

**IN THE ARMED FORCES TRIBUNAL  
REGIONAL BENCH, GUWAHATI**

OA - 32 of 2018

PRESENT

HON'BLE DR. (MRS) JUSTICE INDIRA SHAH, MEMBER (J)  
HON'BLE LT GEN GAUTAM MOORTHY, MEMBER (A)

JC-548087M Ex Nb Sub Dhanjit Kumar Sarma  
S/o Late Harendra Nath Sarma  
Vill-Nabagraha Mandir  
PO-Silpukhuri  
Dist-Kamrup(M), Assam, PIN-780003

..... Applicant

By legal practitioners for  
Applicant.

**Mrs. Rita Devi**  
**Mr. A.R.Tahbildar**

**-VERSUS-**

1. **The Union of India through**  
the Secretary, Ministry of Defence,  
New Delhi-11.
2. **The Officer-in-Charge**  
**Records The Assam Regiment**  
C/O 99 APO
3. **Additional Directorate General**  
Personnel Services, PS -4(d)  
Adjutant General's Branch  
Integrated HQ of MOD (Army),  
PO-New Delhi
4. **The Principal Controller of Defence,**  
Accounts (Pension), Allahabad  
PIN-211014, Uttar Pradesh.

..... Respondents

By Legal Practitioner for the  
Respondents

**Mr. N. Baruah, CGSC**

Date of Hearing : 20.12.2018  
Date of Judgment & order: 21.12.2018

## JUDGMENT & ORDER

*(Per Lt Gen Gautam Moorthy, Member (A))*

1. This is an application filed under Section 14 & 15 of the AFT Act, 2007 filed by the applicant who retired as JCO being aggrieved by the rejection of his claim for disability element of pension.
2. The factual matrix of the case is that the applicant was enrolled in the Indian Army on 21.02.1978 and was discharged in Low Medical Category A3 on 01.04.2002 on his own request after serving 24 years one month and 8 days. The applicant states that on 10.02.2000 while participating in BPET ground test while jumping over a 9 feet ditch, he fell down and suffered knee injury. A Court of Inquiry was ordered to the injury sustained by the applicant.
3. We have perused the Court of Inquiry attached as Annexure-A to the OA and it is noted that the injury was declared attributable to military service which has been endorsed by the Commanding Officer on 15.11.2001. The applicant was subsequently discharged from service under Army Rule 13(3)(l)(i)(b) on 01.04.2002. The Release Medical Board held at the time of discharge assessed his disability at 30% for two years and opined that the disability was attributable to the military service. Thereafter no Re-assessment Medical Board was carried out. After lapse of 15 years, the applicant was advised by the authorities to report to 151 Base Hospital, C/O 99 APO for his Re-assessment Medical Board. This Re-assessment Medical Board was thereafter held on 06.02.2018 at 151 Base Hospital and the Board assessed his disability at 40% for life for the same injury i.e. Tear ACL (RT) KNEE (OPTD). The applicant then submitted all his necessary documents to the Record Officer, Records The Assam Regiment vide letter No. 4030/JC-548087M/Pen(DP) dated 04.08.2018 (Annexure-H). The reason mentioned for rejection of the applicant's claim is set out as under –

*"2. It is intimated that your case for grant of disability element claim was processed to PCDA(P) Allahabad vide out letter No 4030/JC-548087M/Pen(DP) dt 10 May 2018. The same has now been returned by them with observations vide their letter under reference. During your service you were downgraded to low medical category A3(T-24) wef 09 Oct 2001 and were due for the re-categorisation medical board on 26 Mar 2002. But before carrying out your re-categorisation medical board you were discharged from*

*service with effect from 31 Mar 2002 under Army Rule 13(3)(i)(b) at your own request on ECG. Since, you were discharged from service before carrying out re-categorisation of medical board, you are not entitled for disability element."*

4. The Govt. Of India (Ministry of Defence) vide letter No. 16(05)/2008/D(Pension/Policy), Dept of Ex-servicemen Welfare dated 19.05.2017 (Annexure-1) on the subject "Grant of disability element to Armed Forces Personnel who were retained in service despite disability attributable to or aggravated by Military Service and subsequently proceeded on premature/voluntary retirement prior to 01.01.2006" at para 3 of the above letter clarifies that while earlier letter of even No. dated 29.09.2009 allowed disability element/war injury element for Armed Forces personnel retired/discharged from service on or after 01.01.2006, the benefit has now been extended to all similarly placed Armed Forces personnel who retired voluntarily pre-2006. Hence it is evident that the applicant too is entitled to this benefit.
5. The respondents have not opposed the application since it is squarely covered matter. We, accordingly rule that the applicant is entitled to 40% disability element of pension (rounded off to 50%) w.e.f. three years prior to filing this OA i.e. 04.12.2018.
6. Arrears to be calculated and paid within a period of two months on receipt of the copy of this judgment failing which Simple Interest @9% per annum will be levied on the arrears.
7. No cost.

**MEMBER(A)**

**MEMBER(J)**