

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 627 of 2021****Thursday, this the 5<sup>th</sup> day of May, 2022****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**Col (TS) Suresh Mamgain (Retd) (No. IC-51432-X)  
S/o Shri Satya Prasad Mamgain  
R/o Vill – Dharigaoi Patti – Kattulsiyun, Post – Singori,  
Dist – Paur Garhwal, UK – 246147

..... Applicant

Ld. Counsel for the Applicant: **Shri Ved Prakash** and  
**Shri Devendra Kumar**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence (Army), South Block, New Delhi.
2. Chief of the Army Staff, Integrated Headquarters of the Ministry of Defence (Army), New Delhi-110011.
3. Additional Directorate General Personnel Services, AG's Branch, Integrated Headquarter of Ministry of Defence (Army), Plot No. 108 (West), Church Road, New Delhi – 110001.
4. PCDA (P), Draupadi Ghat, Allahabad.

..... Respondents

Ld. Counsel for the Respondents : **Dr. Shailendra Sharma Atal**,  
Central Govt Counsel**ORDER**

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) Quash impugned order No. 13101/IC-51432-X/Engrs/MP-6(c)/605/2019/AG/PS-4 (Imp-I) dated 13.10.2020.
- (b) Direct respondents to grant Disability element of pension to the applicant duly rounded off to 50% w.e.f. his date of discharge.

OR

Direct the respondents to conduct RSMB/RAMB for re-assessing the disability percentage of all the disabilities.

- (c) Direct respondents to pay the due arrears of disability element of pension with interest @ 12% p.a. from the date of retirement with all the consequential benefits.
- (d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost of the application in favour of the applicant and against the respondents."

2. The brief facts of the case are that applicant was commissioned in the Indian Army on 13.06.1992. The applicant while in service suffered with three disabilities, (i) Tinea Concoerticum, (ii) Chronic Ideopathic Urticaria, (iii) Undifferentiated Connective Tissue Disease. The Release Medical Board of the applicant assessed (i) and (ii) disabilities as Aggravated to military service and (iii) disability was held NANA. The disability percentage of (i) and (ii) was assessed @ 10% each however, no disability percentage was assessed for third disability. The composite disability percentage for (i) and (ii) was assessed @ 20% for 2 years. The applicant retired from service on 31.08.2019. The disability pension claim of the applicant was rejected by ADGPS, AG's Branch, New Delhi vide letter dated 13.10.2020 saying that though disability No. (i) and (ii) are aggravated by service but composite assessment is less than 20%. The applicant preferred first appeal dated 15.01.2021 against rejection of disability pension but no action has been taken by the respondents till the date of filing of present Original Application.

3. Learned Counsel for the applicant submitted that at the time of commission in the Indian Army, the applicant was found mentally and physically fit for service and there is no note in the service documents that he was suffering from any disease at the time of entry in the Army. The disabilities of the applicant were contracted during the service, hence first and second disabilities are held aggravated by military service. He submitted that the act of overruling the recommendations of RMB by higher authorities, i.e. ADG PS was wrong and should be set aside. He placed reliance on the judgments of the AFT (PB), New Delhi in OA No. 238 of 2014, **Sukhbir Singh vs. Union of India**, decided on 08.09.2015 and OA No. 320/2015, **Ex Sepoy Jai Singh vs, Union of India & Ors**, decided on 09.07.2015, OA No. 349/2015, **Sqn Ldr. Kashitij Kumar (Retd) vs. Union of India & Ors**, decided on 08.09.2015 and OA No. 1698/2016, **Col LB Malla (Retd) vs. Union of India & Ors**, decided on 20.07.2017 by which disability @ 15-19% was rounded off to 50% and the judgment of the Hon'ble Apex Court in the case of **Union of India & Others vs. Ram Avtar** in Civil Appeal No. 418/2012, decided on 10.12.2014 and pleaded that this Tribunal has also been pleased to pass the several orders in favour of the applicants in similar circumstances and therefore, applicant also be granted disability pension @ 20% duly rounded off to 50% for two years from the date of discharge and thereafter, RSMB/RAMB to be conducted for further assessment of disabilities and grant of disability element to the applicant.

4. On the other hand, learned counsel for the respondents submitted that applicant had retired from service on 31.08.2019 on

attaining the age of superannuation. The RMB assessed composite percentage @ 20% for first and second disabilities of the applicant. During the processing of the disability pension claim the medical authorities held the opinion that composite assessment for all the disabilities should be 19% instead of 20% for two years as per MOD letter dated April, 2019. Therefore, applicant is not eligible for disability pension as disablement percentage qualifying for disability pension is less than 20% as opined by Lt Col Kamlesh Kumar Singh, AAG, AFMS. The reason for rejection of disability pension claim for first ID "TINEA CONCERTICUM" and second ID "CHRONIC IDIOPATHIC URTICARIA" is "*Tinia infection and urticaria are not caused due to service conditions. The fungal infection could be due to poor hygiene or lower immunity. The urticaria is also in allergic reaction to various unknown stimuli. Hence, both are conceded as neither attributable to nor aggravated by military service. The third ID "UNDIFFERENTIATED CONNECTIVE TISSUE DISEASE", in the opinion of Senior Advisor Rheumatology, Command Hospital, (SC), Pune has no sign and symptoms/evidence of while conducting RMB, it should not have been included, instead officer should have upgraded to Shape-I for this illness*". Hence, in view of order of AFT (PB), New Delhi in the case of O.A. No. 219/2019, **Brig Yatindra Mohan Tewari, SM vs. Union of India and Ors**, decided on 09.12.2020 and Regulation 53 of pension Regulations for the Army, 2008 (Part-1), the applicant is not entitled to disability element. He pleaded for dismissal of O.A. being devoid and bereft of merit.

5. We have perused the records and we find that applicant's first and second disabilities were considered as Aggravated by military service and their percentage was assessed @ 20% composite but disability pension claim of the applicant was rejected by ADG PS, AG's Branch, Army Headquarters treating composite percentage @ 19% for two years. The third disability of the applicant which originated in the year 2001 was not given any percentage though it was existed/included in RMB. Hence, we feel it proper to hold a Re-Assessment Medical Board (RAMB) of the applicant to re-assess percentage of each disability and composite percentage of all three disabilities with regard to his entitlement of disability element.

6. In view of aforesaid, The Original Application is **partly allowed**. The respondents are directed to conduct a Re-Assessment Medical Board for the applicant to assess his disabilities recommending the percentage of each disability and composite percentage of all three disabilities. The respondents are directed to inform applicant the place and date where RAMB is to be conducted and give effect to this order positively within a period of four months from the date of receipt of certified copy of the order.

7. No order as to costs.

8. Pending Misc. Application(s), if any, shall stand disposed off.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)  
Member (A) Member (J)

Dated: May, 2022

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