

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 101 of 2023**Friday, this the 21<sup>st</sup> day of July, 2023**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

No. 4061604-N Naik Rattan Mani, S/o Late Shri Amlanand Naithani, R/o OM Enclave, Lane No. – 1, Kedarapuram (Near Police Chowki) Doon University, Dehradun-248001 (Uttarakhand).

**.... Applicant**

Ld. Counsel for the: **Lt. Col. Nidhikant Dhyani (Retd)**, Advocate  
Applicant **Shri Raj Kumar Mishra**, Advocate  
Versus

1. The Union of India, Through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. The Chief of Army Staff, IHQ of MoD (Army), South Block, New Delhi-110011.
3. The Senior Records Officer, Defence Security Corps (DSC), PIN-901277, C/o 56 APO.
4. The Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (UP)-211014.

**... Respondents**

Ld. Counsel for the: **Dr. Shailendra Sharma Atal**, Advocate  
Respondents. **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:-

*8.1 To issue order and directions to grant of benefits of disability element to the applicant from June 2017*

*onwards for the disease (i) Impaired Blood Sugar and (ii) Dyslipidemia assessed permanent disablement 20% sustained and aggravated to the applicant.*

*8.2 To quash the impugned orders bearing No. CA-1/1612/CTE/DO/Seer-235/2017 dt 06 June 2017, annexure as Annexure A-1.*

*8.3 Issue an order or directions to the release the arrears and consequential benefits arise out of disability elements to the applicant with 18% simple interests with effect from June 2017.*

*8.4 Any other relief which the Hon'ble Court may deem fit and proper in the circumstances of the case.*

*8.5 To award the cost of this petition to the applicant.*

2. Briefly stated, applicant was enrolled in the Garhwal Rifles of Indian Army on 25.03.1980 and discharged on 30.07.2001 (AN). He was re-enrolled in the Defence Security Corps (DSC) on 17.06.2002 and discharged on 30.06.2017 in Low Medical Category after rendering 15 years and 14 days of DSC service under Rule 13 (3) Item III (i) (a) of the Army Rules, 1954. At the time of discharge from DSC service, the Release Medical Board (RMB) held at Northern Command (CH), Jdhampur on 11.06.2017 assessed his disabilities (i) '**IMPAIRED BLOOD SUGAR**' @11-14% and (ii) '**DYSLIPIDEMIA**' @1-5%, composite disabilities @20% and opined the disabilities to be neither attributable to nor aggravated by service. The applicant's claim for grant of disability pension was rejected vide letters dated 06.06.2017 which was communicated to the applicant vide letter dated 29.08.2017. The applicant preferred First Appeal which too

was rejected vide letter dated 16.09.2022. 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 diseases of the applicant were contracted during the service, hence they are attributable to and aggravated by Military 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 pension and its rounding off to 50%.

4. On the other hand, learned counsel for the respondents opposed the submissions of learned counsel for the applicant and submitted that since composite disabilities @20% have been regarded as NANA by the RMB, hence, condition for grant of disability element of pension does not fulfil in terms of Regulation 53 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 attributable to/aggravated by military service,

whether it 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 25.03.21980 and was discharged from service on 31.07.2001. Thereafter, he was re-enrolled in the DSC on 17.06.2002 and discharged on 30.06.2017 on completion of terms of engagement. The applicant was in low medical category and his Release Medical Board was conducted on 1106.2017 at Northern Command (CH), Udhampur. The Release Medical Board assessed applicant's composite disabilities @20% for life neither attributable to nor aggravated by military service.

7. In para 17 A (a) of Chapter VII of the Guide to Medical Officer (Military Pensions), 2002 the provision for composite assessment has been mentioned which reads as under :-

***“17A. Composite Assessment***

*(a) Where there are two or more disabilities due to service, compensation will be based on the composite assessment of the degree of disablement. Generally speaking, when separate disabilities have entirely different functional effects, the composite assessment will be the arithmetical sum of their separate assessment. But where the functional effects of the disabilities overlap, the composite assessment will be reduced in proportion to the degree of overlapping. There is a tendency for some Medical Boards to reduce the composite assessment in the former group of cases. This is not correct.”*

8. In view of above, since in the instant case first and second disabilities have entirely different functional effects, hence the

composite assessment is to be the arithmetical sum of their separate assessment. The first disability is @10-14% and the second disability is @1-5%. At anyhow, the arithmetical sum of their separate assessment cannot be more than 19% (14+5 = 19.) Accordingly, we hold that the composite assessment of first and second disabilities is @19% for life.

9. 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 composite disability element is 19% for life, applicant does not fulfil the requirement of Regulation 53(a) of Pension Regulations for the Army, 2008 (Part-I).

10. Since applicant was discharged from DSC 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."*

11. 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 Umesh Chandra Srivastava)  
Member (J)

Dated: 21 July, 2023

AKD/-