

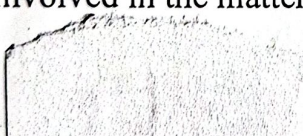
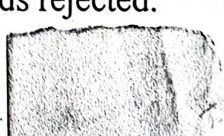
Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, GUWAHATI

2. ORIGINAL APPLICATION NO. 06 OF 2024

Ex-Rect (Sep) Hulang AK Roel Anal .. Applicant

Versus

Union of India & Ors. .. Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>09.12.2024</u> <u>Hon'ble Mr. Justice Shailendra Shukla, Member (J)</u> <u>Hon'ble Lt Gen P. Gopalakrishna Menon, Member (A)</u></p> <p>On the case being taken up for hearing, Mr. AR Tahbildar, Ld. Counsel for the applicant and Mr. Punit, Ld. Counsel for the respondents through Video Conferencing are present.</p> <p>Judgment was pronounced in open Court, whereby O.A. has been allowed.</p> <p>Learned counsel for the respondents made an oral prayer for LTA.</p> <p>Considered. There is no point of law of general public importance involved in the matter. Hence, oral prayer for LTA stands rejected.</p> <div style="display: flex; justify-content: space-between; align-items: flex-end;"><div style="text-align: center;"> (Lt Gen P. Gopalakrishna Menon) Member (A) <i>Sh</i></div><div style="text-align: center;"> (Justice Shailendra Shukla) Member (J)</div></div>

**ARMED FORCES TRIBUNAL
REGIONAL BENCH, GUWAHATI**

OA-06/2024

Hulang AK Roel Anal
(No. 14702838)
Rank - Ex-Rect (Sep)
Vill – Berukhudam,
P.O. Sugnu,
Dist- Chandel, Manipur.

.....

Applicant
By legal practitioner for Applicant
AR Tahbildar

-Versus-

1. The Union of India,
Represented by the Secretary,
Ministry of Defence,
Sena Bhawan,
Raksha Mantralay,
New Delhi-110011.
2. The Officer-in-Charge,
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,
P.O. – New Delhi.
4. The Principal Controller of Defence,
Accounts (Pension), Allahabad,
Pin – 211014, Uttar Pradesh.

..... **Respondents**

By legal practitioner for Respondents
PK Garodia, CGSC

OA 06/24 Hulang AK Roel Anal

CORAM :

JUSTICE SHAILENDRA SHUKLA, MEMBER (J)
LT GEN P. GOPALAKRISHNA MENON, MEMBER (A)

JUDGMENT RESERVED ON : 04.10.2024

JUDGMENT PRONOUNCED ON : 09.12.2024

JUDGMENT (Per Shailendra Shukla, M(J))

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs :-

a) To quash and set aside the order denying disability element to the applicant and the communication dated 03.03.2023 issued vide letter No. 14702838/DP/NE & PG by the Senior Record Officer, The Kumaon Regiment rejecting applicant's representation claiming disability element of disability pension.

b) To resume disability element of pension along with the rounding off benefit of disability element @ 50% to the applicant with effect from the date of discontinuation of pension i.e. from 27.01.1997 with arrears and interest thereon.

2. Facts of the case of the applicant are that the applicant was enrolled in the Army on 09.06.1992 as 'Sepoy'. During his training period, he suffered from the disability **"FRACTURE DISLOCATION METACARPO PHALANGEAL (RT) RING FINGER (OLD)"** and invalided out from service in Medical Category EEE by the Invaliding Medical Board w.e.f. 04.11.1992 with the degree of disability of 20% for two years, which was opined to be attributable to Military service as per the opinion of the Invalidating Medical Board. On being invalidated out from service w.e.f. 01.12.1992 under Army Rule 13(3) item III (iii), the applicant was granted disability pension w.e.f. 02.12.1992 to 26.01.1997 vide PPO No. D/1531/93 and D/RA/3005/95 respectively but from 27.01.1997 onwards his disability element of pension was discontinued. The Chief Controller of Defense Accounts (Pension) vide their letter dated 1/10.09.1997 informed to Records, The Kumaon Regiment, that since the applicant's disability has been re-assessed as less than 20% (11-14%) for five years from 27.01.1997 to 14.05.2002, hence, payment of his disability pension has been stopped. The applicant was not served with the copy of the said letter and he had obtained the same under RTI Act. The applicant states that since the Invaliding Medical Board had held applicant's degree of disability

initially for two years, a Re-Survey Medical Board was held in 1995 after completion of two years from the date of Invaliding Medical Board. On completion of two years from the date of first Re-Survey Medical Board, the applicant was subjected to 2nd Re-Survey Medical Board in the year 1997, which assessed applicant's degree of disability 11-14% for another period of 5 years i.e. from 27.01.1997 to 14.05.2002 and since the degree of disability was assessed below 20% (11-14%), hence disability element was stopped w.e.f. 27.01.1997. Thereafter, another Re- Survey Medical Board was held in the year 2002, wherein applicant's disability was re-assessed at 1-5% for life.

