

**Court No. 1**  
**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**Original Application No. 1030 of 2023**

Friday, this the 01<sup>st</sup> day of March, 2024

**“Hon’ble Mr. Justice Anil Kumar, Member (J)”**  
**“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

JC-705697P, Ex. Nb. Sub. Raj Kumar Lawania, S/o Shri Rajendra Singh Lawania, Resident of Village- Nagla Meera, Post Office – Beri Chahar, Teshil – Kheragarh, District – Agra, Uttar Pradesh.

.... **Applicant**

Ld. Counsel for the : **Col. Ashok Kumar (Retd)** , Advocate and  
Applicant **Shri Rohit Kumar**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi -110011.
2. Commandant cum Chief Records Officer, Army Medical Centre and College, Lucknow -226002.
3. Appellate committee for First Appeals, PS-8, Adjutant General’s Branch, Integrated Headquarters of Ministry of Defence (Army), Room No. 527, Fifth Floor, A-Block, Defence Office Complex, K.G. Marg, New Delhi -110001.

... **Respondents**

Ld. Counsel for the: **Shri Yogesh Kesarwani**, Advocate  
Respondents. Central Govt Standing Counsel.  
Assisted by **Major Danish Farooqui**,  
Departmental Representative

**ORDER**

**“Per Hon’ble Mr. Justice Anil Kumar, 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) *Quash the rejection order of the Appellate Committee for First Appeals, Additional Directorate General of Personnel Services, PS -8, Adjutant Generals Branch, Integrated Headquarters of Ministry of Defence (Army), Room No. 527, fifth Floor, A-Block, Defence Office Complex, KG Marg, New Delhi rejection order bearing No. B/40502/321/2023/AG/PS-8 dated 22 Jun 2023 with all the consequential benefits to the applicant.*
- (b) *Quash the rejection order of the Army Medical Centre and College, Lucknow rejecting the intial claim for grant of disability pension bearing No.JC705697P/REJ/DPI dated 29 Aug 2022.*
- (c) *Direct the respondents to grant disability pension to the applicant @20% with effect from 31 Aug 2022 (date of discharge).*
- (d) *To direct the respondents to pay benefits of rounding off to the applicant as catered for in paragraph 7.2 of Army Headquarter policy letter No. Government of India, Ministry of Defence Policy letter No. 1(2)/97/D/Pen)-C dated 31 Jan 2001.*
- (e) *To issue any other order or direction considered expedient and in the interest of Justice and equity.*
- (f) *Award cost of the petition.*

2. Briefly stated, applicant was enrolled in the medical Corps of Indian Army on 24.08.1996 and discharged on 31.08.2022 (AN) in

Low Medical Category on fulfilling the conditions of his enrolment under Rule 13 (3) Item I (i) (a) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at Command Hospital (Eastern Command), Kolkata on 29.03.2022 assessed his disability '**ISCHEMIC STROKE RIGHT MIDDLE CEREBRAL ARTERY TERRITORY (ICD-I 63.411)**' @10% for life opined the disability to be neither attributable to nor aggravated by service. The applicant's claim for grant of disability pension was rejected vide letter dated 29.08.2022. The applicant preferred First Appeal which too was rejected vide letter dated 22.06.2023 which was communicated to the applicant vide letter dated 01.07.2023. 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/injury of the applicant was contacted during the service, hence it is attributable to and aggravated by Military Service. He further submitted that in previous Re-Categorization Board the applicant's disability was @20% which has been wrongly assessed @10% by the RMB. He also submitted that for the similar disease the RMBs have assessed the disability the same disability more than 20% but in the applicant's case it has wrongly assessed

applicant's disability @10%. He pleaded that various Benches of Armed Forces Tribunal have granted disability element of disability pension in similar cases, as such the applicant be granted disability element of 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 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 81 of Pension Regulations for the Army, 2008 (Part-I) and Regulation 53(a) of the Pension Regulations for the Army, 2008 (Part-I) which provides that *“An individual released/retired/ discharged on completion of terms of engagement or on completion of service limits or on attaining the prescribed age (irrespective of his period of engagement), if found suffering from a disability attributable to or aggravated by military service and so recorded by Release Medical Board, may be granted disability element in addition to service pension or service gratuity from the date of retirement/discharge, if the accepted degree of disability is assessed at 20% or more”* the applicant is not entitled to disability **element of disability** pension. He further submitted that Medical Board is an expert body and its opinion is entitled to be given due weight, value and credence. He further submitted that the RMBs assessed the percentage of

disablement of individual on case to case basis. He pleaded for dismissal of the 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 24.08.1996 and discharged from service on 31.08.2022 on completion of terms of engagement. The applicant was in low medical category and his Release Medical Board was conducted on 29.03.2022 at Command Hospital (Eastern Command) Kolkata. The Release Medical Board assessed applicant's disability @ 10% for life neither attributable to nor 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. Since, applicant's disability element is 10% for life, applicant does not fulfil the requirement of Regulation 53(a) of Pension Regulations for the Army, 2008 (Part-I). Further, we are of the opinion that the degree of disablement of the individual are to be assessed by the RMB on

case to case basis, as such we do not find any illegality in assessment of the applicant's disability.

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 29.03.2022 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 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 Atul Kumar Jain)**  
**Member (A)**

**(Justice Anil Kumar)**  
**Member (J)**

Dated: 01 March, 2024

Ashok/AKD/-