

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP(C) No. 887/2024
CM No. 2178/2024

1. **Union of India through Secretary Ministry of Defence, South Block, New Delhi.** Petitioner(s)
2. **Chief of Army Staff, IHQ MoD (Army) DHQ PO, South Block, New Delhi through its Director AG PS-4 (Pension/Legal) AG's Branch.**
3. **Director Adjutant General Branch (MP 5 & 6) Army HQ West Block-3, RK Puram, New Delhi.**
4. **Principal Controller of Defence Accounts (Pensions), Draupadi Ghat, Allahabad, Uttar Pradesh-211014.**

Through: Mr. Vishal Sharma, Sr. Advocate (DSGI) with
Mr. Eishaan Dadhichi, CGSC
Mr. Suneel Malhotra, GA

vs

Lt. Col. Som Raj (Retd.)
S/o Bhindu Ram, R/o Village Kotla, Airforce
Officer's Mess Road, Udhampur, Jammu,
J&K – PIN 182101

..... Respondent(s)

Through: Mr. Vijay Kumar Padwal, Advocate

CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

ORDER(ORAL)

06.10.2025

Sanjeev Kumar J

1. Impugned in this petition filed by the Union of India & three others is an order and judgment dated 18.04.2023 passed by the Armed Forces Tribunal, Regional Bench, Srinagar at Jammu [“hereinafter after referred to as “**the Tribunal**”] in OA No. 44/2022 titled “**Lt. Col. Som Raj (Retd.) Vs Union of India & others**”, whereby the Tribunal has, while allowing the OA and

quashing the order impugned therein, directed the petitioners to grant disability element to the respondent @ 40% for life duly rounded off to 50% for life.

2. Briefly stated the facts and pleadings to the filing of this petition are that the respondent was commissioned in Indian Army on 19.12.1992 and was discharged on attaining the age of superannuation w.e.f. 31.07.2016 in medical category SHAPE-1.
3. The respondent was re-employed with Army on 29.08.2016 and was discharged on completing the tenure i.e., attaining the age of 58 years. The Release Medical Board (RMB) held at Command Hospital, Northern Command on 01.04.2020 assessed his disabilities.
 - i) Chronic Rhinosinusitis with Polyposis @ 20% for life as attributable to military services.
 - ii) Type 2 Diabetes Mellitus @ 20% for life as aggravated by military services.
4. The claim for disability element of pension was rejected by the competent authority on the ground that the disability element of pension to a re-employed officer is granted only when his service is terminated on account of disability and not on completing the tenure.
5. The first appeal preferred by the respondent came to be rejected on 21.12.2021. Feeling aggrieved by the rejection of his claim for disability element of pension, the respondent filed OA No. 44/2022 before the Tribunal. The OA was contested by the petitioners herein by filing their written statement. It was the

stand taken by the petitioners that though the composite disabilities suffered by the respondents were assessed @ 40% for life and were attributable and aggravated by military service, yet the competent authority rejected the claim in terms of Para 72(iii) of Pension Regulations for Army, 2008, Part-II. The reliance was also placed by the petitioners on Para 25(a) of Special Army Instructions (SAI) 1/S/80.

6. The Tribunal having considered the rival contentions of the parties and perused the material on record, came to the conclusion that the opinion of the Release Medical Board could not have been overruled by Pension Sanction Authority and also that the Special Army Instructions on which reliance was placed by the petitioners did not have the overriding effect on the statute. Relying upon couple of judgments of the Hon'ble Supreme Court, the Tribunal ruled in favour of the respondent.
7. Impugned judgment is challenged by the petitioners, primarily, on the ground that in terms of Para 72(iii) of the 2008 Regulations, a re-employed officer who is not invalided out or boarded out of re-employment on account of low medical category is not entitled to disability pension.
8. It is argued that it is only in cases where the re-employed ex-serviceman is invalided out on account of disability, which is assessed at 20% or more and is found attributable to or aggravated by Army Service, the disability element of pension is sanctioned.

