

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

**Original Application No 1057 of 2022**

Friday, this the 28<sup>th</sup> day of Apr, 2023

**“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”**

**“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

No. 15693358M Ex Nk Rahul Kumar Tyagi, Vill: Hirnot, PO: Sarawa, Tehsil: Shikarpur, Distt: Bulandshahr, Uttar Pradesh: PIN – 202395.

-----Applicant

Ld. Counsel for the Applicant: **Col RN Tiwari (Retd),  
Advocate**

Versus

1. Union of India, Through it’s Secretary Ministry of Defence, South Block, New Delhi - 110011
2. The Chief of Army Staff, Integrated HQ of MoD (Army) New Delhi - 110011
3. Additional Directorate General of Personnel Services/ PS-4 (Imp-II) Adjutant General’s Branch, IHQ of Min of Def (Army), PIN - 900256, C/o 56 APO.
4. Principal Controller of Defence, Accounts (Pensions), Draupadi Ghat, Near Sadar Bazar, Prayagraj, Uttar Pradesh - 211014.

..... Respondents

Ld. Counsel for the Respondents : **Ms. Appoli Srivastava,  
Central Govt. Counsel.**

**ORDER (ORAL)**

**“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 for the following reliefs:-

- “(a) To declare the action of respondents as unjust, arbitrary and illegal;*
- (b) To quash and set aside the PS Directorate, IHQ of Min of Def (Army) letter dated 13 Jun 2022 and to direct the respondents to allow the disability pension from the time applicant was released from service i.e. 01 Oct 2020 with an interest @ 12% per annum with all consequential benefits;*
- (c) To direct the respondents to grant the benefit of rounding off both the disabilities to 50% and pay arrears with an interest @ 12% per annum from the date of release i.e. 01 Oct 2020;*
- (d) To grant an interest @ 12% on delayed payment of the disability pension and;*
- (e) Any other relief which this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case.”*

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 16.04.2004 and after rendering 16 years, 05 months and 14 days service he was discharged from service on 31.10.2020

in low medical category 'S1H1A1P2 (Permanent) E1 under Rule 13 (3) (v) of Army Rules 1954. Prior to discharge, Release Medical Board (RMB) was conducted and applicant's disability "**PRIMARY HYPOTHYROIDISM (ICD-E-03.9)**" was assessed @15% for life and considered as aggravated by military service. Claim of the applicant for grant of disability element was rejected by the respondents vide order dated 03.11.2020. Applicant submitted first appeal dated 25.01.2021 against rejection of his disability element which was rejected vide order dated 06.07.2021. Being aggrieved, applicant has filed instant O.A. for grant of disability element.

3. Learned counsel for the applicant submitted that applicant was found fit in all respects at the time of enrolment in the Army and there was no note in his primary service documents with regard to any disease/disability. Applicant was enrolled in Army on 16.04.2004 and discharged from service on 01.10.2020 in low medical category after rendering more than 16 years of service. In January 2020 while the applicant was posted in Field/CI Ops Area at Sharifabad (J&K), he was detected with disability "**Primary Hypothyroidism**" and applicant was placed in low medical category. Hypothyroidism, also called underactive thyroid, is when the thyroid gland doesn't make enough thyroid hormones to meet needs of the body. Thyroid hormones control the way our body uses energy, so they affect nearly every organ in our body, even the way of our heart beats.

Without enough thyroid hormones, many of our body's functions slow down. Disability of the applicant was assessed @ 15% for life and considered as aggravated by service. Therefore, disability suffered during service is attributable to military service. Learned counsel for the applicant also relied upon judgment of the Hon'ble Apex Court in the case of **Sukhvinder Singh vs. Union of India**, reported in (2014) STPL (WEB) 468 SC and submitted that if disability is not detected prior to the enrolment so disability to be deemed as attributable to service and pleaded that disability element be granted to the applicant and his disability of 15% should be treated to 20% and to be rounded off to 50% from the date of discharge, in view of **Union of India and Ors vs. Ram Avtar &ors**, Civil Appeal No 418 of 2012, dated 10<sup>th</sup> December 2014 and Govt of India letter dated 31.01.2001.

4. Learned counsel for the applicant also relied upon judgment of AFT (RB) Chennai in OA No. 30 of 2017 **Ex Sapper G. Jaganathan vs. Union of India & Ors**, decided on 09.02.2018 and submitted that applicant's case is squarely covered by this judgment and therefore, applicant be granted disability element. Learned counsel for the applicant pleaded that due to disability applicant was invalided out from service before completion of terms of engagement, hence disability of the applicant be treated as attributable and aggravated

by military service and respondents be directed to grant disability element as 20% and round of to 50% for life.

5. On the other hand, learned Counsel for the respondents submitted that applicant is in receipt of service pension and has been denied the disability element on the ground that his disability is assessed less than 20%. He further emphasised that competent authority has rightly rejected the disability pension claim in terms of Para 173 of Pension Regulations for the Army 1961, Part-1, Rule 14 of Entitlement Rule for Casualty Pensionary Awards, 1982 and Para 53 (a) of Pension Regulations for the Army, 2008 (Part I). Para 53 of Pension Regulations reads as under:-

*“An individual released/retired/discharged on completion of term 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 percent or more.”*

6. Learned counsel for the respondents further submitted that since the percentage of disability in this case is less than 20%, therefore, applicant is not entitled to disability element and O.A. deserves to be dismissed.

7. We have heard learned counsel of both sides and found that moot question involved in this case is whether disability element of disability pension is payable to an incumbent whose disability has been considered as not attributable but aggravated by service and has been assessed less than 20%?

