

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 34 of 2023****Thursday, this the 13th day of July, 2023****“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

No. 4568008M Ex Hav Bhaiya Lal Yadav
 S/o Late Satai Yadav
 R/o Village – Chhitam Pur, Post & Police Station – Chaubey Pur,
 District – Varanasi (UP) – 221104

.... Applicant

Ld. Counsel for the : **Shri Dwijendra Nath Pandey**, Advocate
 Applicant

Versus

1. Union of India, through its Secretary, Ministry of Defence, South Block, Sena Bhawan, New Delhi, C/o 56 APO.
2. Chief of Army Staff (COAS) through its Officer-in-Charge, South Block of Central Secretariat at Raisina Hill, New Delhi – 110011, C/o 56 APO.
3. Additional Dte. General Personal Services/PS-4 (d) (ACFA) Adjutants General Branch, Room No. 416, 4th Floor, Integrated HQs of MoD (Army), PIN-900256.
4. Senior Record Officer, for Officer-in-Charge Records, the Mahar Regiment, PIN – 900127, C/o 56 APO.
5. Principal Controller of Defence Account (Pension), Allahabad/Prayagraj.

... Respondents

Ld. Counsel for the : **Shri RKS Chauhan**, 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:-

- (A) *Quash the order dated 15.02.2021 contained as Annexure No. 1 to this O.A. being non speaking, unjustified, bad and illegal to meet the end of justice.*
- (B) *Call for entire records including Release Medical Board proceedings dated 07.11.2020 as well as findings and opinion as approved by the competent authority on which basis the respondents in most arbitrary, unjust, bad and illegal manner denied the same to meet the end of justice.*
- (C) *Direct the respondents to assess the disability elements of applicant more than 20% and further round it off to 50% along with the arrears of disability elements/pensionary service benefits along with interest at prevailing market rate per annum from the date of its accrual to the date of actual payment to the applicant in the interest of justice.*
- (D) *Allow this O.A. with heavy costs in the interest of justice.”*

2. Briefly stated, applicant was enrolled in the Indian Army on 25.10.1996 and was discharged on 31.10.2020 (AN) in Low Medical Category on fulfilling the conditions of his enrolment under Rule 13 (3) III (i) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at Military Hospital, Saugoron on 07.11.2020, assessed his disability **‘GRADE-III FROST BITE (LT) LITTLE FINGER (OPTD) WITH DISARTICULATION OF PIP JOINT (ICD-T033.2)’ @ 6%** for life and opined the disability as attributable to military service. The applicant’s claim for grant of disability pension was rejected vide communication letter dated 15.02.2021. The applicant preferred

First Appeal dated 01.07.2021 which too was rejected vide letter dated 16.08.2021. 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 while performing duties in operational area at Central Glacier in Operation MEGHDOOT. The disability of the applicant assessed @ 6% in very arbitrary and casual manner whereas it should be treated more than 20% as the applicant suffered this disability during war duty and hence, applicant is entitled 50% disability element of pension in view of the Hon'ble Apex Court judgment in the case of **Union of India and Others vs. Ram Avtar** (Civil Appeal No. 418 of 2012, decided on 10.12.2014). 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 since the assessment of the disability element is 6% 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 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 25.10.1996 and was discharged from service on 31.10.2020 on completion of terms of engagement. The applicant was in low medical category and his Release Medical Board was conducted on 07.11.2020 at Military Hospital, Saugoron. The Release Medical Board assessed applicant's disability @ 6% for life as attributable to 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 6% 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 07.11.2020 to the extent of holding the applicant's disability at 6% 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 Misc. Application, if any, stands disposed off.

14. No order as to costs.

(Vice Admiral Atul Kumar Jain) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 13th July, 2023
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