

COURT No.3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 1847/2019

Ex POME Lakhvir Singh Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Ms. Ved Prakash, Advocate
For Respondents : Mr. Sameer Sinha, Advocate

Date: 29th May, 2025

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HON'BLE MS JUSTICE NANDITA DUBEY, MEMBER (j)
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act 2007, the applicant has filed the instant OA seeking the following reliefs:

- (a) *Quash the Impugned Letter No. PEN/600/D/LRDO I:01/2019/138248A dated 21.02.2019.*
- (b) *Direct the Respondents to grant 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 fact and circumstances of the case along with cost of the application in favour of the applicant and against the respondents.*

2. As evident from the records submitted by the parties, the applicant, Lakhvir Singh, Ex-POME, was enrolled in the Indian

Navy on 28.01.2004 and was discharged from service on 31.01.2019 after completing 15 years and 4 days of qualifying service. He was granted Service Pension vide Pension Payment Order (PPO) dated 24.01.2019. While serving onboard a ship, the applicant sustained an injury to his right hand on 15.03.2017 during the lifting of a heavy Gemini Boat. He suffered swelling of the thumb and 1st Carpometacarpal Joint Subluxation. The competent authority assessed the injury as attributable to military service. At the time of his discharge, a Release Medical Board (RMB) was conducted, which categorized his disabilities as follows:

S.No	Disability	Attributability/ Aggravated of disease to service	Percentage of disablement	Composite assessment for all disabilities with duration (Max 100%)	Disability Qualifying for Disability Pension with Duration
(a)	Bronchial Asthma (ICD No J45.9)	Not Attributable/ But Aggravated by Service	Less than 20%	Nil	Nil
(b)	1 st Carpometacarpal Joint Subluxation (OPTD) (ICD No S 63.04)	Attributable to service/ but Not Aggravated	Less than 20%	Nil	Nil

The applicant was discharged from service in Low Medical Category "S2A2 (P&A) Pmt" due to the aforementioned disabilities.

However, his net disability assessment was recorded as Nil for life, which did not meet the minimum threshold of 20% required to qualify for disability pension. Accordingly, his claim for disability pension was rejected on the ground that the RMB had assessed his disability at less than 20%. This decision was communicated to him vide letter dated 21.02.2019, wherein he was also informed of his right to prefer an appeal to the Appellate Committee on First Appeal (ACFA) within six months from the date of receipt of the letter. The applicant filed his first appeal on 27.09.2019, which was duly processed and forwarded to Integrated Headquarters, Ministry of Defence (IHQ MoD)/PCDA, New Delhi vide letter of the same date. However, no decision has been communicated to the applicant on his appeal to date. Aggrieved by this inaction, the applicant has preferred the present OA.

3. At the outset, Mr. Ved Prakash, learned counsel for the applicant, submitted that the denial of the disability element of pension to the applicant is illegal and arbitrary. He contended that at the time of enrolment into the Indian Navy, the applicant underwent a comprehensive medical examination and was found medically fit. Following his selection, he was again subjected to a rigorous medical screening at the Training Centre and no disability or disease, including the present one, was recorded at the time of

his entry into service. Learned counsel pointed out that although the RMB conducted at the time of discharge assessed the applicant's disability at less than 20% for life, the net disability qualifying for pension was reduced to Nil for life. He submitted that the RMB's assessment in respect of Injury/Disease (ID) No. (i) is contrary to Para 27 of the Guide to Medical Officers (GMO), 2008, which prescribes a disability assessment range of 20–40% for uncomplicated Asthma. Therefore, the RMB's assessment of less than 20% is inexplicable and violates the said guidelines, which clearly state that disability assessment in asthma cases cannot be below 20%. He further argued that under Para 2 of Appendix V of the Navy (Pension) Regulations, 1964, and Rule 4 of the Entitlement Rules, 1982, any individual discharged in a lower medical category than the one in which he was enrolled shall be deemed to have been invalided out of service. In support of this contention, learned counsel relied on the decision of the Hon'ble Supreme Court in Union of India v. Mahavir Singh Narwal (SLP No. 24171/2004 decided on 08.01.2008), which upheld the judgment of the Hon'ble Delhi High Court in *Mahavir Singh Narwal v. Union of India* (CW No. 2967/1989 decided on 05.05.2004). In that case, it was held that a person released in a medical category lower than the one in which he was recruited

shall be deemed to have been invalided out, thereby entitling him to disability pension.