3. Being aggrieved by the stoppage of the disability element of pension, applicant had approached this Tribunal by way of O.A. No.11/2021 for restoring/continuing disability element of pension w.e.f. 27.01.1997. The Tribunal vide order dated 30.05.2022 had directed the respondents' authority to hold a Re-Survey Medical Board (In short RSMB) within three months from the date of receipt of the copy of the order and if the RSMB finds the applicant to be entitled for receipt of disability element of disability pension, then the case of the applicant for grant of disability element of pension was directed to be processed in accordance with law. In compliance to the Tribunal's aforesaid order,

applicant was subjected to Re-Survey Medical Board, wherein his degree of disability was assessed to be 5% for life. That on completion of RSMB, applicant prayed for resuming disability element of pension and in response to his representation, Records, the Kumaon Regiment vide their letter dated 03.03.2023 informed the applicant that RSMB has assessed applicant's disability to be 5% for life, whereas to earn disability pension, the degree of disability should be above 20% and the same should be either attributable to or aggravated by military service. The applicant states that he was invalidated out of service because of his disability, which was opined to be attributable to military service and the degree of disability was Initially assessed @ 20% for two years. However, subsequently the Re-Survey Medical Board reassessed applicant's disability @5% for life. Once his disability was reassessed below 20% i.e.5% by the Re-Survey Medical Board, the authorities either ought to have reinstated him into service or continued to grant him disability element of pension, but the authorities have neither continued disability element of pension to the applicant nor reinstated him into service. The applicant submits that such arbitrary action of the authorities is not sustainable in law and facts and the applicant is entitled to continuously receive disability element pension

with effect from the date of discontinuation of the disability element of pension with arrears thereof and rounding off benefits.

4. The learned counsel for the applicant submits that the Apex Court as well as the Armed Forces Tribunals in a catena of judgements has interfered with the observation/decision of the authorities denying disability pension to the Armed Forces personnel on the ground of re-assessment of the degree of disability below 20% by a Re-Survey Medical Board and directed the authorities to grant disability element of pension to the applicant therein. The applicant states that the authorities by their illegal action have violated the applicant's fundamental rights as guaranteed under part III of the Constitution of India as well as the rights granted by the Rules / Regulations holding the field and as such, same needs to be interfered with by this Tribunal in the ends of Justice.

5. The applicant submits that the RMB has assessed the applicant's disability @20% and it is attributable to Military Service and accordingly, he was invalided out of the service for his disability, thus, cut short his tenure of engagement and the authorities cannot discontinue the applicant's disability pension on the non-est ground of his disability being less than 20%. Therefore, the applicant is entitled

to the disability pension with effect from the date of his invalidation from service with the rounding of benefits. The applicant further submits that the disability of an individual can't be assessed in two different parameters for two different purposes, i.e. his disability is a major one making him unfit to be retained in service and the same disability is a minor one so as to grant him the disability pension. Such a contradictory stand of the authorities being not substantiated by the relevant provisions of law, same is liable to be interfered with by this Tribunal. The applicant further states that he was invalidated out of service because of his disability, which was opined to be attributable to military service and the degree of disability was assessed @20% and once his disability was reassessed below 20% i.e. 5% by the Re-Survey Medical Boards, the authorities either ought to have reinstated him into service or continued to grant him disability element of pension, but the authorities have illegally and arbitrarily denied disability element of pension to the applicant. The applicant submits that the authorities by not granting the benefits of disability pension with rounding off benefits as mandated by the relevant provisions of the Pension Regulations have violated applicant's statutory rights for

which the order of discontinuation of disability element of pension is liable to be interfered with by this Tribunal.

