

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 77 of 2023**Wednesday, this the 10th day of May, 2023**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

JC 699695L Ex. Sub. Dinesh Kumar Kushwaha, S/o Munnu Lal Kushwaha, Village & PO : Hariharpur Ghuswal Road, Near Surya Engineering College (ITI), Neelmatha, Tehsil : sarojaninagar, District – Lucknow (U.P.).

.... Applicant

Ld. Counsel for the Applicant : **Shri Amit Asthana**, Advocate and Applicant

Versus

1. The Union of India, through Secretary, Ministry of Defence (Army0, South Block, New Delhi-110010.
2. Chief of the Army Staff, IHQ of MoD (Army), South Block, New Delhi.
3. Adjutant General’s Branch, IHQ of MoD (Army), Room No. 11, Plot No. 108 (West), Brassey Avenue, Church Road, New Delhi-110001.
4. Officer-in-Charge Records, Records of AMC, PIN – 900450 C/o 56 APO.
5. PCDA (Pension), Draupadi Ghat, Allahabad.

... Respondents

Ld. Counsel for the Respondents: **Shri Ashish Kumar Singh**, 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) *To issue/pass an order or directions to the respondents to Call for the records including the RMB proceedings as well as the findings and opinion as approved by the competent authority based on which the respondents in most illegal manner rejected the claim of the applicant in respect of disability of Medical Category S1H1A1P1E2(P) (Permanent) due to primary SUPEROTEMPORAL BRVO WITH RESOLVED MACULAR EDEMA (LT) and has also rejected the Appeal filed against denial of disability pension vide their order dated 18.04.2019, and 09.08.2019, received in Feb. 2018 and thereafter quash all such orders.*
- (b) *Direct the respondents to process the claim of the applicant in respect of disability of Obstructive Sleep Apnea w.e.f. 01.02.2019 along with arrears with an interest @12% as expeditiously as possible.*
- (c) *Further, direct the respondents to extend the benefit broad banding in respect of applicant's disability of assessed at 15-19% to make it 20% and further round it off to 50% along with the arrears of the disability pension with interest @12% p.a. to be compounded quarterly with exemplary cost from the date of retirement till date of payment.*
- (d) *Issue such other order/direction as may be deemed appropriate in the facts and circumstances of the case.*

2. Briefly stated, applicant was enrolled in the Army Medical Corps of Indian Army on 19.01.1989 and was discharged on 31.01.2019 (AN) in Low Medical Category on fulfilling the conditions of his enrolment under Rule 13 (3) Item III I (i) (a) of the Army Rules, 1954 after rendering 28 years and 04 days of service. At the time of discharge from service, the Release

Medical Board (RMB) held at Military Hospital, Bareilly on 22.10.2018 assessed his disability '**SUPEROTEMPORAL BRANCH RETINAL VEINOCCLUSION WITH MACULA OEDEMA (LE) (H-34.9)**' @ 15-19% for life opined the disability to be neither attributable to nor aggravated by service (NANA). The applicant's claim for grant of disability pension was rejected vide letter dated 18.04.2019. The applicant preferred First Appeal which too was rejected vide letter dated 09.08.2019. The applicant preferred Second Appeal dated 16.03.2020 which too was rejected vide letter dated 10.03.2022. 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. 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 disability element is

15-19% 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) 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, 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 19.01.1989 and was discharged from service on 31.01.2019 (AN) on completion of terms of engagement. The applicant was in low medical category and his Release Medical Board was conducted on 22.10.2018 at Military Hospital, Bareilly. The Release Medical Board assessed applicant's disability @15-19% for life 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 15-19% 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 dated 22.10.2018 to the extent of holding the applicant's disability at 15-19% 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 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 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 Umesh Chandra Srivastava)
Member (J)

Dated: 10 May, 2023

AKD/-