thus, we are of the considered opinion that the applicant was enrolled in the Indian Air Force in a fit medical condition and has served for over 20 years. He suffered the disability during his service period and has been discharged in low medical category, therefore, in view of the judgment of the Hon'ble The Apex Court in the case of Sukhvinder Singh Vs. Union of India (supra), he is entitled to disability element @ 15% to 19% deemed to be 20% which may be rounded off to 50%.

10. In the above conspectus, we are of the considered view that the impugned orders passed by the respondents are not only unjust and illegal but also are not in conformity with rules, regulations and law. The impugned orders passed by the respondents deserve to

be set aside and the applicant is entitled to disability element @ 20% for life which may be rounded off to 50% for life from the next date of discharge.

11. In the result, O.A. No. 731 of 2022 is allowed. The impugned orders dated 16.04.2019, 14.08.2020 and 03.11.2020 are set aside. The respondents are directed to grant disability element to the applicant @ 15% to 19% deemed to be 20% which shall be rounded off to 50% for life from the date of discharge. The respondents are directed to give effect to this order within four months from the date of receipt of a copy of this order. Default will invite interest @ 8% per annum till actual payment.

12. No order as to costs.

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

Dated: 06<sup>th</sup> April, 2023  
rk/-