6. On the other hand, the respondents in their reply submitted that the applicant was invalided out from service w.e.f. 01.12.1992 before fulfilling the terms and conditions of enrolment in low medical category **EEE** for disability **'FRACTURE DISLOCATION METACARPOPHALANGEAL RING FINGER OLD'**. The Invaliding Medical Board was held at Military Hospital, Ranikhet on 04.11.1992 and the disability of the applicant was considered as attributable to but not aggravated by military service with net assessment@ 20% for two years vide Invaliding Medical Board Proceedings (AFMSF-16). Accordingly, the applicant was granted service element for life and disability element w.e.f. 02.12.1992 to 03.11.1994 vide PCDA (P) Allahabad's PPO No. D/001531/93 dated 24.05.1993. After two years of invalidment, the applicant was again brought before Medical Board for re-assessment of his disability on 27.01.1995 which was held at 151 Base Hospital and the disability of the applicant was re-assessed @ 7% for two years vide Re-Survey. Medical Board (AFMSF-17). However, the applicant was granted disability element w.e.f. 04.11.1994 to 26.01.1997 vide PPO No D/RA/3005/95 dated

27.05.1995 for 20% disability. Upon expiry of two years' time period, the applicant was again brought before Re-Survey Medical Board for re-assessment of his disability which was held at 151 Base Hospital on 15.05.1997 and the disability of the applicant was re-assessed Nil vide AFMSF-17. Operative portion of Para 1 (c), Part II, page 2 of RSMB proceedings is reproduced as under :

"(c) Do the board anticipates improvement within two or three years of present board?

Disability is cured"

Thereafter, Records, The Kumaon Regiment vide their Letter No 14702838/20/DPR dated 04.07.1997 forwarded the disability pension claim to PCDA(P) Allahabad for adjudication. Upon expiry of time period, the applicant was again brought before Re-Survey Medical Board for re-assessment of his disability which was held at 151 Base Hospital on 11.03.2002 and the disability of the applicant was re-assessed 1-5% for life vide AFMSF-17. Thereafter, Records The Kumaon Regiment vide their Letter. No 14702838/41/DPR dated 30.07.2002 intimated the applicant that his disability has been assessed less than 20% i.e. Nil for life, hence, he is not entitled for

disability element with an advice if the applicant is not satisfied with the decision of Pension Sanctioning Authority i.e. PCDA (P) Allahabad, he may prefer appeal against the decision within six months from 18.07.2002, but the applicant failed to do so. Thereafter, the applicant preferred an application dated 25.01.2020 to Records, The Kumaon Regiment for grant of disability element which was suitably replied vide Letter No 14702838/DP/NE&PG dated 11.05.2020. Thereafter, the applicant again forwarded first appeal dated 29.08.2020 for grant of disability element which was replied vide Records, The Kumaon Regiment's Letter No 14702838/DP/NE&PG dated 17.09.2020. The applicant then filed OA No 11/2021 before AFT (RB) Guwahati for disability element of pension along with rounding off benefit of disability element from 20% to 50%. The AFT was pleased to dispose of the OA vide order dated 30.05.2022 ordering that "the respondents are directed to hold RSMB of the applicant within three months from the date of receipt of the copy of this order. If the applicant is found entitled to the disability element of disability pension, his case shall be processed further in accordance with law". In compliance of AFT's Order dated 30.05.2022, Re-Survey Medical Board (RSMB) was conducted at 183 Military Hospital on 29.12.2022 which assessed the

disability of the applicant as 5% for life. Since the disability of the applicant was re-assessed at less than 20% rejection memo was issued vide Records, The Kumaon Regiment's Letter No 14702838/DP/NE&PG dated 06.04.2023. Being aggrieved by the same, the applicant, has filed this O.A. before this Tribunal for grant of disability element @ 50% w.e.f. the date of discontinuation of pension i.e. from 27.01.1997 with arrears and interest thereon. However, as per Rule-123 of Pension Regulations for the Army 1961 (Part-I) the primary condition for grant of Disability Pension is "Unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided out from service on account of a disability which is attributable to or aggravated by military service and is assessed at 20%." The respondents' states that the applicant was duly informed about stoppage of his disability pension vide Records, The Kumaon Regiment's Letter No. 14702838/25/DPR dated 22.10.1997. It is further submitted by the respondents that since the RSMB dated 29.12.2022 has re-assessed the disability of the applicant as 5% (less than 20 %), therefore, he is not eligible for disability pension in terms of Rule 173 of the Pension Regulations for the Army 1961 (Part-I) and the applicant has not been able to cite any cogent ground/reason

entitling him for relief from this Tribunal. The respondents submit that in the facts and circumstances as mentioned above, the instant O.A. is not maintainable and the same may be dismissed.

