

**COURT NO. 1, ARMED FORCES TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**OA No. 2121/2019**

EX RPO UMESH SAH, NO. 139388-T ..... Applicant  
Versus  
UNION OF INDIA & OTHERS ..... Respondents

For Applicant : Mr. Ved Prakash, Advocate

For Respondents : Dr. Vijendra Singh Mahndiyan, Sr. CGPC

**CORAM:**

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON  
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

**ORDER**

1. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 read as under: -

*“(a) Quash the Impugned Letter No. PEN/600/D/LRDO I:01/2019/139388T dated 07.03.2019*

*(b) Direct the respondents to grant the disability element of pension to the applicant duly rounded off to 50% w.e.f. his date of discharge.*

*(c) Direct respondents to pay the due arrears of disability pension/Invalid pension with interest @ 12% p.a. From the date of retirement with all the consequential benefits.*

*(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case along with cost of the application in favour of the applicant and against the respondents.”*

### BRIEF FACTS

2. The applicant was enrolled in the Indian Navy on 31.01.2004 and discharged from service on 30.01.2019 on completion of 15 Years of qualifying service. While in service, the applicant had sustained a crush injury at the tip of right ring finger and suffered with disability '**CRUSH INJURY WITH TRAUMATIC AMPUTATION RIGHT RING FINGER (OPTD), ICD NO. 68.0**'.

3. The RMB at the time of release dated 28.03.2018 has assessed the said disability as Attributable to but not Aggravated by the service with assessment of disability @ 11-15%.

4. The initial claim of the applicant for grant of the disability pension was rejected by the respondents vide letter dated 07.03.2019 stating that the disability has been found to be Attributable but Not Aggravated assessed @ 15% (less than 20%), Nil for life. The applicant preferred first appeal vide representation dated 17.05.2019 which was rejected vide letter dated 24.02.2020 by the respondents.

5. Aggrieved by the decision of the respondents, the applicant has filed the instant OA. In the interest of justice, in accordance with Section 21(1) of the AFT Act, we take up the present OA.

### CONTENTIONS OF THE PARTIES

6. The learned counsel for the applicant submitted that the applicant was enrolled in the Indian Navy on being found medically fit on 31.01.2004 and discharged from service in the Lower Medical Category (LMC) S2A2 (A) Pmt. for disability **Crush Injury with Traumatic Amputation Right Ring Finger (OPTD) (ICD NO. S68.0)**.

7. The learned counsel submitted that the applicant suffered the disability in August 2017 while on board INS Sumedha and since then he is availing treatment for the injury suffered.

8. The learned counsel for the applicant submitted that the Release Medical Board held on 28.03.2008 at the time of discharge assessed the disability of the applicant @ 20% for life, however, the percentage of the disability was brought down to 15%, without assigning any reasons, with net assessment qualifying for disability pension as 'Nil' for life and the applicant was not granted the disability element of pension and further added that the RMB held the disability of the applicant 'Attributable' to the service but not aggravated by military service.

9. The learned counsel for the applicant in support of his claim has placed specific reliance on the judgment of the Hon'ble Supreme Court in *SLP 24171/2004* titled *Union of India v. Mahavir Singh Narwal*, decided on

**08.01.2008**, to submit to the effect that a person who is in low medical category then the one he was recruited shall be treated as invalided out for purpose of disability.

10. The learned counsel for the applicant submitted that the Release Medical Board assessed the disability percentage @ 20% and thereafter at a later stage without conducting a fresh medical board or informing the applicant modified the assessment and disability percentage was reduced to 11-15% and the net assessment qualifying for disability pension was reduced to Nil % for life long which is arbitrary, unjust and illegal.

11. The learned counsel for the applicant placed reliance on the order in **O.A. No. 311/2016** titled *Hav Kuldip Singh (Retd.) v. Union of India & Ors.*, passed by the Hon'ble Armed Forces Tribunal, Principal Bench, New Delhi, wherein the benefit of grant of war injury pension to the applicant was allowed when the percentage of the disability of the applicant was assessed below 20%, *i.e.*, 12%.

