

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 426 of 2023**Friday, this the 20<sup>th</sup> day of October, 2023**“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)  
Hon’ble Lt. Gen. Anil Puri, Member (A)”**

No. 15790265F Ex. Nk. Pankaj Kumar Triwedi, S/o Kamlesh Kumar Triwedi r/o Village – Kalauli, Post Kalauli, Tehsil – Dandila, District – Hardoi, State – U.P.-241126.

**.... Applicant**Ld. Counsel for the : **Shri Rahul Pal**, Advocate and Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated HQ of MoD (Army), DHQ PO, New Delhi-110011.
3. Officer Incharge, sena Vayu Raksha Abhilekh, Army Air Defence Records, PIN-908803, C/o 99 APO.
4. The Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Prayagraj, Uttar Pradesh-211014.

**... Respondents**Ld. Counsel for the: **Shri Bipin Kumar Singh**, Advocate Respondents. Central Govt 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:-

- A. *To issue/pass an order or directions to the opposite parties to grant disability element of the disability pension @20% to @50% to the applicant from the next date of his superannuation i.e. 01.05.2022 along with 12% interest on arrear in the light of the judgment passed by the Hon'ble Apex Court and Government letter dated 31.01.2001.*
- B. *To issue/pass an order or direction as this Ho'ble Tribunal may deemed just, fit and proper under circumstances of the case in the favour of the applicant.*
- C. *To award the cost of the case in favour of the applicant from the opposite parties.*

2. Briefly stated, applicant was enrolled in the Indian Army on 24.11.2005 and was discharged on 30.04.2022 (AN) in Low Medical Category being unwilling to continue further in service under Rule 13 (3) Item III (iii) (a) (i) of the Army Rules, 1954 as amended vide SRO 22 dated 13.05.2010 and Integrated Headquarters of Ministry of Defence (Army) letter No. B/10201/XV/MP-3 dated 26.09.2017. At the time of discharge from service, the Release Medical Board (RMB) held at Military Hospital, Ambala on 16.02.2022 assessed his disability '**THALASSAEMIA MINOR (D-56.3)**' @10% 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 02.05.2022. The applicant preferred First Appeal dated 24.09.2022 which too was rejected vide letter dated 30.01.2023 which was communicated to the applicant vide letter

dated 04.03.2023. 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 relied upon the Order dated 04.10.2017 passed by this Tribunal in Original Application No. 312 of 2015 in ***Ex. MER (U/T) Rama Kant Singh Versus Union of India and Others*** and order dated 03.03.2022 of this Tribunal in Original Application No. 846 of 2021 in ***Ex. Nk. (MACP Hav.) Somveer Singh Versus Union of India & Others***. 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 @10% i.e. below 20%, therefore, condition for grant of disability element of pension does not fulfil in terms of Regulation 53(a) of the Pension Regulations for the Army, 2008 (Part-I) which provides that "*An individual released/retired/ discharged on completion of terms of engagement or on completion of service*

*limits or on attaining the prescribed age (irrespective of his period of engagement), if found suffering from a disability attributable to or aggravated by military service and so recorded by Release Medical Board, may be granted disability element in addition to service pension or service gratuity from the date of retirement/discharge, if the accepted degree of disability is assessed at 20% or more".* He further submitted that since the applicant was placed in permanent low medical category for the aforesaid with effect from 10.07.2012 and to retain him in service in service it was necessary to grant him sheltered appointment subject to availability of suitable appointment as per his disability and willingness. As the applicant was willing to continue further service in alternative appointment, his retention in service was recommended by the then Commanding Officer of the Unit from 12.07.2012. On further review the applicant was continued to be placed in low medical category for the period of two years from 27.08.2020 to 26.08.2022. As the applicant was not willing to continue further service in alternative appointment on being placed in permanent low medical category, his retention in service was not recommended by the then Commanding Officer of the unit with effect from 17.08.2020. Accordingly, he was discharged from service on 30.04.2022. 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 24.11.2005 and was discharged from service on 30.04.2022 being unwilling to continue in service. The applicant was in low medical category and his Release Medical Board was conducted on 16.02.2022 at Military Hospital, Ambala. The Release Medical Board assessed applicant's disability @10% 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 @10% for life, applicant does not fulfil the requirement of Regulations 53(a) and 97 of Pension Regulations for the Army, 2008 (Part-I) and Rule 6, 10 and 11 of the Entitlement Rules for Casualty Pensionary Award to Armed Forces Personnel-2008. Further, we also find that the RMB has opined that the applicant's disability is an inherited condition, cause and course are not related to military service, hence it is NANA.

8. The respondents have not denied for sheltered appointment even after applicant's having been placed in low medical category. Since applicant was discharged from service being unwilling to continue in service, 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 16.02.2022 to the extent of holding the applicant's disability @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. The Order dated 04.10.2017 in **Ex. MER (U/T) Rama Kant Singh (Supra)** and order dated 03.03.2022 in **Ex. Nk. (MACP**

**Hav.) Somveer Singh (Supra)** are not applicable in the instant case as in the case of **Ex. MER (U/T) Rama Kant Singh (Supra)** the respondents had failed to produce the original record with regard to treatment of that applicant and in the case of **Ex. Nk. (MACP Hav.) Somveer Singh (Supra)** the applicant's disability was @20% as NANA for life and in the present case the applicant's disability is @10% for life and he was discharged being unwilling to continue in service. .

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.

(Lt. Gen. Anil Puri)  
Member (A)

(Justice Ravindra Nath Kakkar)  
Member (J)

Dated: 20 October, 2023

AKD/-