

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 640 of 2023**Thursday, this the 11th day of July, 2024**“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Lt. Gen. Anil Puri, Member (A)”**

No. JC-820133Y Ex. Sub. Munna Lal, Son of Shri Mithai Lal, resident of Village - Chatela, Tehsil Kalpi, District Jalaun-285203.

.... Applicant

Ld. Counsel for the Applicant : **Shri Manoj Kumar Awasthji**, Advocate
Shri Anshuman Srivastava, Advocate

(Not Present at the time of hearing)

Versus

1. Union of India, through its Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. The Appellate Committee on First Appeal (ACFA), Additional Directorate General of Personnel Services/ PS-4 (Imp-II) AG’s Branch, Integrated H Q of MoD (Army), DHQ – PO, New Delhi-110011.
3. The Officer-in-Charge, Sena Polic Corps Abhilekh Karyalaya Corps of Military Police Records, PIN – 900493, C/o 56 APO.
4. The PCDA (Pension), Draupadi Ghat, Allahabad (Prayagraj).

... Respondents

Ld. Counsel for the Respondents: **Shri Ashish Kumar Singh**, Advocate
Central Government Standing Counsel.

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) *To issue pass an order to set-aside/quash the Impugned order No. JC-820133Y/NE (D/ Pen) dated 02.06.2022 passed by respondents no. 3 annexed as Annexure no. 1 to this original application.*
- (b) *To issue pass an order or directions to the respondents to grant of Disability Element of Disability Pension @05% with effect from date of discharge i.e. 30.04.2022 in light of Hon’ble Apex Court judgments.*
- (c) *To issue pass an order or directions to respondents to grant benefit of Rounding off Disability Element of disability Pension @05% to @50% for life to the applicant and pay due arrears including consequential benefits with interest @12% p.a. till final payment is made in light of Hon’ble Apex Court judgments and letter dated 31.01.2001.*
- (d) *Any other relief which the Hon’ble Tribunal may deem fit and proper in the fact and circumstance of the case is also granted along with cost of the original application.*

2. Briefly stated, applicant was enrolled in the Indian Army on 30.04.1992 and was discharged on 30.04.2022 (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 after rendering 30 years and 01 day of service. At the time of discharge

from service, the Release Medical Board (RMB) held at 176 Military Hospital on 31.03.2022 assessed his disability '**ELECTRICAL BURN (LT) PALM WITH BLUNT INJURY LT FOOT (OPT) WITH TENDON INJURY 2ND AND 3RD TOES (ICD-530.0)**' @5% for life as **attributable to service**. The applicant's claim for grant of disability element of disability pension was rejected vide letter dated 02.06.2022. The applicant preferred First Appeal dated 05.08.2022 but of no avail. It is in this perspective that the applicant has preferred the present Original Application.

3. The applicant pleaded that the he sustained injury on 23.08.2019 at Sukana (West Bengal) while performing bonafide Military duty as such his disease/injury has been regarded as attributable to service vide IAFY-2006 dated 02.03.2020 as well as AFMSF-16 (Ver-2019) i.e. RMB but the degree of disability has been wrongly assessed @5% by the RMB, hence he has not been granted disability element of disability pension. The applicant pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such he 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 although the applicant's disability has been regarded as attributable to service but since the assessment of

the disability element is @5% 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) 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”* 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 heard Ld. Counsel for the respondents and perused the records including Release Medical Board proceedings. The question in front of us is straight; whether the applicant's disability 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 30.04.1992 and was discharged from service on 30.04.2022 on completion of terms of

engagement. The applicant was in low medical category and his Release Medical Board was conducted on 31.03.2002 at 176 Military Hospital. The Release Medical Board assessed applicant's disability @5% for life as **attributable to** 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 @5% 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 31.03.2022 to the extent of holding the applicant's disability @5% for life is not tenable in terms of Hon'ble Apex Court judgment in the case of ***Bachchan Prasad vs Union of India & Ors***, Civil Appeal 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 on merit**.
13. Pending application, if any, stands disposed of.
14. No order as to costs.

(Lt. Gen. Anil Puri)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated: 11 July, 2024

AKD/-