

**E-Court****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 405 of 2020**Wednesday, this the 11<sup>th</sup> day of August, 2021**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. JC-368129L Ex-Subedar Ravi Shankar Prasad son of Shri Dharamdeo Ram, resident of 96B, New Basti Rastipur Mau, Umapur Mau, Uttar Pradesh, Pin-275101.

..... Applicant

Ld. Counsel for the Applicant : **Shri VP Pandey, Advocate.  
Shri Rakesh Kumar Singh, Advocate.**

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi-110011.
3. Officer-in-Charge, Signals Abhilekh Karyalaya, Signal Records, Post Bag No. 5, Jabalpur (M.P.)-482001.
4. Principal Controller of Defence Account Pension, Draupadi Ghat, Allahabad-211014.

.....Respondents

Ld. Counsel for the Respondents. : **Shri Rajiv Pandey, Advocate  
Central Govt Counsel.**

**ORDER (Oral)**

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs.

*“(i) To set aside/quash the order dated 12 September 2008 (Annexure No A-1) passed by Defence Security Corps Records being illegal and arbitrary.*

*(ii) To issue/pass an order or direction to the respondents to grant disability pension to the applicant from 08 December, 2008.*

*(iii) Any other relief as considered proper by this Hon’ble Tribunal will be awarded in favour of the applicant.*

*(iv) Cost of the O.A. be awarded to the applicant.*

2. Brief facts of the case are that applicant was enrolled in the Indian Army on 12.02.1977 and was discharged from service w.e.f. 28.02.2007 (AN) after completion of terms of engagement in low medical category ‘P2 (Permanent)’ for the disability “DISSEMINATED KOCHS”. Prior to discharge, applicant being in low medical category, was brought before Release Medical Board (RMB) held on 08.12.2006 which assessed his disability @ 50% for two years attributable to military service. Accordingly disability pension for the period 01.03.2007 to 07.12.2008 was granted to applicant vide PPO No. DE/013666/2007 (Army). Subsequently his Re-Survey Medical Board (RSMB) held on 19.08.2008 assessed his disability @ 15-19% for life and accordingly, his disability element of pension was discontinued w.e.f. 08.12.2008. Records reveal that applicant has filed no representation after his disability element of

pension was stopped on the ground of disability being below 20%. This was communicated to applicant vide letter dated 12.09.2008. This O.A. has been filed for grant of disability element of pension. Applicant is in receipt of service element of pension.

3. Learned counsel for the applicant submitted that applicant was not suffering from any disability at the time of enrolment and the disability '**Disseminated Kochs**' has occurred after applicant had completed more than 28 years of service in the Army therefore, the aforesaid disability should be aggravated by military service and applicant deserves to be granted disability element keeping in view of pronouncement of Hon'ble Apex Court judgment in the cases of ***Dharamvir Singh vs Union of India & Ors***, (2013) 7 SCC and ***Sukhvinder Singh vs Union of India & Ors***, (2014) STPL (WEB) 468 SC and numerous judgments delivered by various Regional Benches of Armed Forces Tribunal.

4. Per contra, learned counsel for the respondents submitted that since Re-Survey Medical Board (RSMB) dated 19.08.2008 has assessed applicant's disability @ 15-19% for life and NANA, therefore, he is not entitled to disability element of pension in terms of para 53 (a) of Pension Regulations for the Army, 2008 (Part-I). He pleaded for dismissal of O.A.

5. We have heard learned counsel for the parties and perused the material placed on record.

6. It is undisputed case of the parties that applicant was enrolled in the Army on 12.02.1977 and discharged from service after

completing terms of engagement on 28.02.2007 in low medical category. Applicant is in receipt of service element of pension and he has also received disability element of pension till 07.12.2008 as assessed by RMB dated 08.12.2006. RSMB held on 19.08.2008 assessed his disability @ 15-19% for life neither attributable to nor aggravated by military service. Disability element of pension was discontinued w.e.f. 08.12.2008 on the ground of disability being below 20% and this fact was communicated to applicant vide letter dated 12.09.2008.

7. After hearing learned counsel for the parties and from a perusal of the material brought on record, we are of the view that learned counsel for the applicant has not brought to our notice any document or medical paper/authority showing that the assessment of the disability of the applicant by the RSMB below 20%, was incorrect and is violative of the policy prescribed for that purpose. Thus, the only point that remains to be considered is whether the stoppage of the disability element of the pension by the respondents was legal or not. This point has been considered by the Hon'ble Apex Court in the case of *Balbir Singh vs. Union of India & others* in Civil Appeal No. 3086 of 2012 decided on 08.04.2016 wherein a similar question was involved. We would like to quote the relevant part of the judgment, which reads as under :-

“It is not in dispute that the appellant was discharged from service/invalidated out of service on account of 100% permanent disability suffered by him during the course of

service. It is also not in dispute that the said disability was held to be attributable to military service. That the disability was subsequently reduced to fall below 20% is also common ground. Inasmuch as the authorities stopped the disability pension, they committed no wrong. Stoppage of the disability pension did not however mean that the service element of the pension could also be stopped. That is evident from the provisions of Regulation 186 which reads as follows:-

“186 (1) An individual who is invalided out of service with a disability attributable to or aggravated by service but assessed at below 20 per cent shall be entitled to service element only. (2) An individual who was initially granted disability pension but whose disability is re-assessed at below 20% subsequently shall ceased to draw disability element of disability pension from the date it falls below 20 per cent. He shall however continue to draw the service element of disability pension.” The Tribunal was therefore justified in restoring the service element of the pension in favour of the appellant.” Therefore, in view of Regulation 186 mentioned above and keeping in view the judgment of Hon’ble Apex Court, we do not find any illegality or irregularity in the order passed by the respondents stopping the disability pension of the applicant.”

8. Thus, from the above it transpires that applicant’s disability was re-assessed by RSMB @ below 20% which does not entitle him to grant disability element of pension in view of the aforesaid

pronouncement. The respondents have rightly stopped disability element of pension w.e.f. 08.12.2008.

9. In view of the above, O.A. lacks merit and same is accordingly **dismissed**.

10. No order as to costs.

11. Pending application, if any, shall stand disposed off.

(Vice Admiral Abhay Raghunath Karve)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated: 11<sup>th</sup> August, 2021  
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