8. For grant of invalid pension, the relevant portions of the Pension Regulations for the Army 1961 (Part I) and Entitlement Rules for Casualty Pension Award, 1982 are reproduced below:-

**(b) Para 197 of Pension Regulations for the Army 1961 (Part- 1) - (Invalid Pension/Gratuity when Admissible)**

*197. Invalid pension/gratuity shall be admissible in accordance with the Regulations in this chapter to:-*

*(a) an individual who is invalided out of service on account of a disability which is neither attributable to nor aggravated by service;*

*(b) an individual who is though invalided out of service on account of a disability which is attributable to or aggravated by service, but the disability is assessed less than 20% and*

*(c) a low medical category individual who is retired/discharged from service for lack of alternative employment compatible with his low medical category.*

**“(d) Entitlement Rules for Casualty Pensionary Awards, 1982**

*1. 4. Invaliding from service is necessary condition for grant of a disability pension. An individual who, at the time of his release under the Release Regulation, is in a lower medical category than that in which he was recruited, will be treated as*

*invalidated from service. JCOs/ORs& equivalents in other services who are placed permanently in a medical category other than "A" and are discharged because no alternative employment suitable to their low medical category can be provided, as well as those who having been retained in alternative employment but are discharged before the completion of their engagement will be deemed to have been invalidated out of service.*

2.

9. In view of the aforesaid discussions, we are of the considered view that provisions of Regulations 197 and 198 of the Pension Regulations for the Army 1961 (Part- 1) helps the applicant in as much as when a person is discharged in lower medical category than in which he was recruited and his services has been cut short, he would be treated to be invalidated out of service. Admittedly, the applicant was recruited in a medically fit condition and was discharged in low medical category, thus, as per para 4 of Entitlement Rules, he is to be treated as invalidated out of service. Since he has been considered as invalidated out of service he becomes entitled to the benefits accruing from the provisions of paras 197 and 198 of Pension Regulations and, therefore, he is to be considered entitled for invalid pension. Invalid pension can be granted to an individual after 10 years of service and it is granted to an individual who is invalidated out of service on account of disability which is neither attributable to nor aggravated by military service.

10. The law is settled that even if disability percentage is less than 20%, it would stand rounded off to 50% (in cases after their superannuation). The case in point relied upon by the Applicant is **Sukhvinder Singh Vs. Union of India**, reported in (2014) STPL (WEB) 468 SC. In para 9 of the judgment Hon'ble Apex Court has held as under:-

*"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....."*

12. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of **Dharamvir Singh Versus Union of India & Others**, reported in (2013) 7 Supreme Court Cases 316. In this case the Hon'ble Apex Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words.

*"29.1. Disability pension to be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a*



*disability is attributable to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).*

*29.2. A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service [Rule 5 read with Rule 14(b)].*

*29.3. The onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).*

*29.4. If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service [Rule 14(c)]. [pic]*

*29.5. If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service [Rule 14(b)].*

*29.6. If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons [Rule 14(b)]; and*

*29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 - "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."*

13. The initial presumption that the applicant was physically fit and free from any disease and he was in sound physical and mental condition at the time of entering into service remains unrebutted. Further, his disability was considered as aggravated by military service, therefore, we are of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant in view of ***Dharamvir Singh vs Union of India & Ors*** (supra) and the disability of the applicant should be considered as attributable to and aggravated by military service.

14. On the issue of rounding off of disability pension, we are of the opinion that the case is squarely covered by the decision of ***K.J.S. Buttar vs. Union of India and Others***, reported in (2011) 11 SCC 429 and Review Petition (C) No. 2688 of 2013 in Civil appeal No. 5591/2006, ***U.O.I. & Anr vs. K.J.S. Buttar and Union of India vs. Ram Avtar & Others***, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014. Hence the applicant is eligible for the benefit of rounding off.

15. In the instant case the applicant was recruited in medically fit condition and was discharged in low medical category before completion of terms of engagement. His disability has been considered as aggravated by military service and it has been assessed as less than 20%. Since the applicant was discharged from service before completion of terms of engagement in low

medical category, his discharge from service should be considered as invalidation from service as has been held by the Hon'ble Apex Court judgment in the case of ***Sukhwinder Singh vs Union of India & Ors*** reported in (2014) STPL (WEB) 468 SC. In our view, the case is fully covered by the aforesaid decision of Hon'ble the Apex Court in which the substance of what has been held is that even if an individual is assessed to be less than 20%, the *“disability leading to invaliding out of service would attract the grant of fifty per cent disability pension.”* Probably because of this reason the Union of India must have issued the order dated 31.01.2001 for giving the benefit of rounding off the disability pension to 50% to the persons who are having less than 50% of the disability. Para 9 of the judgment, being relevant is quoted below.

*“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 authorizing 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.”***

16. In view of the discussions made above, we are of the view that the applicant is entitled for the grant of disability element and Original Application deserves to be allowed. Accordingly, O.A. is **allowed**. The impugned order rejecting claim for grant of disability element is set aside. The applicant is already in receipt of service element hence, respondents are directed to grant disability element of disability pension @ 15% deemed to be 20% for life, which shall stand rounded off to 50% for life from the next date of discharge. The entire exercise shall be completed by the respondents within four months from the date of production of a certified copy of this order, failing which the respondents shall be liable to pay interest at the rate of 8% to the applicant on the amount accrued till the date of actual payment.

17. No order as to costs.

**(Vice Admiral Atul Kumar Jain)**  
**Member (A)**

**(Justice Ravindra Nath Kakkar)**  
**Member (J)**

Dated: 28<sup>th</sup> April, 2023  
Rkm/