

**Court No. 1**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**Original Application No. 25 of 2024**

Monday, this the 25<sup>th</sup> day of November, 2024

**“Hon’ble Mr. Justice Anil Kumar, Member (J)  
Hon’ble Maj. Gen. Sanjay Singh, Member (A)”**

(Army No. 4195201P) Ex. Nk. (MACP Hav) Balwant Singh, Son of Shri Diwan Singh, Resident of Village - Marh, Post Office - Wadda, District - Pithoragarh :- 262521.

**Presently residing at:-** House No. 12B/512, Vrindavan Yojna, Lucknow-206002.

**.... Applicant**

Ld. Counsel for the Applicant : **Mohd. Zafar Khan**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence (Army), South Block, New Delhi-110010.
2. Chief of the Army Staff, IHQ MoD (Army), South Block, New Delhi.
3. Officer in Charge Records/Signals Records Officer, The Kumaon Regiment Records, PIN-900473, C/o 56 APO.
4. PCDA (Pension), Draupadi/Dhobi Ghat, Allahabad.

**... Respondents**

Ld. Counsel for the Respondents: **Shri Ashish Kumar Singh**, Advocate  
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 issue /pass an order or directions to set-aside /quash the letter /order No. 4195201/DP/NE&PG dated 06 June 2022 and letter /order No. 4195201/DP/NE & PG dated 07 July 2023 passed by respondent No.3 which annexed as Annexure No. 1 and 2 to this Original Application.*
- B. *To issue/pass an order or directions to the respondents to treat the percentage of disablement of applicant as 20% for life and Grant disability element of disability pension @20% for life from the date of discharge i.e. 31.07.2022 along with 12% interest on arrear in light of Hon’ble Apex Court judgment.*
- C. *To issue/pass an order or directions to the respondents to grant subsequently benefit of rounding off/broad banding off disability pension @20% to 50% to the applicant from the date of discharge i.e. 31.07.2022 along with 12% interest on arrear in light of Hon’ble Apex Court judgment and Government letter dated 31.01.2001.*
- D. *To issue/pass an order or directions to the respondents to grant all services benefits to the applicant which are not granted till date.*
- E. *To issue/pass any other order or directions as this Hon’ble Tribunal may deem just fit and proper under the circumstances of the case in favour of the applicant.*
- F. *To allow this original application with costs.*

2. Briefly stated, applicant was enrolled in the Indian Army on 17.07.2000 and discharged on 31.07.2022 (AN) in Low Medical Category on fulfilling the conditions of his enrolment under Rule 13 (3) Item III (i) of the Army Rules, 1954. Before discharge from service, the Release Medical Board (RMB) held at Military

Hospital, 170 Military Hospital on 15.04.2022 assessed his disability '**BETA THALASSEMIA TRAIT (D 56.1)**' @5% for life opined the disability to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected vide letter dated 06.06.2022. The applicant preferred First Appeal which too was rejected vide letter dated 12.06.2023 which was communicated to the applicant vide letter dated 07.07.2023. 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 further submitted that Categorization Medical Board held on 20.01.2020 at Command Hospital (Eastern Command) assessed the applicant's disability element @20% and nature of disability as "Permanent" but RMB which was held on 15.04.2022 reduced the applicant's disability @5% without any justification, which has been done, just to deprive off the applicant from his legal and rightful claim of disability element of disability pension and the respondents have taken the benefit of non-mentioning the assessment of said disability in the Guide to

Medical Officers (Military Pensions), 2008. The respondents have admitted in Para 3 of Part VII (Opinion of the Medical Board) at page 7 of RMB dated 15.04.2022 that “3. *In case the medical board differs in opinion from the previous medical board, a detailed justification explaining the reasons to defer should be brought out clearly*”. The applicant’s disability ought to have been treated as @20% for life as aggravated by military service. He further submitted that Para 422 (h) of the Defence Services Regulations, Regulations for the Medical Services of The Armed Forces – 2010 (Revised Edition) provides that “*Medical Boards when recording their opinion as to causation, degree of disability and fitness for service will be careful not to allow their decisions to be influenced by the proceedings of the previous Medical Board. However, in the event of disagreeing with the opinions expressed by previous Boards, they will state the grounds on which they base their disagreement*”. 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 @5% i.e. below 20% as NANA, 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 percentage of disability has wrongly been assessed/reduced by the RMB, 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 17.07.2000 and discharged from service on 31.07.2022 on completion of terms of engagement. The applicant was in low medical category and his Release Medical Board was conducted on 15.04.2022 at 170 Military Hospital. The Release Medical Board assessed applicant's disability @5% for life neither attributable to nor aggravated by military service.

7. It is undisputed that the Categorization Medical Board held on 20.01.2020 assessed the applicant's disability @20% as NANA but the RMB held on 15.04.2022 assessed the applicant's

disability @5% for life. We are of the opinion that after a period of two years the applicant's disability may have been reduced. There is no reason to disbelieve the assessment made by the RMB after a gap of two years of time.

8. 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 @5% for life as NANA, the applicant does not fulfil the requirement of Regulation 53(a) of Pension Regulations for the Army, 2008 (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 15.04.2022 to the extent of holding the applicant's disability @5% 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 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.

(Maj. Gen. Sanjay Singh)  
Member (A)

(Justice Anil Kumar)  
Member (J)

Dated: 25 November, 2024

AKD/-