

**RESERVED**  
**Court No. 1**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**ORIGINAL APPLICATION No. 957 of 2023**

Tuesday, this the 25<sup>th</sup> day of February, 2025

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

Service No. 14625458-H, Ex. Nk. Ram Dayal Kushwaha,  
Son of Shri Chandrabhan Kushwaha,  
Resident of Nawapar, Deoria, Nawapar, Uttar Pradesh-274601  
..... **Applicant**

Counsel for the : **Maj. S.M. Mustafa (Retd.)**, Advocate  
Applicant

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. The Officer-in-Charge Records, EME Records, Pin 900453 C/o 56 APO.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Prayagraj-211014.

.....**Respondents**

Counsel for the : **Shri Ram Saran Awasthi**, Advocate  
Respondents. Central Govt. Standing Counsel

**ORDER**

**“Per Hon’ble Mr. Justice Anil Kumar, Member (J)”**

1. The instant Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for following reliefs :-

- (a) *To set aside/quash the rejection order dated 17 February 2017 contained as Annexure A-1.*
- (b) *To pass an order/direction to Respondents to summoning of Release Medical Board proceedings as to ascertain the percentage of disability (b) NON-UNION INTER CONDILAR FRACTURE (RT) FEMUR (OPD) (S-72.4).*
- (c) *To issue order/direction to the respondents to grant disability element of disability pension for life from the next date of discharge i.e. 01 March 2020.*
- (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. The Original Application was heard and finally decided on merit by the order of this Tribunal dated 14.05.2024 by which Original Application has been dismissed.

3. Being aggrieved by the order dated 14.05.2024 passed by this Tribunal, applicant preferred Writ Petition (Writ-A No. 6368 of 2024) before the Hon'ble High Court Allahabad, Lucknow Bench and by the order dated 22.11.2024 the Hon'ble High Court was pleased to allow the Writ Petition filed by the applicant and set aside the judgment dated 14.05.2024 passed by this Tribunal and remitted the matter back to this Tribunal for considering the issues observed in the judgment in light of the judgments already rendered and the guideline applicable in this behalf.

4. Brief facts of the case are that applicant was enrolled in the Indian Army on 28.02.1995 and was discharged from service on 28.02.2017 in low medical category on completion of terms of engagement under Rule 13(3) Item III (i) of Army Rules, 1954. The applicant was granted Casual Leave from 24.10.2011 to 12.11.2011. During the aforesaid Casual Leave, on 30.10.2011, the applicant met with an accident and sustained injury in his right leg while going to market by motor cycle near Kotwa Village, which after investigation was found to be a case of **“NON-UNION INTER CONDILAR FRACTURE (RT) FEMUR (OPTD) (S72.4)”**. At the time of discharge from service, the Release Medical Board (RMB) held at 167 Military Hospital, C/o 56 APO on 21.10.2016 assessed his disabilities (i) **‘RHEUMATOID ARTHRITIS (M06.9)’ @15-19%** for life as aggravated by military service and (ii) **‘NON-UNION INTER CONDILAR FRACTURE (RT) FEMUR (OPTD) (S72.4)’ @30%** for life as neither attributable to nor aggravated (NANA) by service, composite assessment for both the disabilities @40% for life. The applicant’s claim for grant of disability pension was rejected vide letter dated 17.02.2017.

5. Heard learned counsel for the parties and perused the record and gone through the judgment passed by the Hon’ble High Court in Writ petition and case law referred by the parties. Case laws referred by the applicant are :-

- (a) T.A. No. 92 of 2011, **Signalman Jayant Bagchi vs. Union of India**, order dated 03.05.2012 which is annexed as

Annexure No. A-10 to the Original Application and Civil Appeal No. 1734/2015, **Union of India and Others vs. Signalman Jayant Bagchi** in which order passed by the Hon'ble Apex Court on 07.12.2018.

(b) O.A. No. 320 of 2019, **Sgt. Rohitash Kumar Sharma (Retd) vs. Union of India & others** order passed by this Tribunal on 18.01.2021 which is annexed as Annexure No. A-11 to the Original Application.

(c) O.A. No. 626 of 2017, **Rajbir Singh Bhadouria vs. Union of India & Others**, order passed by this Tribunal on 08.05.2018 against which Civil Appeal was filed before the Hon'ble Apex Court, No. 26955/2020, **Union of India & Others vs. Rajbir Singh Bhadouria**, in which order has passed by the Hon'ble Apex Court on 04.03.2021.

