

**Court No. 1**

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

**Original Application No. 952 of 2023**

Friday, this the 19<sup>th</sup> day of April, 2024

**“Hon’ble Mr. Justice Anil Kumar, Member (J)  
Hon’ble Maj. Gen. Sanjay Singh, Member (A)”**

No. 15424581F Ex. Nk. Sonu S/o Sri Ait Singh, R/o Village & Post Baroda Mor, H. No. 131, District Sonipat (Haryana), PIN-695020.

**.... Applicant**

Ld. Counsel for the : **Col. K.K. Misra (Retd.)**, Advocate and Applicant

Versus

1. Chief of the Army Staff, Army HQ, New Delhi.
2. Officer-in-Charge, AMC Records, Lucknow.
3. PCDA (Pension), Allahabad.

**... Respondents**

Ld. Counsel for the: **Ms. Kavita Mishra**, Advocate Respondents. Central Govt. Standing Counsel.

**ORDER**

**“Per Hon’ble Mr. Justice Anil Kumar, 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) *to quash AMC Record letter No. 15424581F/REJ/DPI dt 30 Sep 2022 (Annexure A-6 to this OA) and direct the respondents to grant 20% disability pension to the*

*applicant as per his entitlement, duly rounded of to 50%, along with its arrears with interest as applicable.*

- (ii) Any other relief which the Hon'ble Tribunal may think just and proper may be granted to the applicant.*
- (iii) Cost of the case may be awarded in favour of the applicant.*

2. Briefly stated, applicant was enrolled in the Army Medical Corps of Indian Army on 29.09.2005 and was discharged on 01.10.2022 (FN) in Low Medical Category on fulfilling the conditions of his enrolment under Rule 13 (3) Item III (i) of the Army Rules, 1954 after rendering 17 years and 02 days of service. At the time of discharge from service, the Release Medical Board (RMB) held at Military Hospital, Namkum on 22.07.2022 assessed his disability '**AOM (RT) WITH HEALED PERFORATION (H90.3)**' @5% for life as **attributable to military service**. The applicant's claim for grant of disability pension was rejected vide letter dated 30.09.2022. The applicant preferred First Appeal dated 19.10.2022 but of no avail. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that the Review Medical Board held on 31.01. 2020 had assessed the applicant's disability as attributable to service. The Medical Board held on 27.05.2022 had assessed the applicant's disability @20%. He further submitted that the applicant's disability has been opined as attributable to service by the RMB but its degree of

percentage has wrongly been suddenly brought down from 20% to 5%. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension and its rounding off to 50%.

4. On the other hand, learned counsel for the respondents opposed the submissions of learned counsel for the applicant and submitted that although applicant's disability has been opined as attributable to service but since the assessment of the disability element is @5% i.e. below 20%, therefore, condition for grant of disability element of pension does not fulfil in terms of Regulation 179 of Pension Regulations for the Army, 1961 (Part-I) and Regulation 53(a) of 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*" and, therefore, the competent authority has rightly denied the benefit of disability element of

pension to applicant. She 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 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 29.09.2005 and was discharged from service on 30.09.2022 on completion of terms of engagement. The applicant was in low medical category and his Release Medical Board was conducted on 22.07.2022 at Military Hospital, Namkum. The Release Medical Board assessed applicant's disability @5% 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 aggravated by military service. Although the applicant's disability has been opined by the RMB as attributable to service but since, applicant's disability element is 5% for life, applicant does not fulfil the requirement of Regulation 179 fo te

Pension Regulations for the Army, 1961 (Part-I) and 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 22.07.2022 to the extent of holding the applicant's disability @5% for life is not tenable in terms of Hon'ble Apex Court judgment in the case of **Bachchan Prasad vs Union of India & Ors**, Civil

Appeal 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 179 of the Pension Regulations for the Army, 1961 (Part-I) and 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.

**(Maj. Gen. Sanjay Singh)**  
**Member (A)**

**(Justice Anil Kumar)**  
**Member (J)**

Dated: 19 April, 2024

AKD/-