

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 600 of 2022**

Friday, this the 16th day of December, 2022

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Lt. Gen. Rakesh Kumar Anand, Member (A)

No. 15200489-A Ex. Gnr. Rahul Kumar, son of Shri Rajendra Singh, resident of Village – Ranchhar, Post – Baraut, District – Bagpat (U.P.), Pincode-250645.

.... **Applicant**

Ld. Counsel for the Applicant : **Shri V.P. Pandey**, Advocate and
Shri Rakesh Kumar Pundir, Advocate
Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi-110011.
2. The Chief of the Army Staff, Integrated Headquarters, Ministry of Defence (Army), South Block, New Delhi-110011.
3. Officer-in-Charge Records, Artillery Records, PIN-908802, C/o 56 APO.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Prayagraj-211014.

... **Respondents**

Ld. Counsel for the Respondents: **Dr. Shailendra Sharma Atal**, 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 direction to the Respondents to summon and quash the impugned rejection order passed by Records, respondent No.3 being arbitrary and illegal.*
- (b) *to issue/pass an order or direction to the Respondents to quash/set aside the order dated 13 January 2021 passed by Appellate Committee on First Appeals (ACFA) contained in Annexure No.A-1 being arbitrary and illegal.*
- (c) *To issue an order or direction to the Respondents to grant disability element @20% for life which after rounding off will be @50% for life from the next date of discharge i.e. 01.02.2021.*
- (d) *Any other relief as considered proper by this Hon’ble Tribunal be awarded in favour of the applicant.*
- (e) *Cost of the Original Application be awarded to the applicant.*

2. Briefly stated, applicant was enrolled in the Regiment of Artillery of Indian Army on 04.01.2023 and was discharged on

31.01.2021 (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 Military Hospital, Dehradun on 28.10.2019 assessed his disability '**GOUT (M-10)**' @ 10% for life opined the disability to be **aggravated by service**. The applicant's claim for grant of disability pension was rejected vide letter dated 31.05.2020. The applicant preferred First Appeal which too was rejected vide letter dated 13.01.2021. 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 disease of the applicant was contracted during the service, hence it is held as aggravated by service by 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 has been regarded as **aggravated by service**, but since the assessment of the disability element is 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 above or below 20% and whether applicant was invalidated out of service on account of the disability or was discharged on completion of terms of engagement?

6. It is undisputed case of the parties that applicant was enrolled in the Indian Army on 04.01.2003 and was discharged from service on 31.01.2020 on completion of terms of engagement. The applicant was in low medical category and his Release Medical Board was conducted on 28.10.2019 at Military Hospital, Dehradun. The Release Medical Board assessed applicant's disability @10% for life as aggravated by military service.

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. Although the applicant's disability has been opined as aggravated by service, but since it is assessed 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 dated 28.10.2019 to the extent of holding the applicant's disability at 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 04th 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.

(Lt. Gen. Rakesh Kumar Anand)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 16 December, 2022

AKD/-