

**Court No. 1 (E-Court)****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 336 of 2022**Friday, this the 07<sup>th</sup> day of October, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

No. 15164861Y, Ex. Gnr. Ravindra Kumar Singh Yadav, S/o Loutu Singh Yadav, Resident of Village – Karaila Kala, Post – Deoria, Tehsil – Zamania, District – Gorakhpur, Uttar Pradesh, PIN – 232340.

**.... Applicant**Ld. Counsel for the Applicant : **Shri V.P. Pandey**, Advocate

Versus

1. The Union of India, through its Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of MoD (Army), South Block, New Delhi-110011.
3. Officer-In-Charge Records, Artillery Regiment Record Office, Nasik Road Camp, District – Nasik, Maharashtra, PIN-908802, C/o 56 APO.
4. 40 Rashtriya Rifles battalion (Dogra), PIN-934540, C/o 56 APO.
5. The PCDA (Pension), Draupadi Ghat, Allahabad (Prayagraj).

**... Respondents**Ld. Counsel for the Respondents: **Shri Rajesh Shukla**, 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 set-aside/ quash the no. CF/1516486Y/RKSY Dated 30.10.2019 passed by respondent no. 4 which is annexed as Annexure No. A-1 to this Original Application.*
- B. *To issue/pass an order or direction to the respondents to declare the applicant injury as Battle Casualty since 06.07.2014 i.e. date of injury sustained and grants consequential benefits accordingly.*
- C. *To issue/pass an order or direction to the respondents to grant war injury/disability pension to the applicant and pay the arrears of pension from the date of discharge i.e. 30.04.2020 along with @12% interest on arrear in terms of O.A. No. 54 of 2016 Lt. Col. Sharma Sunil Datta Vs Union of India & Others passed by Hon’ble Armed Forces Tribunal, Regional Bench, Kolkata.*
- D. *To issue/pass an order or directions to the respondents to constitute afresh Re-Survey Medical Board to assess the present medical condition of applicant and accordingly grant the injury/disability pension.*
- E. *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.*
- F. *To allow this original application with costs.*

2. Briefly stated, applicant was enrolled in the Indian Army on 07.04.2003 and discharged on 30.04.2020 (AN) in Low Medical

Category on fulfilling the conditions of his enrolment. At the time of discharge from service, the Release Medical Board (RMB) held at Base Hospital, Delhi Cantt. on 30.12.2019 assessed his disability '**MULTIPLE INJURIES BLUNT TRAUMA (RT) CHEST & ABDOMEN LACERATED WOUND (RT) INGUINAL REGION & URETHRA INJURY**' @ 10% for life opined the disability to be attributable to military service. The applicant's claim for grant of disability pension was rejected vide letter dated 30.10.2019. The applicant preferred representation dated 23.07.2021 but of no avail. It is in this perspective that the applicant has preferred the present Original Application.

3. The Ld. Counsel for the applicant submitted that although the applicant's disability has been assessed @10% for life but, since the applicant's disability has been regarded as attributable to military service by the Release Medical Board, hence applicant is entitled for the grant of disability of pension. Ld. Counsel for the applicant further submitted that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability element of disability pension and its rounding off to 50%.

4. On the other hand, learned counsel for the respondents opposed the submissions of Ld. Counsel for the applicant and submitted that although the applicant's disability has been regarded as attributable to military service, but since the assessment of the disability element is @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 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 07.04.2003 and discharged from service on 30.04.2020 on completion of terms of engagement. The applicant was in low medical category and his Release Medical Board was conducted on 30.12.2019 at Base Hospital, Delhi Cantt. 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 attributable to military service. Although the applicant's disability has been opined as attributable to military service by the RMB, but since the applicant's disability element is

10% for life (below 20%), 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 30.12.2019 to the extent of holding the applicant's disability at 10% 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 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)

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 Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)  
Member (A) Member (J)

Dated: 07 October, 2022

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