

**Reserved**  
**Court No.1**

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

**Original Application No. 376 of 2018**

Thursday, this the 28<sup>th</sup> day of March, 2019

**Hon'ble Mr. Justice SVS Rathore, Member (J)**  
**Hon'ble Air Marshal BBP Sinha, Member (A)**

14622148-M NK Nagendra Singh Chhaunkar (Retd), S/o Late  
Shri Bhagwan Chhaunkar, R/o C-186, Pushpanjali Upvan,  
Mathura, (U.P.), PIN- 281004

.....Applicant

Ld. Counsel for : **Shri Rohitash Kumar Sharma,**  
the Applicant **Advocate**

Versus

1. Union of India, through the Secretary, Ministry of  
Defence, DHQ PO New Delhi-110011.
2. The Chief of the Army Staff, Integrated HQ of Ministry of  
Defence (Army), DHQ PO, New Delhi- 110011.
3. Additional Director General, Personnel Services (PS-4),  
Integrated HQ of Ministry of Defence (Army) DHQ PO,  
New Delhi- 110011.
4. Officer In Charge, EME Records, Pin- 900453
5. Controller Defence Account (Pension), Draupadi Ghat,  
Allahabad, U.P.

.....Respondents

Ld. Counsel for the : **Shri G.S. Sikarwar, Advocate**  
Respondents

**ORDER**

**“(Per Hon’ble Mr Justice SVS Rathore, Member (J))”**

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

“(a) Call for the records based on which the Respondents have rejected the request of the Applicant for the disability pension including the impugned findings of Release Medical Board Proceeding and orders including order dated 02.09.2017 denying the disability pension to the Applicant.

(b) Direct the Respondents to pay disability pension to the Applicant @ 20% as assessed by the RMB to be enhanced to 50% after applying the principles of broad banding w.e.f. 01.07.2016 along with arrears with interest @ 18% per annum.

(c) Issue such other order/ direction as may be deemed appropriate in the facts and circumstances of the case.”

2. The undisputed facts, as averred by the learned counsel for the parties are that the applicant was enrolled in the Corps of EME as a Sepoy in the Indian Army on 18.06.1994 in medically fit condition and was discharged from service on 30.06.2016 on completion of term of engagement under Item III (i) of Table annexed to Rule 13(3) of Army Rules, 1954 in low medical category A3 (Permanent) on account of disabilities **“GIANT CELL TUMOR RADIUS (RT) (OPTD) (C-40)”**. The Release Medical Board (RMB) held before discharge considered the disability aforesaid as neither attributable to nor aggravated by military service (NANA) and assessed it as 20% for life. The case for disability pension was rejected by the respondents and communicated to the applicant vide letter dated 04.08.2016. Thereafter the applicant made representation for grant of disability element to EME Records

and the applicant was informed that his claim for disability pension has been rejected by competent authority. Feeling aggrieved by the rejection of disability claim by the respondents the applicant has preferred the present O.A.

3. Learned counsel for the applicant submitted that since the applicant was enrolled in a medically fit condition and thereafter he has been discharged in Low Medical Category from army service, as such, his disability should be considered as attributable to and aggravated by military service and he should be granted disability pension.

4. The learned counsel for respondents submitted that the Release Medical Board of the applicant found him suffering from “**GIANT CELL TUMOR RADIUS (RT) (OPTD) (C-40)**” @ 30% but the same was found to be neither attributable to nor aggravated by military service and as such, he has rightly been denied disability pension by the authorities concerned. He has also submitted that Para 173 of the Pension Regulations clearly states that disability pension is admissible to an individual who is invalided out from service on account of disability, which is attributable to or aggravated by military service and is assessed at 20% or more. He concluded by stating that this being a NANA case the claim of applicant for disability pension has rightly been rejected.

5. We have heard Shri Rohitash Kumar Sharma, Ld. Counsel for the applicant and Shri G.S. Sikarwar, Ld. Counsel for the respondents and perused the record. The only ground put forth by the respondents for denial of disability pension is that his disability had been opined to be neither attributable to nor aggravated by military service by Release Medical Board. The only question before us is as to whether the disability of the applicant is attributable to or aggravated by military service ?

6. We have noted that the reason for declaring the disease as NANA is very cryptic i.e. “No Casual Relation to military

service". This does not convey clearly as to why this disease has been declared as NANA. In such circumstances we are of the considered opinion that the benefit of doubt goes in favour of the applicant. Considering all issues we give benefit of doubt to the applicant and consider his disability as aggravated by military service in light of law settled on this matter by Hon'ble Supreme Court in the case of **Dharamvir Singh Vs. Union of India and Ors** reported in **(2013) 7 Supreme Court Cases 316**.

7. In so far as the relief of rounding off is concerned, it is no more res integra. On the issue of rounding off of disability pension, we are of the opinion that the case is squarely covered by the decision of **K.J.S. Buttar vs. Union of India and Others**, reported in (2011) 11 SCC 429 and Review Petition (C) No. 2688 of 2013 in Civil appeal No. 5591/2006, **U.O.I. & Anr vs. K.J.S. Buttar** and **Union of India vs. Ram Avtar & Others**, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014).

8. As a result of foregoing discussions, the O.A deserves to be allowed and is hereby **allowed**. The impugned orders passed by the respondents rejecting the claim of the applicant for disability pension are set aside. The disability of the Applicant is held as aggravated by military service and he is held entitled to disability pension from the date of discharge i.e. 01.07.2016. The disability of the Applicant which was assessed as 20% for life is rounded off to 50% for life. The Applicant shall be paid arrears of disability pension within four months of receiving a certified copy of this order. For default, the applicant shall be entitled to interest at the rate of 9% on the arrears aforesaid.

9. No order as to costs.

**(Air Marshal BBP Sinha)**  
**Member (A)**

Dated: March , 2019

JPT

**(Justice S.V.S. Rathore)**  
**Member (J)**

