

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 112 of 2021**Thursday, this the 28th day of October, 2021**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. JC-349721M Ex. Sub. Yamuna Prasad, S/o Late Chhedi Lal,
R/o Village – Mau, Post – Mau, Tehsil – Mau, District Chitrakoot,
Pin-210209 (UP).

..... Applicant

Counsel for the : **Shri Om Prakash Kushwaha**, Advocate
Applicant

Versus

1. Union of India through its Secretary, Integrated HQs of MoD (Army), New Delhi-110011.
2. The Chief of Army Staff, Integrated HQ of MoD (Army), South Block, New Delhi-110001.
3. The Officer-in-Charge, Record Office, Bombay Engineer Group, Kirkee, Pune-411003.
4. The Office of PCDA (P), Draupadi Ghat, Allahabad, Pin-211014.
5. State Bank of India, Mau Branch, District Chitrakoot, Pin-210209 (UP).

.....Respondents

Counsel for the : **Shri Devesh Kumar**, Advocate
Respondents. Central Govt. Counsel

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

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

A. To issue/pass an order or direction to set aside/quash the rejection order passed by IHQ of MoD (Army), New Delhi vide letter No. B/40502/668/2013/AG/PS-4(Imp-11) dated 19.05.2014, and Record Office, Bombay Engineer Group, Kirkee, Pune vide their letter No. JC-349721M/12/D/Pen/ Appeal dated 03.06.2014, in which the applicant has been unjustly rejected for 6-10% Disability element of disability Pension approved by the Release Medical Board before discharge from service.

B. To issue/pass an order or directions to the respondents to grant disability element of disability pension @6-10% to the applicant, and benefit of Rounding of/Broad banding of disability pension @6-10% to @50% with interest @18% p.a. on arrears, based on relevant Policy letters and judgment passed by the Hon’ble Apex court, Armed Forces Tribunal in similar cases time to time from the date of discharge wef 31.01.2013.

C. To issue/pass any other order or direction as this Hon’ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.

D. To allow this original application with costs.

2. Facts giving rise to Original Application in brief are that applicant was enrolled in the Army Medical Corps of Indian Army on

02.01.1985 and was discharged from service on 31.12.2007 due to permanent low medical category. Consequent upon directions of Hon'ble Delhi High Court and instructions issued by IHQ of MoD (Army), the applicant was reinstated back into service with effect from 01.01.2008 and was finally discharged from service on 31.01.2013 on completion of terms of engagement in low medical category under Rule 13(3) Item I (a) of Army Rules, 1954. On 27.10.1995 applicant sustained injury while travelling in a military convoy, which after investigation was found to be a case of "**MALUNITED FRADCTURE PROXIMAL PHALANX (RT) INDEX FINGER**". Before being discharged from service, Release Medical Board (RMB) was held at 167 Military Hospital, C/o 56 APO on 01.10.2012 in which applicant was found suffering with @6-10% disability for life as **attributable to Military Service**. Despite being discharged from service in low medical category, disability pension was denied to applicant on the reason that degree of disability is less than 20% vide letter dated 25.02.2013. The applicant preferred First Appeal which too was rejected vide letter dated 19.05.2014. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned counsel for the applicant submitted that applicant sustained injury while travelling in a military convey, which ultimately resulted into 6-10% disability for life being **attributable to Military Service**, because of "**MAL UNITED FRADCTURE PROXIMAL PHALANX (RT) INDEX FINGER**". He submitted that various Benches

of AFT, Hon'ble High Courts and the Hon'ble Apex Court, in the matter of disability/injury, has held that if an armed forces personnel suffers with disability/injury during the course of service, which was never reported earlier when he/she was enrolled/recruited in the army, he/she shall be entitled to the disability pension for the same. Thus, he submitted that applicant's case being fully covered with above, as he also suffered injury while on duty and same being not reported earlier at the time of his enrolment, he is entitled to disability pension.

4. On the other hand, learned counsel for the respondents conceded that the applicant while travelling in a military convey sustained injury. He submitted that since the assessment of the disability element is 6-10% 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 degree of disability 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 02.01.1985 and was finally discharged from service on 31.01.2013 (AN) on completion of terms of engagement.

The applicant was in low medical category and his Release Medical Board was conducted on 01.10.2012 at 167 Military Hospital C/o 56 APO. The Release Medical Board assessed applicant's disability @ 6-10% for life **attributable to** 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. Although the applicant's disability has been opined by the RMB as **attributable to military service, but** since, applicant's disability element is 6-10% 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. 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.”

10. In view of the discussions made above, Original Application lacks merit and same is accordingly **dismissed**.
11. Pending application, if any, stands disposed of.
12. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 28 October, 2021

AKD/-