

**Court No. 1**  
**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**Original Application No. 666 of 2022**

Thursday, this the 23<sup>rd</sup> day of February, 2023

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

Ex. JWO Rajesh Kumar (Service No. 761674-T), S/o Shri Tulsi Ram is presently residing at Plot No. 78, Shyam Vihar, ASTI Road, Bakshi Ta Talab, District – Lucknow, Uttar Pradesh Pin - 226201.

.... **Applicant**

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

Versus

1. Union of India, the Secretary, Ministry of Defence, South Block, New Delhi -110011.
2. The Chief of Air Staff, Air Headquarters, Vayu Bhawan, New Delhi -110106.
3. The Directorate of Air Veterans, Air Headquarters, Subroto Park, New Delhi -110010
4. The PCDA (Pension), Draupadi Ghat, Allahabad.
5. The JCDA (Air Force), Subroto Park, New Delhi -110010.

... **Respondents**

Ld. Counsel for the Respondents: **Shri Arun Kumar Sahu**, Advocate  
 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) *Declare the disabilities (i) KIENBOCK's DISEASE (RT) OPTD (ii) BPH GRADE-1 as attributable and aggravated by the Military Service.*
- (b) *Grant the disability element of pension to the Applicant @50% wef. 01 April 2021 for long life with all consequential benefits and*
- (c) *To issue/pass any other orders /direction as this Hon'ble Tribunal may deem fit and proper under the circumstances of the case in favour of the applicant and render justice.*

2. Briefly stated, applicant was enrolled in the Indian Air Force on 16.03.1992 and was discharged on 31.03.2021(AN) in Low Medical Category on fulfilling the conditions of his enrolment after rendering total 29 years and 15 days of regular service. At the time of discharge from service, the Release Medical Board (RMB) held at 8 BRD Air Force on 26.06.2020 assessed his disabilities (i) **'KIENBOCK's DISEASE (RT) (OPTD) (Z-09.0)'** @15% for life as **attributable to service** and (ii) **'BPH GRADE -1 (OLD) N 40.1'** @ 5% for life, composite disabilities @20% for life as neither attributable to nor aggravated by service (NANA). The applicant's claim for grant of disability element of disability pension was rejected vide letter dated 16.08.2021 which was communicated to the applicant vide letter dated 17.09.2021. The applicant preferred First Appeal dated 30.11.2021 but of no avail. 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 Air Force and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Air Force. The first disease of the applicant has been regarded as attributable to service by the RMB. The second disease of the applicant was also contacted during the service, hence it is also 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 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 first disability element is 15% i.e. below 20% as attributable to military service and the second disease of the applicant has been regarded as NANA by the RMB, therefore, condition for grant of disability element of pension does not fulfil in terms as per Regulation 153 of Pension Regulations for the IAF, 1961 (Part – I) and, hence, 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 disabilities is attributable to/aggravated by military service and, if so, whether they are above or below 20% and also whether

applicant was invalidated out of service on account of the disability?

6. It is undisputed case of the parties that applicant was enrolled in the Indian Air Force on 16.03.1992 and was discharged from service on 31.03.2021(AN) on completion of terms of engagement. The applicant was in low medical category and his Release Medical Board was conducted on 8 BRD Air Force. The Release Medical Board assessed applicant's first disability @15% for life as attributable to service and the second disability @5% for life as NANA.

7. We are agree with the opinion of the RMB that the second disability @5% for life as NANA as it is non malignant enlargement of prostate due to excessive growth of prostatic tissue and not related to service conditions as it is an age related disability.

8. As per Regulation 153 of Pension Regulations for the IAF, 1961 (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 first disability element is @15% for life which is below 20%, applicant does not fulfil the requirement of Regulation 153 of Pension Regulations for the IAF, 1961 (Part – I).

9. 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.”*

10. Further, contrary view to Release Medical Board dated 26.06.2020 to the extent of holding the applicant's first disability @15% 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 04<sup>th</sup> 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)

11. 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.

12. 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.”*

13. In view of the discussions made above, Original Application lacks merit and same is accordingly **dismissed**.

14. Pending application, if any, stands disposed of.

15. No order as to costs.

(Vice Admiral Atul Kumar Jain)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated: 23 March, 2023  
AKD/Ashok/-