

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 64 of 2023**Monday, this the 16<sup>th</sup> day of October, 2023**“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)  
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

No. 15166285Y Ex. Gnr. (MACP Nk.) Satish Kumar Yadav, S/o Shri Daya Shankar Singh Yadav, R/o Village &amp; Post Office Deoria, Tehsil Mohammadabad, District Ghazipur (UP)-233233.

**.... Applicant**Ld. Counsel for the Applicant : **Shri Ashok Singh**, Advocate  
**Shri Vikas Singh Chauhan**, Advocate  
Versus

1. Union of India, through its Secretary, Govt. of India, Ministry of Defence, New Delhi-110011.
2. Chief of the Army Staff, IHQ of MoD (Army), DHQ PO, New Delhi-110011.
3. The Chairman, Second Appellate Committee of Pension (SACP, Addl. Dte. Gen. Personnel Services PS-4 (Imp.-II), AG’s Branch, Integrated HQ of MOD (Army), Room No. 10, Plot No. 108 (West), Church Road, Brassy Avenue, New Delhi-110001.
4. OIC Artillery Records, PIN-908802, C/o 56 APO.
5. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

**... Respondents**Ld. Counsel for the Respondents: **Shri Manu Kumar Srivastava**, Advocate  
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:-

*“8.1 To quash/set aside the impugned order dated 16 Jul 2021 passed by the First Appellate Committee as a Annexure No. A-1 with compilation No. 1 being illegal and devoid on merit and devoid on merit and further passed the order or direction to the Respondents to grant the disability pension to the applicant at the rate of 20% for life as per the previous medical board proceedings dated 11 March 2020 in accordance with law.*

*8.2 Issue an order or direction directing to the Respondents to again placed the applicant before release survey medical board (RSMB) for assessment of the actual percentage of disability element in accordance with the existing policy of Integrated Headquarters of Ministry of Defence, Directorate General of Medical Service (Army) letter No. 76086/Rel-CI/Policy/DGMS-5(A) dated 02 Nov 2017.*

*8.3 Issue an appropriate order or direction as this Hon’ble Tribunal may deem fit and proper in the demand of justice.*

*8.4 Issue an order or direction awarding the cost of the application together with all legal expenses incurred by the applicant.*

2. Briefly stated, applicant was enrolled in the Indian Army on 16.07.2003 and was discharged on 31.07.2020 (AN) in Low Medical Category after completion of 17 years of service. At the

time of discharge from service, the Release Medical Board (RMB) held at Military Hospital, Gwalior on 28.07.2020 assessed his disability '**ANKLE SPRAIN (LT) (S 93.4)**' @15% for life opined the disability to be **attributable to military service**. The applicant's claim for grant of disability pension was rejected vide letter dated 02.02.2021. The applicant preferred First Appeal which too was rejected vide letter dated 16.07.2021 which was communicated to the applicant vide letter dated 31.07.2021. The applicant preferred Second Appeal dated 19.05.2022 which too was rejected vide letter dated 15.06.2022 which was communicated to the applicant vide letter dated 07.07.2022. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that the RMB has assessed the applicant's disability as **attributable to military service** @15% for life but the disease with which applicant suffers is '**ANKLE SPRAIN (LT) (S 93.4)**' and per table at para 17B of Amendment to Chapter VII Assessment of Guide to Medical Officers-2008 (Military Pensions) the degree of disablement in case of Ankle cannot be assessed less than 20%. 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 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 the applicant's disability was opined as **attributable to military service** but 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 the Pension Regulations for the Army, 1961 (Part-I) and Regulation 53(a) 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 assessment of 15% of disability in the case of Ankyloses is in accordance with extant rules/guidelines 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 16.07.2003 and was discharged from service on 31.07.2020 which shows that he was discharged on completion of terms of engagement. The applicant was in low medical category and his Release Medical Board was conducted on 28.07.2020 at Military Hospital, Gwalior. The Release Medical Board assessed applicant's disability @15% for life as attributable to military service.

7. On careful scrutiny of the documents, we find that the RMB has assessed the applicant's disability @15% for life as attributable to military service. In this regard when we see the said provisions, we observe that in the table at para 17 B of Amendment to Chapter VII Assessment of Guide to Medical Officers-2008 (Military Pensions) although it is mentioned that the degree of disablement in case of Ankle cannot be less than 30% but in the in para 17 B (v) itself it is clearly stated that *"When a joint is ankylosed in an unfavourable position, an increase in the scale of assessment corresponding to the additional degree of disablement entailed, would be justified. On the other hand, when a joint is not truly ankylosed but only limited in its movements, the assessment would normally be reduced"*. Therefore, we are of the view that RMB, which is an expert body, has assessed the applicant's disability in accordance with rules/guidelines on the subject, issued by the Ministry of Defence.

8. As per 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), 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 the Pension Regulations for the Army, 1961 (Part-I) and Regulation 53(a) of Pension Regulations for the Army, 2008 (Part-I).

9. 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.”*

10. Further, contrary view to Release Medical Board dated 20.07.2020 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)

11. 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.

12. 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.”*

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.

16. Ld. Counsel for the applicant orally submitted to grant Leave to Appeal against the above order which we have considered and no point of law of general public importance being involved in the case the plea is rejected.

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

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

Dated: 16 October, 2023

AKD/-