

RESERVED**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 1154 of 2023**Wednesday, this the 02nd day of April, 2025**“Hon’ble Mr. Justice Anil Kumar, Member (J)**
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”

Ex. Sub. T. Umamaheswara Rao (JC 797817A), S/o Sambha Murtu, R/o Majjili Peta, Rapaka, Ponduru, Srikakulam, Andhra Pradesh -532168.

.... Applicant

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

Versus

1. Union of India, through the Secretary, Ministry of Defence, DHQ PO, New Delhi -110001.
2. The Chief of the Army Staff, South Block, Integrated HQs of Ministry of Defence (Army), New Delhi -110011.
3. RVC Records, Meerut Cantt, PIN- 900468, C/o 56 APO.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Sadar Bazar, Prayagraj, Uttar Pradesh - 211014.

... Respondents

Ld. Counsel for the: **Dr. Shailendra Sharma Atal**, Advocate
Respondents. 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 direct the respondents to bring all service and medical documents including the RMB on record with advance copy to the applicant.*
- b. To set aside/quash the impugned orders dated 01.11.2022 and letter dated 26.06.2023.*
- c. To grant disability pension to the Applicant from the date of Release (31.10.2022) w.e.f. 01.11.2022.*
- d. To direct the Respondents to grant broad banding of the disability pension w.e.f. 01.11.2022.*
- e. To direct the Respondents to issue a corrigendum PPO pertaining to the disability pension and broad banding of the disability pension of the Applicant.*
- f. To direct the Respondents to pay arrears of disability pension and broad banded disability pension along with interest @8% w.e.f. 01.11.2022.*
- g. To grant such relief appropriate to the facts and circumstances of the case as deemed fit and proper.*

2. Briefly stated, applicant was enrolled in the Remount Veterinary Corps of Indian Army on 27.10.1994 and was discharged on 31.10.2022 (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. The applicant is in receipt of Service Pension. Before discharge from service, the Release Medical Board (RMB) held at Military Hospital, Bareilly assessed his disability ‘**PARTIAL TEAR ACL WITH LATERAL MENISCUS TEAR (RT) KNEE**

(OPTD) (M 23.611)' @10% for life as attributable to service. The applicant's claim for grant of disability pension was rejected vide letter dated 01.11.2022. The applicant preferred First Appeal dated 18.11.2022 which too was rejected vide letter dated 26.06.2023 which was communicated to the applicant vide letter dated 13.07.2023. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that although the applicant's disability has been regarded as **attributable to service** but it's degree of disability has arbitrarily been assessed @10% for life. Earlier the Re-categorization Board held on 15.12.2021 had assessed the applicant's disability @20% for life. However, the same was later arbitrarily changed to 10% for life, the changed percentage was intimated to the applicant by the letter of initial rejection. 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 conceded the applicant's disability has been regarded as attributable to service by the RMB but since the degree of disability of the applicant has been assessed @10% for life i.e. below 20%, therefore, condition for grant of disability element of pension does not fulfil in terms of Regulation 173 of the Pension Regulations for

the Army, 1961 (Part-I) revised 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 pension to applicant. Ld. Counsel for the respondents further submitted that since the applicant is not entitled for the grant of disability element of disability pension the question of rounding off of disability element of disability pension does not arise. 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 27.10.1994 and was discharged from service

on 31.10.2022 on completion of terms of engagement. The applicant was in low medical category and his Release Medical Board was conducted at Military Hospital, Bareilly. The Release Medical Board assessed applicant's disability @10% 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. Although the applicant's disability has been opined as attributable to service by the RMB but since it's degree of disability has been assessed @10% 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 held before discharge of the applicant to the extent of holding the applicant's disability @10% 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 No. 1154 of 2023** lacks merit and same is accordingly **dismissed**.

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

14. No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated: 02 April, 2025

AKD/-