

Form No. 4  
{See rule 11(1)}  
ORDER SHEET

ARMED FORCES TRIBUNAL,  
REGIONAL BENCH, GUWAHATI

OA – 06/2021 with MA -07/2021

Ex. Sep. SR Warhring Anal ..... Applicant  
AR Tahbildar  
Legal practitioner for Applicant

-Versus-  
UOI & Others. .... Respondents  
Dipanjali Bora  
Legal practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>CORAM</u></p> <p>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member(J) Hon'ble Air Mshl Balakrishnan Suresh, Member (A)</p> <p><u>ORDER</u></p> <p><u>03.04.2023</u></p> <p><u>M.A. No. 7 of 2021</u></p> <p>Heard Shri A.R. Tahbildar, Ld. Counsel for the applicant and Ms. Dipanjali Bora, Ld. Counsel for the respondents.</p> <p>For the reasons stated in affidavit filed in support of application, delay in filing the Original Application is condoned. Delay condonation application stands disposed off accordingly. .</p> <p><u>O.A. No. 6 of 2021</u></p> <p>Heard Shri A.R. Tahbildar, Ld. Counsel for the applicant and Ms. Dipanjali Bora, Ld. Counsel for the respondents.</p> <p>Original Application is <b>dismissed</b>.</p> <p>For orders, see our order passed on separate sheets.</p> <p>Misc. Application(s), pending if any, shall be treated to have been disposed of.</p> <p>(Air Mshl Balakrishnan Suresh) (Justice Umesh Chandra Srivastava) Member (A) Member (J)</p>

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

**Original Application No. 06 of 2021**

Monday, this the 3<sup>rd</sup> day of April, 2023

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

**No. 4357371Y Ex. Sep. SR Warhring 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 issued by Govt. of India, Ministry of Defence vide letter No. 7(850)/97/D(Pen-A&AC) dated 19.05.1999 (Annexure – F) rejecting applicant's appeal claiming disability element of pension.*
- 8.2) *To pay disability element of pension 20-% with effect from the date of discontinuation of pension i.e. from 27.01.1991 along with the rounding off benefit of disability element from 20% to 50% from 01.01.1996 to the applicant with arrear in compliance of relevant provisions of law.*
- And/or pass such further order/orders as to your Lordship may deem fit and proper.*

2. Briefly stated, applicant was enrolled in the Indian Army on 13.12.1983 and was discharged on 10.03.1988 (AN) in Low Medical Category after rendering 04 years, 02 months and 26 days of service 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 27.01.1988 assessed his disability '**GASTRIC (PEPTIC) ULCER (531)**' @20% for two years and disability considered to be attributable to military service. Accordingly, the applicant was granted disability pension for two years. The applicant's Re-Assessment Medical Board (RAMB) was held at 151 Base Hospital on 26.02.1991, wherein the degree of disability has been assessed at Nil.

Accordingly, the applicant claim for grant of disability pension was rejected vide letter dated 28.08.1991 by the Principal Controller of Defence Accounts (Pension), Prayagraj, however, re-assessed his disability on 29.01.1991 @1-5% for five years i.e. less than 20%. The Re-assessment of applicant's disability was again held at 151 Base Hospital on 29.08.1995 which assessed his disability @1-5% for five years from 27.01.1996. Accordingly, disability claim of the applicant was rejected by the Principal Controller of Defence Accounts (Pension), Prayagraj vide letter dated 31.10.1995 which was communicated to the applicant vide letter dated 16.11.1995. The applicant preferred First Appeal dated 01.03.1996 which too was rejected vide letter dated 19.05.1999. 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 and applicant was granted disability element @ 20% for two years. However, in the last RAMBs held on 26.02.1991 and 29.08.1995 the degree of the applicant's disability has been assessed at 1-5% (less than 20%) for life and disability pension stopped 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 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 '**GASTRIC (PEPTIC) ULCER (531)**' 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 been stopped 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 since disability of the applicant has been assessed at 1-5% (below 20%) for life by Re-Assessment Medical Boards dated 26.02.1991 and 29.08.1995, hence, applicant became ineligible for grant of disability pension 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 stopped the benefit 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 13.12.1983 and was discharged from service on 10.03.1988 in low medical category. The

applicant was in low medical category and his Release Medical Board was conducted on 27.01.1988. The Release Medical Board assessed applicant's disability @20% for two years as attributable to military service. Accordingly, applicant was granted disability pension. The last Re-Assessment Medical Board held on 26.02.1991 and 29.08.1995 assessed the degree of disability of the applicant at 1-5% (less than 20%) for life. Hence, respondents have stopped the applicant's disability pension.

8. 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 1-5% (less than 20%) by the Re-Assessment Medical Board held on 26.02.1991 and 29.08.1995, applicant does not fulfil the requirement of Regulation 186 (2) of Pension Regulations for the Army, 1961 (Part-I).

9. Further, contrary view to Re-Assessment Medical Board held on 26.02.1991 and 29.08.1995 to the extent of holding the applicant's disability at 1-5% (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 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)

10. 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.

11. 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."*

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

13. Pending Misc. Applications, if any, stand disposed of.

14. No order as to costs.

(Air Marshal Balakrishnan Suresh)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated: 03 April, 2023

AKD/MC/-