12. *Per contra*, the learned counsel for the respondents submitted that the claim of the applicant is bound to be dismissed in accordance with Regulation 105-B of Navy Pension Regulation 1964: -

***"Wherein the disability should either be either be attributable to or aggravated by the Naval Service and additionally also the***

*minimum assessment for the disability is mandatorily required to be @ 20% or more.”*

13. The learned counsel for the respondents further submitted that the applicant does not meet the minimum qualifying percentage of disability, i.e., 20% and the net assessment qualifying for disability pension was also recorded as NIL by the Release Medical Board, therefore, the competent authority has rejected the disability pension claim and the O.A. deserves to be dismissed.

#### ANALYSIS

14. We have heard the learned counsel for the parties and have gone through the record produced before us. It is an undisputed fact that at the time of joining the Indian Navy on 30.01.2004, the applicant was found medically and physically fit and there was no note or record pertaining to any disability. The applicant had sustained a crush injury at the tip of right ring finger on board INS Sumedha which was assessed as attributable to service.

15. The RMB initially assessed the disability of the applicant @ 20%, however, the RMB presided by different board members at a later stage has assessed the disability below 20% i.e., 11-15% for life

16. Qua the disability of the applicant, it is essential to advert to *Appendix II to Chapter VII GMO 2008*, which specifies the assessment percentage for ring finger injury @ 7%. It is therefore deduced that the finding and assessment

of the second board members assessing the applicant's disability at less than 20% is correct as per the GMO quoted hereinabove. The applicant is therefore not entitled to the benefit of the disability element as he does not meet one of the twin conditions of Regulation 105B of Navy Pension Regulation 1964.

17. The Hon'ble Supreme Court in its judgment in *Bachchan Prasad v. Union of India & Ors. [Civil Appeal No. 2259 of 2012]* dated 04.09.2019, also held that an individual is not entitled to disability element if the disability is less than 20% 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 traveling 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%. The appellant is not entitled for disability element, as his disability is less than 20%."*

18. The Hon'ble Supreme Court in its judgment in the case of *Secretary, Ministry of Defence & Others v. Damodaran A.V. (dead) through LRs. & Others [(2009) 9 SCC 140]*, clearly laid down the following principles with regard to primacy of medical opinion: -

8. *When an individual is found suffering from any disease or has sustained injury, he is examined by the medical experts who would not only examine him but also ascertain the nature of disease/injury and also record a decision as to whether the said personnel is to be placed in a medical category which is lower than 'AYE' (its category and whether temporarily or permanently. They also give a medical assessment and advice as to whether the individual is to be brought before the release/invalidating medical board. The said release/invalidating medical board generally consists of three doctors and they, keeping in view the clinical profile, the date and place of onset of invalidating disease/disability and service conditions, draws a conclusion as to whether the disease/injury has a causal connection with military service or not. On the basis of the same they recommend (a) attributability, or (b) aggravation, or (c) whether connection with service. The second aspect which is also examined is the extent to which the functional capacity of the individual is impaired. The same is adjudged and an assessment is made of the percentage of the disability suffered by the said personnel which is recorded so that the case of the personnel could be considered for grant of disability element of pension. Another aspect which is taken notice of at this stage is the duration for which the disability is likely to continue. The same is assessed/recommended in view of the disease being capable of being improved. All the aforesaid aspects are recorded and recommended in the form of AFMSF-16. The Invalidating Medical Board forms its opinion/ recommendation on the basis of the medical report, injury report, court of enquiry proceedings, if any, charter of duties relating to peace or field area and of course, the physical examination of the individual.*

9. *The aforesaid provisions came to be interpreted by the various decisions rendered by this Court in which it has been consistently held that the opinion given by the doctors or the medical board shall be given weightage and primacy in the matter for ascertainment as to whether or not the injuries/illness sustained was due to or was aggravated by the military service which contributed to invalidation from the military service."*

19. In the light of the above considerations, we are of the view that since the disability of the applicant does not meet the eligibility criteria of being eligible for getting disability pension as the RMB assessed the disability at less than 20% (11-15% for life), he is not entitled to the disability element of the pension.


**CONCLUSION**

20. There is no error or infirmity in the findings of the Release Medical Board and thus OA 2121 of 2019 is dismissed, being devoid of merit.

21. There is no order as to costs.

Pronounced in open Court on this 22 day of August, 2024.

  
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**JUSTICE RAJENDRA MENON**  
[CHAIRPERSON]

  
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**REAR ADMIRAL DHIREN VIG**  
[MEMBER (A)]