

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 675 of 2022**Friday, this the 16<sup>th</sup> day of December, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Lt Gen Rakesh Kumar Anand, Member (A)**Rambeer Singh (No. 2998712Y Ex Nk)  
S/o Hariram Gurujar  
R/o Village – Marakpur, Post Office – Gobindgarh,  
District – Alwar – 301604

..... Applicant

Ld. Counsel for the Applicant: **Shri Yashpal Singh**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi.
2. Additional Director General personnel Services, Adjutant General's Branch, Integrated Headquarters of Ministry of Defence (Army), PIN – 900256, C/o 56 APO.
3. Appellate Committee of first Appeal through its Chairman, Adjutant General's Branch, Integrated Headquarters of Ministry of Defence (Army), PIN – 900256, C/o 56 APO.
4. Second Appellate Committee on pension through its Chairman, Adjutant General's Branch, Integrated Headquarters of Ministry of Defence (Army), PIN – 900256, C/o 56 APO.
5. Officer-in-charge Records, The Rajput Regiment, PIN-900427, C/o 56 APO
6. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Prayagraj-211014.

..... **Respondents**Ld. Counsel for the Respondents : **Shri Arvind Kumar Pandey**,  
Central Govt Counsel

## ORDER

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:-

- “(a) Issue/pass an order setting aside the order/letter dated 12.06.2015 and order/letter dated 09.06.2021 rejecting the claim of the applicant for disability pension (Annexure No. 1 and 2 to the Original Application), after summoning the relevant original records.
- (b) Issue/pass an order directing the respondents to consider case of the applicant for grant of disability pension and provide the same from the date of discharge including arrears and interest and also the benefit of rounding off and other consequential service benefits of ex-serviceman.
- (c) Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.
- (d) Allow this Original Application with cost.”

2. The brief facts of the case are that the applicant was enrolled in the Indian Army on 18.01.1999 and was discharged from service on 30.11.2014 (AN) in terms of Rule 13 (3) III (iii)(a)(i) of Army Rules, 1954 in low medical category P2 (Permanent) having rendered 15

years and 10 months of service. The Release Medical Board (RMB) of the applicant held on 06.08.2014 assessed his disability “**LT PUJ OBSTRUCTION**” @ 15-19% for life and opined the disability to be neither attributable to nor aggravated by military service (NANA). Disability pension claim of the applicant was rejected vide order dated 12.06.2015. First appeal of the applicant was rejected by First Appellate authority vide order dated 09.06.2021 and second appeal preferred by the applicant has not been replied so far. Being aggrieved, the applicant has filed the present Original Application for grant of disability pension.

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. The disease of the applicant was contracted during the service, hence it is attributable to and aggravated by Military Service. He placed reliance on the judgment of the Hon'ble Apex Court in the case of ***Dharamvir Singh vs. Union of India & Ors***, (2013) 7 SCC 316 and ***Union of India and others vs. Ram Avtar*** (Civil Appeal No. 418 of 2012, decided on 10.12.2014) and argued that the disability of the applicant is principally due to stress and strain of military service as the

disability was suffered by the applicant in the year 2013 when he had completed about 14 years of service and should be considered as aggravated by military service and pleaded that applicant be granted disability pension treating it @ 20% duly rounded off to 50% for life.

4. On the other hand, Ld. Counsel for the respondents submitted that disability of the applicant has been assessed as NANA by the RMB @ 15-19% for life, hence competent authority had rejected the claim for grant of disability pension. He further submitted that in the instant case, duly constituted medical board assessed applicant's disability below 20%. Hence, as per Rule 179 of Pension Regulations for the Army, 1961 (Part-1) and Para 53(a) of Pension Regulations for the Army, 2008 (Part-1), applicant being discharged on completion of terms of engagement/on completion of service limit is not entitled for disability pension. He pleaded for dismissal of the O.A.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the RMB and rejection orders of disability pension claim as well as appeal.

6. For adjudication of the controversy involved in the instant case, we need to address three issues; firstly, is the discharge of the applicant a case of discharge or invalidation?; secondly, is the disability attributable to or aggravated by military service or not? and

thirdly, if found to be attributable to or aggravated by military service, can the benefit of rounding off be extended to the applicant?

7. For the purpose of first question as to whether the discharge of the applicant by Release Medical Board is a case of discharge or invalidation, in this context, it is clear that the applicant was medically boarded out from service before completion of his terms of engagement in low medical category and was, thus, discharged from service. In this regard, Rule 4 of the Entitlement Rules for Casualty Pensionary Awards, 1982 defines invalidation as follows:

*“Invaliding from service is a necessary condition for grant of a disability pension. An individual, who, at the time of his release under the Release Regulations, is in a lower medical category than that in which he was recruited will be treated as invalided from service. JCOs/Ors and equivalent in other services who are placed permanently in a medical category other than ‘A’ and are discharged because no alternative employment suitable to their low medical category can be provided, as well as those who having been retained in alternative employment but are discharged before the completion of their engagement will be deemed to have been invalided out of service.”*

8. Thus, in light of above definition, it is clear that the applicant was in low medical category as compared the one when he was enrolled and hence his discharge in the rank of Naik after 15 years and 10 months of service is to be deemed as invalidation out of service.