4. Learned counsel for the applicant further submitted that, in accordance with Para 7.2 of the Government of India, Ministry of Defence Letter dated 31.01.2001, when an Armed Forces personnel is invalided out, the extent of disability or functional incapacity shall be considered as 50% for the purpose of computing the disability element of pension, even if the Medical Board has assessed the disability at less than 50%. In other words, where the disability is assessed in the range of 1% to 49%, it shall be treated as 50% for computing the disability pension. He reiterated that the applicant is deemed to have been invalided out of service, as per the aforementioned regulation and the judgment of the Hon'ble Supreme Court in *Mahavir Singh Narwal's case* (supra), and therefore, his disability is required to be rounded off to 50% in terms of the MoD letter dated 31.01.2001. In support of this contention, learned counsel also placed reliance on the decision in *Hav. Kuldip Singh (Retd.) v. Union of India & Others* (OA No. 311/2016), wherein it was held that when the disability is assessed as attributable to service but falls below 20%, it is still liable to be rounded off to 50%, thereby entitling the individual to the disability element of pension.

5. On the other hand, Mr. Sameer Sinha, learned counsel for the respondents, justified the action of the authorities in denying the disability element of pension to the applicant. He submitted that mere onset of a disease during service does not automatically render it attributable to Naval service, unless it is clearly established that the course of the disease was adversely affected by service conditions peculiar to the nature of Naval duty. In the present case, the RMB assessed the applicant's disabilities as follows:

(i) Bronchial Asthma – Not attributable to, but aggravated by service, with disablement assessed at less than 20%.

(ii) 1st Carpometacarpal Joint Subluxation – Attributable to service, but not aggravated, with disablement also assessed at less than 20%.

The net disability assessment qualifying the applicant for disability pension was recorded as Nil for life, thereby rendering him ineligible for disability pension. Learned counsel emphasized that as per Regulation 105-B of the Navy (Pension) Regulations, 1964, for a person to be entitled to disability pension, the disability must be either attributable to or aggravated by Naval service and the minimum qualifying assessment must be 20% or more. Since the applicant's assessed disabilities fell below this statutory brink, the

competent authority rightly rejected his claim for grant of disability pension.

6. Upon perusal of the records and consideration of the submissions made by both parties, the following issue arises for our consideration:

Whether the composite assessment of disabilities sustained by the applicant, viz. Bronchial Asthma which is aggravated by service and 1st Carpometacarpal Joint Subluxation, which is attributable to Naval service could validly be assessed at less than 20% by the Release Medical Board, particularly in view of the guidelines prescribed under Para 27 of the Entitlement Rules (GMO) 2008?

7. As already noticed, the applicant was discharged from the Indian Navy after rendering 15 years and 4 days of qualifying service. The Release Medical Board (RMB) assessed two disabilities at the time of his discharge; (i) Bronchial Asthma held to be aggravated by service; and (ii) 1st Carpometacarpal Joint Subluxation, held to be attributable to service. Despite these findings, the composite disability was assessed at less than 20% rendering the applicant ineligible for disability pension. However, as per Para 27 of the Entitlement Rules for Casualty Pensionary Awards 2008, Bronchial Asthma, even when uncomplicated, is

generally assessed between 20% to 40%. In this case no cogent or reasoned explanation was provided by the RMB as to why the said disability was assessed below the minimum.

8. This position is supported by the judgment of the Hon'ble Supreme Court in the case of Cdr. Rakesh Pande Vs. Union of India and Ors. [(2019) 11 SCC 209, wherein the Court held that where a disability is attributable to or aggravated by service and the disability percentage appears to have been arbitrarily assessed below the qualifying brink without due justification, the benefit of doubt must go to the claimant.

9. At this stage learned counsel for the applicant fairly stated that in so far as the second disability, viz., 1st Carpometacarpal Joint Subluxation, is concerned, no specific percentage of disability has been assessed and it has merely been indicated as 'less than 20%. He further submitted that if the applicant's claim in respect of Bronchial Asthma is allowed, he would not press his claim with regard to the second disability.

10. In view of Para 27 of the Entitlement Rules for Casualty Pensionary Awards, 2008, and in the light of the decision in *Rakesh Pande* (supra), we are inclined to allow the applicant's claim for disability element of pension in respect of the disability Bronchial Asthma assessed at 20% and round it off to 50% in accordance with

the law laid down in Union of India and Ors. Vs, Ram Avtar
[(2014) 8 SCC, 3]

11. The respondents are directed to calculate, sanction and issue the necessary PPO in view of the applicant's claim for grant of disability element of pension @ 50% qua his disability of Bronchial Asthma with effect from the date of his discharge from service. The entire exercise shall be completed within a period of three months from the date of receipt of a certified copy of this order. The arrears of disability pension shall also be paid to the applicant accordingly. In case of non compliance, the applicant shall be entitled to interest @ 6% p.a. from the day these fell due till actual payment

12. The OA is allowed to the above extent.

12. Pending application(s), if any, also stands disposed of.

Pronounced in open Court on this 23th day of May, 2025.

(JUSTICE NANDITA DUBEY)
MEMBER (J)

(RASIKA CHAUBE)
MEMBER (A)

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