7. We have heard both the learned counsel and perused the documents placed on record.

8. The main questions for determination are –

a) whether the order dated 03.03.2023 of the respondents denying disability element to the applicant and rejecting applicant's representation claiming disability element of disability pension is incorrect ?

b) Whether the applicant is entitled to disability element of pension along with the rounding off benefit of disability element @ 50% with effect from the date of discontinuation of pension i.e. from 27.01.1997 with arrears and interest thereon ?

9. The applicant submits that he was invalided out of service because of his disability @ 20%. Subsequently, after in the Re-survey Medical Board, the disability had reduced to 5%, then either he should have been reinstated into service or should have been continued with grant of disability element of pension. The authorities have neither reinstated him nor continued his disability element. On

the other hand, the respondents have referred to Rule 173 of Pension Regulations for the Army, 1961, Part-I saying that for grant of disability pension, the following requirements are must :-

- 1) That the applicant should have been invalided out from service on account of disability;
- 2) That the disability should have been attributable to or aggravated by military service;
- 3) The disability should be 20% or more.

10. As per the respondents, the applicant's disability having been reduced to 5% he was not eligible, in terms of Rule 173 of Pension Regulations for the Army, 1961, Part-I.

11. Submissions were considered.

12. The applicant in support of his case has referred to the judgment of **Sukhvinder Singh vs. Union of India & others (2014)**

14 SCC 364. As per the facts of the aforesaid case, the applicant was invalided out of service with disability between 6% to 10% and would be entitled to the disability pension. Arriving at the decision, it was observed that the Hon'ble Supreme Court has referred to Regulation 173 of Pension Regulations for the Army, 1961, Part-I, as per which the extension of disability ought to be 20% or more for grant

of disability pension, but when the member of Armed Forces is invalidated out of service due to disability, it perforce has to be assumed that the disability was above 20%. In arriving at such conclusion, the Hon'ble Apex Court has referred to Regulation 183 of Pension Regulations for the Army, 1961 (Part I). The relevant paras are as under :

"10. Regulation 183 of the Pension Regulations for the Army, 1961 (Part I) stipulates as under :

"183. Amount of disability pension. The disability pension consists of two elements viz. service element and disability element which shall be assessed as under:

1) Service element

** * **

(2) Disability element

** * **

In case where an individual is invalidated out of service before completion of his prescribed engagement/service limit on account of disability which is attributable to or aggravated by military service and is assessed below 20%, he will be granted an award equal to service element of disability pension determined in the manner given in Regulation 183 of the Pension Regulations for the Army Part I (1961)....

11. 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 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 appear to be no provisions authorizing 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, its 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.

12. In view of our analysis, the appellant would be entitled to the disability pension. The appeal is, accordingly, accepted in the above terms. The pension along with the arrears be disbursed to the appellant within three months from today."


13. Reverting to the facts of the present case, as per the Medical Board's opinion placed on record his disability was found to be attributable to military service and the extent of disability was 20%, however, in subsequent RSMB it was reduced to 5%. In such scenario he should have been reinstated in service, and if not done, the presumption in the aforesaid citation of **Sukhvinder Singh** (Supra) would kick in whereby it shall have to be presumed that the applicant's disability was in fact 20%. Consequently, the prayer of the applicant stands allowed. The applicant is entitled to disability element of pension @ 20%, rounded off to 50% with effect from the date of his discontinuation of pension i.e. from 27.01.1997 along with arrears, if any. The O.A. thus stands allowed in following terms :

- 1) The applicant is entitled to disability element of pension @ 20%, rounded off to 50% w.e.f. 27.01.1997 along with arrears, if any.

2) The arrears of the pension shall however be limited to three years from the date of filing O.A. The present O.A. was filed on 12.01.2024.

3) The compliance of this order must be ensured within four months to be counted from the date of receipt of copy of this order, failure shall invite interest @ 8% per annum.

14. No order as to costs.



(Lt. Gen P. Gopalakrishna Menon)
Member (A)



(Justice Shailendra Shukla)
Member (J)

Date : 09.12.2024

smh