

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, GUWAHATI
(Sl. No. 19)

O.A. No. 08 of 2022 with M.A. No. 02 of 2022

Ex. Sep. S.R. Thungshel Anal Applicant
By Legal Practitioner for the Applicant : Shri A.R. Tahbildar, Advocate

Versus

Union of India & Others Respondents
By Legal Practitioner for Respondents : Ms. Dipanjali Bora, Advocate

Notes of the Registry	Orders of the Tribunal
	<p><u>05.04.2023</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Air Marshal Balakrishnan Suresh, Member (A)</u></p> <p><u>M.A. No. 02 of 2022</u></p> <p>Heard Shri A.R. Tahbildar, Ld. Counsel for the applicant and Ms. Dipanjali Bora, Ld. Counsel for the respondents. This application has been filed for condoning the delay of 29 years and 02 days in filing the Original Application for grant of disability element of disability pension. It is submitted by the Ld. Counsel for the applicant that delay in filing the Original Application is not intentional, but for the reasons stated in the affidavit filed in support of delay condonation application. The Ld. Counsel for the respondents has vehemently opposed the prayer. Upon hearing submissions of Ld. Counsel of both sides we find that cause shown is sufficient. Accordingly, delay is condoned. Delay condonation application stands disposed of.</p> <p><u>O.A. No. 08 of 2022</u></p> <p>Heard Shri A.R. Tahbildar, Ld. Counsel for the applicant and Ms. Dipanjali Bora, Ld. Counsel for the respondents. Original Application is dismissed. For orders, see our order passed on separate sheets. Misc. Application(s), pending if any, shall be treated to have been disposed of.</p> <p style="text-align: center;">(Air Marshal Balakrishnan Suresh) (Justice Umesh Chandra Srivastava) Member (A) Member (J)</p> <p>AKD/MC/-</p>

ARMED FORCES TRIBUNAL, REGIONAL BENCH, GUWAHATI**Original Application No. 08 of 2022**Wednesday, this the 05th day of April, 2023

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Air Marshal Balakrishnan Suresh, Member (A)

No. 4352510N Ex. Sep. S.R. Thungshel Anal**.... Applicant**

Ld. Counsel for the : **Shri A.R. Tahbildar**, Advocate
Applicant

Versus

Union of India & Others.**... Respondents**

Ld. Counsel for the: **Ms. Dipanjali Bora**, 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:-

- 8.1) *To quash and set aside the impugned order dated 19.02.1993 issued vide No. G3/70/58/12/92 (Annexure -B) by the Accounts Officer (Pension), Office of the Chief Controller of Defence Accounts rejecting the applicant's claim for disability element of pension.*
- 8.2) *To pay disability element of pension 20% with the rounding off benefit of disability element from 20% to 50% to the applicant with arrear from three years prior to the date of filing of the instant application.*

And/or pass such further order/orders as to your Lordship may deem fit and proper.

2. Briefly stated, applicant was enrolled in the Assam Regiment of Indian Army on 23.12.1980 and was discharged from service on 31.08.1992 (AN) in Low Medical Category before fulfilling the terms of engagement under Rule 13 (3) Item III (v) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held on 17.07.1992 assessed his disability '**LUMBER SPONDILYSIS LV-4, LV-5 721**' @20% for two years and disability considered to be attributable to military service. The applicant's claim for the grant of disability pension was rejected by the Principal Controller of Defence Accounts vide letter dated 19.02.1993. The applicant's Re-Survey Medical Board (RSMB) was held at 151 Base Hospital on 30.04.2002, wherein the degree of disability has been assessed at 11 to 14% (less than 20%) for life. Accordingly, the applicant claim for grant of disability element of disability pension was rejected vide letter dated 19.12.2002 which was communicated to the applicant vide letter 21.01.2003. The applicant submitted an application dated 16.04.2021 under Right to Information Act asking copies of RMB, RSMB proceedings, rejection letter, PPO order and PCDA (P), Allahabad etc. which were provided to him vide letter dated 05.06.2021. The applicant approached the respondents through CPGRAM dated 10.07.2021 which was rejected vide letter dated 19.08.2021. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant submitted that disability of the applicant has been regarded as attributable to military service. However, in the RSMB held on 30.04.2002 the degree of the applicant's disability has been assessed at 11-14% (less than 20%) for life and disability element of disability pension has not been granted which is illegal and arbitrary. 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% as well as arrears thereof.

