

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

**Original Application No. 07 of 2024**

Friday, this the 20<sup>th</sup> day of March, 20206

**Hon'ble Mr. Justice SK Gupta, Member (J)**  
**Hon'ble Lt Gen CP Mohanty, Member (A)**

No. 14700871H Ex Hav Nule Daniel Anal, Village-Chandel  
Christin, P.O.-Chandel, Distt-Chandel, Manipur.

.... Applicant

Ld. Counsel for the: **Shri Anup Ranjan Tahbildar**, Advocate.  
Applicant

Versus

1. Union of India, Represented by the Secretary, Ministry of Defence, Sena Bhawan, New Delhi-1
2. Records, the Kumaon Regiment, Pin-900473, C/o 56 APO.
3. Additional Directorate General, Personnel Services, PS 4 (d), Adjutant General's Branch, IHQ of MoD (Army), DHQ, PO-New Delhi.
4. The Principal Chief of Defence Accounts (Pension), Draupadi Ghat, Allahabad-211014, Uttar Pradesh.

... Respondents

Ld. Counsel for the:  
Respondents.

**Ms Deepanjali Borah**, Advocate  
Central Govt Counsel.

## ORDER

1. Being aggrieved by the impugned order dated 09.06.2023 issued by respondent No 2, denying him disability element of pension, the applicant has filed the instant O.A. seeking the following reliefs:

*(i) To quash and set aside the impugned letter No 14700871/DP/NE&PG dated 09.06.2023 issued by Senior Record Officer, Records The Kumaon Regiment rejecting applicant's claim for disability element of pension in terms of Para 53 of the Pension Regulations for the Army, 2008 (Part-I).*

*(ii) To pay disability element of pension along with the rounding off benefit of disability element from 50% to 75% to the applicant with effect from the date of his invalidment from service with arrear, and to pass such further order/orders as to your Lordships may deem fit and proper.*

2. Brief facts of the case are that the applicant was enrolled in the Army on 23.02.1980 and was discharged from service on 12.01.1997 (AN), in low medical category 'B' (permanent) under Rule 13 (3) III (v) of Army Rules, 1954. The Release Medical Board (RMB) had assessed his disability 'Maculopathy (Lt) Eye (378)' @ 20% for two years neither attributable to nor aggravated by military service (NANA). Disability element of pension claim of the applicant was rejected by PCDA (P), Allahabad vide order dated 03.07.1997 advising the applicant to prefer 1<sup>st</sup> appeal before the Appellate Authority within six months. After lapse of 22 years the applicant

preferred 1<sup>st</sup> Appeal dated 11.06.2019 which was returned unacted stating that it has become time barred. Thereafter, the applicant filed O.A. No. 61/2019 before this Tribunal which was disposed off vide order dated 30.05.2022 granting disability element of pension for two years with further direction to the respondents to hold Re-survey Medical Board (RSMB) in respect of the applicant within three months. Accordingly, RSMB in respect of the applicant was held at 183 Military Hospital on 12.12.2022 which assessed his disability @ 50% for life neither attributable to nor aggravated by military service. The case for grant of disability element of pension was processed with respondent No 2 which issued rejection memo vide letter dated 09.06.2023 stating that since the disability suffered by the applicant is neither attributable to nor aggravated by military service, he is not entitled to disability element of pension. It is in this perspective that this O.A. has been filed.

3. Learned Counsel for the applicant submitted that the applicant was medically fit when he was enrolled in the Army service and any disability not recorded at the time of recruitment should be presumed to have been caused subsequently. The action of the respondents in denying disability element of pension to the applicant is illegal and arbitrary. In this regard during the course of hearing, he relied upon the decision of the Hon'ble

Supreme Court in the case of *Dharamvir Singh v. Union of India & Others*, (2013) 7 SCC 316, and submitted that for the purpose of determining attributability of the disease/disability to military service, what is material is whether the disability was detected during the initial enrolment medical board and if no disability was detected at that time, then it is to be presumed that the disability arose while in service, therefore, the disability of the applicant is to be considered as aggravated by service and he is entitled to get disability element of pension duly rounded off.

4. On the other hand, learned counsel for the respondents submitted that though the RSMB has assessed the disability of the applicant @ 50% for life, it opined that the disability is neither attributable to nor aggravated by military service (NANA). As such, his claim for disability element of pension has rightly been rejected by the respondents. He submitted that the instant O.A. deserves to be dismissed.

5. Having heard the learned counsel for both the parties and perused the records, the only question that needs to be answered is, whether the disability of applicant is attributable to or aggravated by military service?

6. We have noted that the only reason for which the disability 'Maculopathy (Lt) Eye (378)' has been opined as NANA by the

RSMB and rejection order passed by the respondents is that the disease/disability is constitutional in nature and not related to service. However, on further scrutiny, we have observed that the applicant's disability was first detected in the year 1993 i.e. after completion of 13 years of service while posted in High Altitude Area (Leh-Ladakh). Since the disability in question was detected when the applicant had put in 13 years' service, we are inclined to give benefit of doubt in favour of the applicant. Thus, we are of the considered opinion that the disability 'Maculopathy (Lt) Eye (378)' of the applicant is to be considered as aggravated by military service in line with the law settled on this matter by the Hon'ble Supreme Court in the case of *Dharamvir Singh* (supra). Additionally, the applicant will also be eligible for the benefit of rounding off to the tune of 75%, in terms of the decision of the Hon'ble Supreme Court in *Union of India and others v. Ram Avtar* (Civil Appeal No 418 of 2012 decided on 10.12.2014).

7. Resultantly, the O.A is **allowed**. The impugned order dated 09.06.2023 passed by the respondents is set aside. The applicant's disability 'Maculopathy (Lt) Eye (378)' is to be considered as aggravated by military service. The applicant is entitled to disability element of pension @ 50% for life, which shall be rounded off to 75% for life from the date of his discharge from

service. The respondents are directed to grant disability element of pension to the applicant @ 75% for life w.e.f. 13.06.1997 alongwith arrears. However, due to law of limitation the arrears of disability element of pension shall be restricted to three years from the date of filing of this O.A. which was filed on 17.01.2024. The respondents are directed to make payment of disability element of pension to the applicant within a period of four months from the date of receipt of a certified copy of this order, failing which the amount shall carry interest @ 8% p.a.

8. No order as to costs.

9. Miscellaneous application(s), pending, if any, shall be treated to have been disposed off.

Sd/-

(Lt Gen CP Mohanty)  
Member (A)

Dated: 20.03.2026  
rathore

Sd/-

(Justice SK Gupta)  
Member (J)