

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 107 of 2023**

Tuesday , this the 11<sup>th</sup> day of July, 2023

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

No. 14638020-L Ex. Naik Kanhaiya Yadav, Son of Rajdev Yadav, R/o Village – Manpur Rajwabar, Post Manpur, Tehsil – Kasia, District – Kushinagar-274402.

.... **Applicant**

Ld. Counsel for the : **Shri Manoj Kumar Awasthi**, Advocate and Applicant  
**Shri Anshuman Srivastava**, Advocate  
Versus

1. Union of India, through its Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. The Officer-in-Charge Records, EME Records, Pin – 900453, C/o 56 APO.
3. The Appellate Committee on First Appeal (ACFA), Additional Directorate General of Personnel Services/PS-4 (Imp-III) AG’s Branch, Integrated H Q of MoD (Army), DHQ PO, New Delhi-110011.
4. The PCDA (Pension), Draupadi Ghat, Allahabad (Prayagraj).

... **Respondents**

Ld. Counsel for the: **Shri Shyam Singh**, Advocate  
Respondents. 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 to set-aside/quash the order No. 14638020L/DP-4/Pen dated 14.07.2021 passed by respondent no. 2 annexed as Annexure no. 1 to this original application.*
- (b) *To issue pass an order or directions to the respondents to grant Disability Element of Disability Pension @20% with effect from date of discharge i.e. 31.03.2021.*
- (c) *To issue pass an order or directions to respondents to grant benefit of Rounding off Disability Element of Disability Pension @20% to @50% for life to the applicant and pay due arrears including consequential benefits with interest @12% p.a. till final payment is made in light of Hon'ble Apex Court Judgments and Policy letter dated 31.01.2001.*

2. Briefly stated, applicant was enrolled in the Corps of E.M.E. of Indian Army on 03.03.1997 and was discharged on 31.03.2021 (AN) in Low Medical Category on fulfilling the conditions of his enrolment under Rule 13 (3) Item III (i) (a) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at 166 Military Hospital on 20.03.2021 assessed his disability '**SARCOIDOSIS STAGE II (D86.0)**' @15% for life opined the disability to be neither attributable to nor aggravated by service. The applicant's claim for grant of disability pension was rejected vide letter dated 14.07.2021. The applicant preferred First Appeal dated 23.06.2022 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 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. Ld. Counsel for the applicant relied upon the Judgment and order dated 03.12.2021 of this Tribunal in Original Application No.220 of 2021, **Col. Sameer Misra (Retd) Versus Union of India & Others**. He further submitted that according to the Guide to Medical Officers (Military Pensions), 2002 the applicant's disability cannot be assessed less than 20%. In the Re-Categorization Medical Board held on 08.12.2020 the applicant's disability was assessed @20% which has been wrongly reduced by the RMB @15% for life. In other case the RMB has assessed the same disability @20% and in the applicant's case it has been assessed @15%. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability element of 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, 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 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 03.03.1997 and was discharged from service on 31.03.2021 on completion of terms of engagement. The applicant was in low medical category and his Release Medical Board was conducted on 20.03.2021 at 166 Military Hospital. The Release Medical Board assessed applicant's disability @15% for life neither attributable to nor aggravated by military service.

7. As per Regulation 179 of Pension Regulations for the Army, 1961 (Part-I) and Regulation 53 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 179 of Pension Regulations for the Army, 1961 (Part-I) and Regulation 53 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. With regard to submission of the Ld. Counsel for the applicant that the disability by which applicant suffered cannot be

assessed less than 20% we do not find mention in the Guide to Medical Officers (Military Pensions), 2002 that it cannot be assessed less than 20%, as such there is no irregularity in assessment of RMB.

10. In regard to assessment of Re-Categorization Medical Board held on 08.12.2020 in which the applicant's disability was assessed @20% we are of the opinion that applicant's disability is a curable disease and due to medicines on change in life style it may be reduced.

11. With regard to submission of Ld. Counsel for the applicant that in other case the RMB has assessed the same disability @20% and in the applicant's case it has been assessed @15%, we are of the opinion that it depends on case to case basis and it cannot be said that the percentage of disability of two individual for the same disease be same.

12. The Judgment and Order dated 03.12.2021 of this Tribunal in Original Application No. 220 of 2021, **Col. Sameer Misra** (Supra) is not applicable in this case as in the case of Col. Sameer Misra the disability '**SARCOIDOSIS (D-86)**' was assessed @20% for life as aggravated by service by the RMB and in this case it has been assessed @15% for life (below 20% for life) as NANA by the RMB.

13. Further, contrary view to Release Medical Board dated 20.03.2021 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 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)

14. 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.

15. In addition to above, a bare reading of Regulation 179 of Pension Regulations for the Army, 1961 (Part-I) and Regulation 53 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.”*

16. In view of the discussions made above, Original Application lacks merit and same is accordingly **dismissed**.

17. Pending application, if any, stands disposed of.

18. No order as to costs.

(Vice Admiral Atul Kumar Jain)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated: 11 July, 2023

AKD/-