(d) O.A. No. 157 of 2018, **Ex Sub. Ram Avtar vs. Union of India & Others** which has been disposed of by this Tribunal by the order dated 10.12.2018.

Learned counsel for the respondents relied on the following case laws :-

- (a) Civil Appeal No. 10870 of 2018 **Union of India & Others vs Wing Commander SP Rathore**, decided on 11.12.2019.
- (b) Civil Appeal No. 2259 of 2012, **Bachchan Prasad vs Union of India & Others**, in which judgment has been passed by the Hon'ble Apex Court on 04.09.2019.

6. As regards first disability of the applicant, i.e. '**RHEUMATOID ARTHRITIS (M06.9)**' by the judgment/order dated 14.05.2024 passed by this Tribunal was assessed @15-19% for life as aggravated by military service, grant of disability element for this disability was rejected being disability below 20% and not meeting the eligibility condition as given in Regulation 53(a) of Pension Regulations for the Army, 2008 (Part - I), which reads that '*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 first disability is @ 15-19% for life, applicant does not fulfill the requirement of Regulation 53(a) of Pension Regulations for the Army, 2008 (Part-I). The applicant was discharged from service on completion of terms of engagement, i.e. 22 years in the rank of Naik, 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 judgment of the Hon'ble Apex Court in the case of **Sukhwinder Singh vs Union of India & Ors**, (2014) STPL (WEB) 468 and therefore, applicant is not fulfilling the conditions for grant of disability element for this disability.

7. Further, assessment of first disability by the RMB @ 15-19% which is below 20% for life is not tenable in terms of the Hon'ble Apex Court judgment in the case of Civil Appeal No 10870 of 2018, **Union of India & Ors vs Wing Commander SP Rathore**, decided on 11.12.2019 wherein the court made it clear that '*disability element is inadmissible irrespective of disability being attributable to or*

*aggravated by the military service when disability percentage is below 20% and discharge from service on completion of terms of engagement/service' and also in terms of judgment of the Hon'ble Apex Court in the case of **Bachchan Prasad vs Union of India & Ors**, Civil Appeal No. 2259 of 2012, decided on 04.09.2019 wherein the court held that 'we cannot find fault with the opinion of the Medical Board that the disability is less than 20%.'*

8. Regarding disability No. 1, i.e. '**RHEUMATOID ARTHRITIS (M06.9)**', in judgment dated 22.11.2024, it has been observed by the Hon'ble High Court that Tribunal has wrongly sidelined the pleadings set out by the petitioner and failed to consider the implication of its own judgment(s) rendered in identical matters for giving equal benefit to the petitioner. It has also been observed by the Hon'ble High Court that issues framed by the Tribunal do not touch upon the real question as to whether the first injury sustained by the petitioner which was quantified at 15-19% for life entitled the petitioner of the benefit of the judgment(s) or not. The Hon'ble High Court has further observed that two judgments referred by the respondents and annexed in the Original Application as Annexure A-10 & A-11 have not been considered by the Tribunal. The Tribunal was under bounden duty to consider such a vital aspect and principle of rounding off on the first disability was liable to be determined having regard to the earlier judgments of which the finality was not disputed by Union of India.

9. For disposal of disability No.1, issue No.1 was framed by this Tribunal, in impugned judgment dated 14.05.2024 which is as follows :-

(a) Whether the first disability is below 20% or will be assessed as 20% or above and whether applicant was invalidated out of service on account of the disability or was discharged on completion of terms of engagement and this issue was observed in judgment of the Tribunal.

The case laws relied by the applicant are mentioned in Para 5 (a) to (d) which are as follows :-

(i) **T.A. No. 92 of 2011, Signalman Jayant Bagchi vs. Union of India.**

This case was allowed by this Tribunal on 03.05.2012 which is filed with the Original Application as Annexure A-10 and appeal against the judgment filed by the Union of India, i.e. Civil Appeal No. 1734/2015, **Union of India and Others vs. Signalman Jayant Bagchi** was dismissed by the Hon'ble Apex Court by the order dated 07.12.2018. In this case, applicant was suffering from low backache and sustained injury while on leave and in Medical Board proceedings it was mentioned that Low Backache of the applicant was aggravated by 'stress and strain of service which was assessed @ 15-19% for two years and it was a case of invalidation having 7 years of service in the Army. Therefore, applicants' disability was treated @ 20% for two years and accordingly, applicant was granted @ 20% for

two years. This case was based on different facts and circumstances, therefore, applicant cannot be given any benefit on the basis of the order passed in that judgment.