9. ***Per Contra***, learned counsel appearing for the respondent would argue that the respondent having retired from Regular Army Service on 31.07.2016 was entitled to a disability pension for the disability “*Chronic Rhinosinusitis with Polyposis*” assessed at 20% for life, as attributable to military service by the Release Medical Board for the reason that the disability had manifested within 10 years of his retirement from the Regular Army Service. He submits that in view of the fact that the disability aforementioned was on account of disease, which he was inflicted with in the year 2003 i.e., while in Regular Army Service and, therefore, he is entitled to disability pension. He would argue that the respondent is pressing his claim on the ground that notwithstanding the provisions of Regulation 72(iii) of 2008 Regulations Part 1, the respondent is entitled to disability pension in view of categorical provision of Regulation 173 of 2008 Regulations.
10. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the respondent is entitled to disability pension, not for the reasons given by the Tribunal in the impugned order, but for the reasons which we will give hereinafter.
11. Admittedly, the respondent was discharged from Indian Army on completing his tenure w.e.f. 31.07.2016. At the time of his discharge/retirement, he was physically and mentally fit i.e., in

SHAPE-1. He was re-employed in Army service on 29.08.2016 and was retired on attaining the age of 58 years.

12. On 24.07.2020, the Release Medical Board found the respondent suffering from two disabilities, which we have already narrated hereinabove. The disability No. 1 was assessed @ 20% for life and found attributable to military service. The disability as is apparent from the medical record owes its origin to the year 2003 and, therefore, was attributable to Regular Military Service rendered by the respondent before his re-employment. If that be the position, the provisions of Regulation 86 of the Regulations of 2008 were attracted. For facility of reference, we set out Regulation 86 of Regulations of 2008 Part I hereinbelow:-

“MANIFESTATION OF DISABILITY AFTER RETIREMENT/DISCHARGE

86. Service personnel who had retired/discharged (otherwise than at his own request or in any of the circumstances specified in Regulation 29 & Regulation 41) on a retiring/service pension/gratuity, but who within a period of 10 years from the date of retirement is found to be suffering from a disease which is accepted as attributable to his military service, be granted in addition to his retiring/service pension/gratuity, a disability element with effect from the date of Review Medical Board constituted by the Director General Armed Forces Medical Services.”

13. From reading of Regulation 86, it is abundantly clear that a service personnel, who has retired/discharged but found to be suffering from a disease, which is acceptable as attributable to military service, within a period of 10 years from the date of such retirement, is entitled to payment of disability element of pension in addition to his service pension w.e.f. from the date of Review

Medical Board constituted by the Director General Armed Forces Medical Services. It is true that in the instant case, the respondent was not subjected to the Review Medical Board within 10 years of his retirement from regular army service. He was rather examined by the Release Medical Board for the reason that he had taken re-employment after his superannuation from regular army service and was examined at the time of his discharge from re-employment.

14. Be that as it may. The medical opinion of the Release Medical Board is quite categoric and unequivocal. Not only the disability-1 suffered by the respondent has been assessed @ 20% for life, but the same has also been found attributable to military service. The medical opinion has also gone to the extent of specifying the date when the respondent suffered the ailment, which ultimately resulted into manifested disability. It was in the year 2003 when the respondent was in regular military service.
15. In view of the aforesaid, we are of the considered opinion that the case of the respondent in respect of disability-1 is fully covered by Regulation 86 of the Regulations Part 1. Since the first disability has been assessed at 20%, therefore, same is required to be rounded off to 50%.
16. For the foregoing reasons, this petition is ***disposed of*** by providing as under:-

- (i) that the respondent is held entitled to disability element of disability pension w.e.f., 01.04.2020 when the Release Medical Board was conducted in respect of the respondent. His disability shall be taken as 20% for life rounded off to 50%.
- (ii) that the petitioners shall do well to give effect to this judgment/order within a period of 03 months from the date of receipt of certified copy of this order. In case of any delay, the amount shall become payable with interest @ 6% per annum to be reckoned w.e.f. expiry of 3 months till actual payment.

17. The judgment dated 18.04.2023 passed by the Tribunal is ***upheld*** with aforesaid alteration/modification/vacation on motion.

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

Jammu
06.10.2025
Rahul

Whether the order is speaking:	Yes
Whether the order is reportable:	Yes