

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 282 of 2021**Friday, this the 17<sup>th</sup> day of December, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

No. 156252W Ex. POLOG (MAT) Ranjan Kumar Mishra, S/o Ramesh Chandra Mishra, R/o Village – Bhaiyakhera, P.O. – Usuru, District – Rae Bareli, Pin-229202 (UP).

**.... Applicant**Ld. Counsel for the Applicant : **Shri K.P. Datta**, Advocate holding brief of **Shri Om Prakash Kushwaha**, Advocate

Versus

1. Union of India, through its Secretary, Ministry of Defence (Navy), New Delhi-110011.
2. The Chief of the Naval Staff, IHQ of Ministry of Defence (Navy), Date of Pay & Allowance 'D' II Wing, Sena Bhawan, New Delhi-110011.
3. The Commodore, Bureau of Sailors, Naval Pension Office, C/o INS Tanaji, Sion-Tombay Road, Mankhurd, Mumbai-400088.
4. Office of the Principal Controller of Defence Accounts (Navy), Mumbai, Pin-400088.
5. Branch Manager, Bank of Baroda, Bhojpur Br., District – Rae Bareli (UP).

**... Respondents**Ld. Counsel for the Respondents: **Shri Arun Kumar Sahu**, Advocate  
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:-

- A. *To issue/pass an order or directions to set-aside/quash Naval Pension Office, C/o INS Tanaji, Sion-Trombay Road, Mankhurd, Mumbai letter No. PEN/600/D/LRDO I:10/2017/156252W dated 11 Oct 2017.*
- B. *To issue/pass an order or directions to the respondents to grant disability element of disability pension to the applicant @6-10% wef 31.10.2017 based on relevant Ruling and Judgment passed in similar cases time to time from the date of discharge wef 31.10.2017, and benefit of Rounding of/Broad banding of disability pension @6-10% to @50% for life along with arrears and interest @18% p.a. from the date of discharge wef 31.10.2017.*
- C. *To issue/pass an order/directions to the respondents to decide the First Appeal of the applicant submitted on 11.03.2021.*
- D. *To issue/pass any other order or direction as Appellate Committee may deem just, fit and proper under the circumstances of the case in favour of the applicant.*
- E. *To allow this original application with costs.*

2. Briefly stated, applicant was enrolled in the Indian Navy on 03.10.2002 and was discharged on 31.10.2017 (AN) in Low Medical Category after completion of 15 years and 28 days of service. The applicant, while in service, had sustained fracture

dislocation of the Middle Finger while playing cricket at Campbell Bay on 18.09.2014. At the time of discharge from service, the Release Medical Board (RMB) held at Mumbai on 29.08.2017 assessed his disability '**GANGRENE DISTAL PHALANX (POST TRAUMATIC) MIDDLE FINGER LEFT. ICD NO. S66.9 W20.0**' @6-10% for life opined the disability to be **attributable to service**. The applicant's claim for grant of disability pension was rejected vide letter dated 11.10.2017. The applicant preferred First Appeal dated 11.03.2021 but of no avail. 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 Navy and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Navy. The disease/injury of the applicant was contacted during the service and it has been opined by the RMB as attributable to service. 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 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 as attributable to service but since the assessment of the disability element is 6-10% i.e. below 20%, therefore, condition for

grant of disability element of disability pension does not fulfil in terms of Regulation 105-B of Navy (Pension) Regulations, 1964 and, therefore, the competent authority has rightly denied the benefit of disability element of disability 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 naval 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 Navy on 03.10.2002 and was discharged from service on 31.10.2017 on completion of terms of engagement. The applicant was in low medical category and his Release Medical Board was conducted on 29.08.2017 at Mumbai. The Release Medical Board assessed applicant's disability @ 6-10% for life neither attributable to nor aggravated by naval 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 naval service. Since, applicant's disability element is 6-10 % for life, applicant does not fulfil the requirement of Regulation 105-B of Navy (Pension) Regulations, 1964.

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 29.08.2017 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 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 naval 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: 17 December, 2021

AKD/-