

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

**Original Application No. 570 of 2023**

Monday, this the 04<sup>th</sup> day of March, 2024

**“Hon’ble Mr. Justice Anil Kumar, Member (J)”**

**“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

Ex. Hav. Anjani Kumar (15691596-A) S/o Shri Devi Prasad, R/o Girdharpur, Post – Shekhpur, Tehsil - Bhognipur, District – Kanpur Dehat, Uttar Pradesh -209112.

.... **Applicant**

Ld. Counsel for the : **Wg. Cdr. Ajit Kakkar (Retd)**, Advocate and Applicant  
**Shri Manoj Kumar Awasthi**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, DHQ PO, New Delhi -11000.
2. The Director, A Block, Room No. 536, 5<sup>th</sup> Floor, Defence Offices Complex, KG Marg, Adjutant General’s Branch, IHQ of MoD (Army), New Delhi -110001.
3. PCDA, Draupdi Ghat, Near Sadar Bazar, Prayagraj, Uttar Pradesh -211014.
4. Senior Record Officer, Records Office, Army Signal Corps, PIN NO-908770, C/o 56 APO, Jabalpur -482001.

... **Respondents**

Ld. Counsel for the: **Shri Ashish Kumar Singh**, Advocate  
 Respondents. Central Govt Standing Counsel  
 Assisted by Major Danish Farooqui,  
 Departmental Representative

**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 direct the respondents to bring all service and medical documents including the relevant medical documents on records with advance copy to the applicant.*
- b. *To set aside/quash the Rejection Letter/Impugned Letter dated 01.06.2021, 02.11.2021 and 13.07.2022.*
- c. *To direct respondent to conduct RSMB if Required.*
- d. *To grant disability pension to the Applicant from the date of Invalidment (31.05.2021) w.e.f. 01.06.2021.*
- e. *To direct the Respondents to grant broad banding of the disability pension w.e.f. 01.06.2021.*
- f. *To direct the Respondents to issue a corrigendum PPO pertaining to the disability pension and broad banding of the disability pension of the applicant.*
- g. *To direct the Respondents to pay arrears of disability and broad banded disability along with interest @12% w.e.f. 01.06.2021.*
- h. *To grant such other relief appropriate to the fact and circumstances of the case as deemed fit and proper.*

2. Briefly stated, applicant was enrolled in the Indian Army on 02.03.2004 and discharged on 31.05.2021 (AN) in Low Medical Category being unwilling to serve further under Rule 13 (3) Item III (iii) (a) (i) of the Army Rules, 1954 after rendering 17 years and 91 days of service. At the time of discharge from service, the Release

Medical Board (RMB) held at Command Hospital (Northern Command) on 01.04.2021 assessed his disability '**BETA THALLAEMIA MINOR (ICD-D56.3)**' @ 1-5% for life opined the disability to be neither attributable to nor aggravated by service. The applicant's claim for grant of disability pension was rejected vide letter dated 01.06.2021. The applicant preferred First Appeal which too was rejected vide letter dated 11.10.2021 which was communicated to the applicant vide letter dated 02.11.2021. The applicant preferred Second Appeal which too was rejected vide letter dated 30.06.2022 which was communicated to the applicant vide letter dated 13.07.2022. 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 disease of the applicant was contracted during the service, hence it is attributable to and aggravated by Military Service. Ld. Counsel for the respondents relied upon the order dated 03.03.2022 passed by this Tribunal in Original Application No. 846 of 2021, (**Army No. 4199592H**) **Ex. Nk. (MACP Hav.) Somveer Singh Versus Union of India & Others**. He pleaded that various Benches of Armed Forces Tribunal have granted disability element of disability pension in similar cases, as such the

applicant 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 since the assessment of the disability element is 1-5% 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 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 and, if

so, whether it is 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 Army on 02.03.2004 and was discharged from service on 31.05.2021 being unwilling to serve further. The applicant was in permanent low medical category and his Release Medical Board was conducted on 01.04.2021 at Command Hospital (Northern Command). The Release Medical Board assessed applicant's disability @ 1-5% for life as neither attributable to nor aggravated by 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 1-5% for life as NANA, 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 being unwilling to serve further, 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 01.04.2021 to the extent of holding the applicant’s disability at 1-5% 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)

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. We have perused the order dated 03.03.2022 passed by this Tribunal in Original Application No. 846 of 2021, **(Army No. 4199592H) Ex. Nk. (MACP Hav.) Somveer Singh Versus Union of India & Others** and we find that the order is not applicable in the instant Original Application as in that case the disability of that applicant was @20% for life and in the instant case the disability of the applicant is @1-5% for life.

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 Anil Kumar)**  
**Member (J)**

Dated: 04 March, 2024

Ashok/AKD/-