

Court No. 1
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 582 of 2023

Wednesday, this the 11th day of October, 2023

“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”
“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”

No. 2689220A, Ex. Hav. Arun Kumar Singh, S/o of Shri Virendra Singh, Resident of Village – Malkapur, Post Office – Malkapur, District – Auraiya, (Uttar Pradesh) -206244.

.... **Applicant**

Ld. Counsel for the : **Shri R. Chandra**, Advocate and
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi -11.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), DHQ Post Office – New Delhi -11.
3. The Officer In – Charge, The GRENADIERS Records, PIN - 908776, C/o 56 APO.
4. The Chief Controller Defence Accounts, Draupadi Ghat, Allahabad (UP).

... **Respondents**

Ld. Counsel for the: **Shri R.K.S. Chauhan**, Advocate
Respondents. Central Govt Standing Counsel.

ORDER

“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, 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:-

(I) *Hon’ble tribunal may be pleased to set aside the Order dated 24/02/2020 (Annexure No.A-1) and order dated*

16/09/2020 (Annexure No.A-2) and order dated 28/09/2021 (Annexure No. A-2 (a).

- (II) *Hon'ble Tribunal may be pleased to findings of Release Medical Board only part of assessment of percentage is reviewed judicially and assessment of percentage be accepted as 20%.*
- (III) *Hon'ble Tribunal may be pleased to direct the respondents to grand Disability Element with effect from 01/02/2020 (Next date of discharge) with interest at the rate of 18% per annum.*
- (IV) *Hon'ble Tribunal may be pleased further to grant benefit of rounding of disability pension in terms of Ram Avtar's Case.*
- (V) *Any other appropriate order or direction which the Hon'ble Tribunal may deem just and proper in the nature and circumstances of the*

2. Briefly stated, applicant was enrolled in the GRENADIERS Regiment of Indian Army on 01.02.1996 and discharged on 31.01.2020 (AN) in Low Medical Category on fulfilling the conditions of his enrolment under Rule 13(3) Item III (i) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at Military Hospital, Jabalpur on 21.01.2020 assessed his disability '**PRIMARY HYPOTHYROIDISM**' @15% for life opined the disability as **aggravated by service**. The applicant's claim for grant of disability pension was rejected vide letter dated 24.02.2020. The applicant preferred First Appeal which too was rejected vide letter dated 16.09.2020. The applicant preferred Second Appeal which was too

rejected vide letter dated 28.09.2021. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that in other cases medical authorities have assessed 20% for the same disability but in the case of applicant in Periodical Medical Board assessed the applicant's disability @19% and the RMB assessed @15% for life. He relied upon the Order dated 04.08.2015 passed by Armed Forces Tribunal, Regional Bench, Chennai in O.A. No. 59 of 2014, **A. Savarimuthu Versus Union of India & Others**, order dated 27.11.2017 passed by Armed Force Tribunal, Regional Bench, Kochi in O.A. No. 49 of 2017, **Lt. Col. (Retd.) T.P. Ponnamma Versus Union of India & Others** and Order dated 09.12.2020 of this Tribunal in O.A. No. 26 of 2020, **Colonel Sharad Seth (Retd) Versus Union of India & Others**. He further pleaded that various Benches of Armed Forces Tribunal have granted disability element of disability pension in similar cases, as such the applicant be granted disability element of 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% i.e. below 20%, 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 and, if so, whether it 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 01.02.1996 and discharged from service on 31.01.2020 on completion of terms of engagement. The applicant was in low medical category and his Release Medical Board was conducted on 21.01.2020 at Military Hospital, Jabalpur. The Release Medical Board assessed applicant's disability @ 15% for life neither attributable to nor aggravated by military service.

7. As per Regulation 81 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% for life, applicant does not fulfil the requirement of Regulation 81 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 21.01.2020 to the extent of holding the applicant’s disability at 15% 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 81 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. The orders on which applicant has relied upon are not applicable in the instant case as in those cases the disability of the those applicants' were assessed @20% and in the instant case the applicant's disability has been assessed @15%. The degree of disablement depends on case to case basis. The applicant has utterly failed to show any provision either in the Guide to Medical Officer, 2008 (Military Pensions) or in any policy letter that the applicant's disability cannot be assessed less than 20%.

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.

16. Ld. Counsel for the applicant orally submitted to grant Leave to Appeal against the above order which we have considered and no point of law of general public importance being involved in the case the plea is rejected.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated: 11 October, 2023

AKD/Ashok/-