(ii) **O.A. No. 320 of 2019, Sgt. Rohitash Kumar Sharma (Retd) vs. Union of India & others.**

This case was decided by this Tribunal by order dated 18.01.2021 which is filed with the Original Application as Annexure No. A-11. In this case disability @ 15-19% was rounded off to 50% but in that order law laid down by the Hon'ble Supreme Court in Civil Appeal No 10870 of 2018 **Union of India & Ors vs Wing Commander SP Rathore**, decided on 11.12.2019 has not been followed in which the Hon'ble Apex Court categorically held that disability element would not be admissible for pension if the disability is less than 20% and rounding it off to 50% would not apply in such a case, relevant portion of the judgment is as follows :-

*“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.”*

This principle was reiterated by the Hon'ble Apex Court in the order passed on 29.07.2024 in Civil Appeal Nos. 8152-8153 of 2024 (@ Diary No. 2382 of 2022), **Union of India & Others vs. Ex Sgt. Kamal Deep Rastogi.**



(iii) **O.A. No. 157 of 2018, Ex Sub. Ram Avtar vs. Union of India & Others.**

This case was allowed by this Tribunal by the order dated 10.12.2018. In this case, disability of the applicant was assessed @ 6-10% for life as aggravated by military service. The applicant was granted disability element of pension @ 6-10% duly rounded off to 50% for life but this order is not in accordance with the law laid down by the Hon'ble Supreme Court in Union of India vs. **Wing Commander SP Rathore** (supra).

Further contrary view of RMB dated 21.10.2016 to the extent of holding the applicant's first disability @ 15-19% is not tenable in terms of the Hon'ble Apex Court judgment in the case of **Bachchan Prasad** (supra), decided on 04.09.2019, wherein the court has 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%. The appellant is not entitled for disability element, as his disability is less than 20%."*

10. Keeping in view the aforesaid observations/discussion and the observation made by the Hon'ble Apex Court in the cases of **Wing Commander SP Rathore** (supra) and **Bachchan Prasad** (supra), we

are of the view that the applicant is not entitled to the disability element of disability pension for first disability, i.e. '**RHEUMATOID ARTHRITIS (M06.9)**', which is assessed @ 15-19%, i.e. below 20%.

11. As regards, second disability of the applicant, i.e. '**NON-UNION INTER CONDILAR FRACTURE (RT) FEMUR (OPTD) (S72.4)**' which was assessed @30% for life as neither attributable to nor aggravated (NANA) by service, we find that applicant was on Casual Leave and while he was going to market near Kotwa Village, met with an accident and sustained injury resulting into second disability, thus, the activity in which he sustained injury being not connected with his military duties in any manner and having no causal connection, the applicant is not entitled to the disability element of disability pension for the second disability also. It is also pertinent to mention here that there is no observation/direction of the Hon'ble High Court in judgment dated 22.11.2024 passed in Writ Petition regarding 2<sup>nd</sup> disability.

For second disability, applicant relied on judgment passed by the Hon'ble Apex Court in Civil Appeal No. 26955 of 2020, **Union of India & Ors vs. Rajbir Singh Bhadouria**, decided on 04.03.2021. In this case disability was sustained during leave which was assessed @ 30% for life as aggravated by stress and strain of the service and it was a case of invalidation where the applicant was discharged from service before completion of terms of engagement and in that case, the Release Medical Board had opined that injury was aggravated by military service. Thus, fact of this case is different from that case and

no benefit can be granted to the applicant by the order passed by the Hon'ble Court.

12. On the basis of above observation and principles laid down by the Hon'ble Courts, we are of the view that applicant is not entitled for disability element of disability pension for disability No. 1 & 2.

13. Accordingly, Original Application is **dismissed**.

14. No order as to costs.

**(Vice Admiral Atul Kumar Jain)**  
**Member (A)**

Dated: February, 2025  
SB

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