4. Learned Counsel for the applicant further submitted that applicant was diagnosed to be suffering from '**LUMBER SPONDILYSIS LV-4, LV-5 721**' at the time of discharge from service, therefore, applicant's case is fully covered with law laid down by the Hon'ble Apex Court in ***Sukhvinder Singh Vs. Union of India and Others*** (Civil Appeal No. 5605 of 2010, decided on 25.06.2014) and therefore, applicant is entitled for disability element of disability pension which has not been granted by the respondents in very illegal and arbitrary manner. He also submitted that the Hon'ble Apex Court in ***Union of India vs. Ram Avtar*** has held that service personnel who were in low medical category at the time of their retirement/release they are deemed to be invalided out of service and not released from service as such applicant is entitled for the benefit of Govt. of India letter dated

31.01.2001. He pleaded to release disability pension of the applicant in the interest of natural justice.

5. Per contra, learned counsel for the respondents submitted that the service documents in respect of the applicant have been destroyed during the year 2017 after stipulated period of retention i.e. after 25 years of retirement in terms of Para 592 and 595 of the Regulations for the Army (Revised Edition, 1987). He further submitted that since disability of the applicant has been assessed at 11-14% (below 20%) for life by Re-Survey Medical Board dated 30.04.2002, hence, applicant became ineligible for grant of disability element on account of disablement being 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 the competent authority has rightly not granted the benefit of disability element of disability pension to applicant. He pleaded for dismissal of Original Application.

6. We have given our considerable thoughts to both sides and have carefully perused the records. The question in front of us is straight; whether the disability is re-assessed above or below 20% and also whether the applicant is entitled for disability element even if the disability is re-assessed below 20%?

7. It is undisputed case of the parties that applicant was enrolled in the Indian Army on 23.02.1980 and was discharged from service on 31.08.1992 in low medical category. The applicant was in low medical category and his Release Medical

Board was conducted on 17.07.1992. The Release Medical Board assessed applicant's disability @20% for two years as attributable to military service. The Re-Assessment Medical Board held on 30.04.2002 assessed the degree of disability of the applicant at 11-14% (less than 20%) for life. Hence, respondents have not granted the applicant's disability element of disability pension. We find that the service documents of the applicant have been destroyed during the year 2017 after stipulation period of retention i.e. after 25 years of retirement in terms of Para 592 and 595 of the Regulations for the Army (Revised Edition, 1987).

8. We could have decided the case, had there been related medical documents pertaining to the applicant and applicant could have been benefitted, but we are unable to impart justice in the absence of requisite medical documents. In view of the above, we are unable to decide the case in vacuum after a prolonged gap of more than 29 years from the date of discharge of the applicant from service.

9. As per Regulation 186 (2) of Pension Regulations for the Army, 1961 (Part - I), an individual who was initially granted disability pension but whose disability is re-assessed at below 20% subsequently shall cease to draw disability element of disability pension from the date it falls below 20 per cent. He shall however continue to draw the service element of disability pension. Since, applicant's disability element has been assessed at 11-14% (less than 20%) by the Re-Survey Medical Board held

on 30.04.2002, applicant does not fulfil the requirement of Regulation 186 (2) of Pension Regulations for the Army, 1961 (Part-I).

10. Further, contrary view to Re-Survey Medical Board held on 30.04.2002 to the extent of holding the applicant's disability at 11-14% (less than 20%) 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 04th 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 186 (2) of Pension Regulations for the Army, 1961 (Part-I), makes it abundantly clear that an individual being re-assessed disability below 20% subsequently shall cease to draw disability element of disability pension from the date it falls below 20 per cent. 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 Misc. Applications, if any, stand disposed of.

15. No order as to costs.

(Air Marshal Balakrishnan Suresh)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 05 April, 2023

AKD/MC/-