

**Court No 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 838 of 2021**Saturday, this the 21<sup>st</sup> day of May, 2022**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**JC-777910-A Nb Sub Pramod Kumar (Retd) S/o Sri Hari Ram R/o  
Vill-Aunta, Post-Atariya Tehsil-Orai, Distt-Jalaun (UP)-285123.

..... Applicant

Ld. Counsel for the : **Shri PK Shukla**, Advocate  
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence (Army),  
New Delhi.
2. Chief of Army Staff, Integrated Headquarters, Ministry of  
Defence, South Block-III, New Delhi-110011.
3. OIC Records, EME Records, PIN-900453, C/o 56 APO.
4. PCDA (P) (Army), Draupadi Ghat, Allahabad-211014 (UP).

.....Respondents

Ld. Counsel for the : **Shri Alok Kumar Mishra**, Advocate  
Respondents. Central Govt Counsel.

**ORDER (Oral)**

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

*“(i) To quash or set aside the respondents letter dated 11.10.2021 and 05.07.2021 (Annexure A-1 and A-2 of OA).*

*(ii) To issue order or directions to the respondents to grant disability element to the applicant for the disability he had, with effect from 01.05.2021 (date of discharge-30.04.2021) with all consequential benefits including rounding off benefit from 10% to 50% in terms of Govt of India letter dated 31 Jan 2001 and judgment passed by the Hon’ble Apex Court in case of Ram Avtar vs UOI & Ors.*

*(iii) Any other relief as considered proper by the Hon’ble Tribunal be awarded in favour of the applicant.*

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 29.04.1995 and was discharged from service w.e.f. 30.04.2021 (AN) under Rule 13 (3) I (i) (a) of the Army Rules, 1954 after completion of terms of engagement in low medical category ‘A2(P)’ for the disability “Traumatic Amputation PIP Joint (Lt) Little Finger (Optd) (S.68)”. Prior to discharge, applicant being in low medical category, was brought before Release Medical Board (RMB) held on 16.04.2021 which assessed his disability @ 10% for life attributable to military service. Disability element of pension claim was rejected vide order dated 05.07.2021 (Annexure A-1) on the ground of disability being below 20%. Thereafter, against aforesaid rejection order, applicant preferred first appeal on 01.09.2021 (Annexure A-8) which was also rejected vide order dated 11.10.2021 (Annexure A-2). This O.A. has been filed for

grant of disability element of pension. Applicant is in receipt of service element of pension.

3. Learned counsel for the applicant submitted that applicant was not suffering from any disability at the time of enrolment and the disability '**Tromatic Amputation PIP Joint Little Finger (Optd) (S.68)**' has occurred on 21.03.2011 after applicant completed more than 16 years of service. His further submission is that since the RMB has opined the disability as attributable to military service, therefore, the applicant should be granted disability element of pension and its rounding off in view of the Hon'ble Apex Court judgment in the case of **Union of India and Ors vs. Ram Avtar & Ors**, Civil Appeal No 418 of 2012 decided on 10<sup>th</sup> December 2014 and numerous judgments delivered by various Regional Benches of Armed Forces Tribunal.

4. Per contra, learned counsel for the respondents submitted that since RMB dated 16.04.2021 has assessed applicant's disability @ 10% for life i.e. below 20% he is not entitled to disability element of pension as per the judgment dated 20.08.2009 passed by the Hon'ble Apex Court in Civil Appeal No 5678/2009 arising from SLP (C) No 23727/2008, **Secretary Ministry of Defence & Ors vs Late Sep Damodaran AV through LRs & Ors**. His further submission is that the RMB being an expert body and who physically examined the applicant had assessed the disability of the applicant @ 10% for life by giving due weightage, value and credence to the findings and opinion of the competent medical

authority, he is not entitled to disability element of pension as per para 53 (a) of Pension Regulations for the Army, 2008 (Part-I). He pleaded for dismissal of O.A.

5. We have heard learned counsel for the parties and perused the material placed on record.

6. It is undisputed case of the parties that applicant was enrolled in the Army on 29.04.1995 and discharged from service after completing terms of engagement on 30.04.2021 (AN) in low medical category. Applicant is in receipt of service element of pension. The RMB held on 16.04.2021 had assessed his disability @ 10% for life attributable to military service. Disability element of pension was denied on the ground of disability percentage being below 20%.

7. As per para 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 10% (i.e. below 20%) for life, applicant does not fulfil the requirement of para 53 (a) of the Pension Regulations for the Army, 2008 (Part-I).

8. Additionally, 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% and service personnel is discharged after completion of terms of

engagement. 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.”*

9. In view of the above, O.A. lacks merit and is accordingly **dismissed.**

10. No order as to costs.

11. Pending application, if any, shall stand disposed off.

(Vice Admiral Abhay Raghunath Karve)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated: 21.05.2022  
rathore