9. Once the discharge of the applicant is deemed as invalidation then his disability percentage can't be less than 20% as per law settled on this issue by Hon'ble Apex Court in the case of **Sukhvinder Singh vs. Union of India & Ors.**, reported in (2014) STPL (WEB) 468 SC. Relevant extract of the judgment is as follows :

*“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.”*

10. So far as attributability or aggravation effect of disability is concerned, the provisions of Pension Regulations for the Army, 1961 (Part-I) and the Entitlement Rules for Casualty Pension Award, 1982 are relevant and the same are excerpted herein below;

**“(a) Pension Regulations for the Army 1961 (Part I)**

**Para 173.** *Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by*

*military service in non-battle casualty and is assessed at 20 percent or over.*

*The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II.”*

**(b) Entitlement Rules for Casualty Pension Award, 1982**

*5. The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions:-*

**Prior to and During Service.**

- (a) A member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance.*
- (b) In the event of his subsequently being discharged from service on medical grounds any deterioration in his health which has taken place is due to service.*

**Onus of Proof.**

*9. The claimant shall not be called upon to prove the conditions of entitlement. He/she will be given more liberally to the claimants in field/afloat service cases.*

**Diseases**

*14. In respect of diseases, the following rule will be observed:-*

- (a) cases.....*
- (b) a disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service, if no note of it was made at the time of the individual's acceptance for military service. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.”*

11. Additionally, the law on the point of attributability of the disability is no more RES INTEGRA. On the question of attributability of disability to military service, we would like to refer to the judgment and order of Hon'ble the Apex Court in the case of ***Dharamvir Singh vs Union of India & Ors*** reported in (2013) 7 SCC 316. The relevant

portion of the aforesaid judgment, for convenience sake, is reproduced as under:-

*"29.1. Disability pension to be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).*

*29.2. A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service [Rule 5 read with Rule 14(b)].*

*29.3. The onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).*

*29.4. If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service [Rule 14(c)]. [pic]*

*29.5. If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service [Rule 14(b)].*

*29.6. If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons [Rule 14(b)]; and 29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 - "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."*

12. Thirdly, since the applicant was discharged from service on 30.11.2014, therefore, in view of the judgment of the Hon'ble Apex Court in **Ram Avtar** (supra), the applicant is entitled to the benefit of rounding off of disability element from 20% to 50% for life.

13. From the above mentioned Rule on disability pension and ratio of law emerging out of Hon'ble Apex Court's judgment (supra), it is clear that once a person has been recruited 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. In this particular case, we find that the applicant was placed in low medical category due to his disability "**LT PUJ OBSTRUCTION**". The applicant has worked with the respondents for more than 15 years with this disability in low medical category and the only reason given in medical board for denial of disability pension is that it is NANA and not connected with service. Additionally no meaningful reason as to why the disease could not be detected at the time of his enrolment, is mentioned either in the medical board proceedings or in the counter affidavit. Thus considering all issues involved in this case, we are of the following considered opinion:

(a) The applicant's discharge vide Release Medical Board held on 06.08.2014 is to be treated as invalidation in terms of Rule 4 of the Entitlement Rules (supra).

(b) Since the applicant has worked more than 15 years with the respondents in low medical category and has been discharged (now deemed invalidation) with effect from 30.11.2014 due to P2 (Permanent) low medical category, therefore, the benefit of doubt will lean towards the applicant and his disability is to be considered as 'aggravated by military service'.

14. As a result of foregoing discussion, the O.A. is **allowed**. The impugned orders passed by the respondents are set aside. The applicant is held entitled to 20% disability element for life duly rounded off to 50% for life from the next date of discharge i.e. w.e.f. 01.12.2014. The respondents are directed to grant disability element to the applicant @ 50% for life from the next date of discharge from service. However, due to law of limitations settled by the Hon'ble Supreme Court in the case of ***Shiv Dass v. Union of India and others*** (2007 (3) SLR 445), the arrears of disability element will be restricted to three years preceding the date of filing of the instant O.A. The date of filing of this O.A is 18.08.2022. 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.

15. No order as to costs.

16. Pending Misc. Application(s), if any, shall stand disposed off.

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

**(Justice Umesh Chandra Srivastava)**  
**Member (J)**

Dated: December, 2022  
SB