

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW****Original Application No. 219 of 2019**Wednesday, this the 09<sup>th</sup> day of December, 2020**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**IC-21849A Brig Yatindra Mohan Tewari, SM (Retd) 11/119,  
Devlok Colony, Vishnupuri, Church Road, Aliganj, Lucknow-  
226022.**.... Applicant**Ld. Counsel for the: **Col YR Sharma (Retd)** , Advocate.  
Applicant

Versus

1. Union of India, Through Secretary, Ministry of Defence,  
South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated HQ of MoD (Army),  
South Block, DHQ PO, New Delhi-110011.
3. Additional Directorate General Personnel Services,  
Adjutant General's Branch/PS-4 (Imp-II) Integrated  
Headquarters of MoD (Army), DHQ PO-New Delhi-  
110011.
4. Principal Controller of Defence Account (Pension),  
Draupadi Ghat, Allahabad (UP)-221014.

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

**ORDER (Oral)**

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

- (I) *Direct/pass an order in appropriate nature to respondents to quash/set aside the Medical Board proceedings held at MH, Allahabad on 04 Oct 2006, to the extent of holding the Disability "Diabetis Meilitus Type-II, F-11" at 15-19% and holding it as neither aggravated nor attributable to military service filed as Impugned order and marked as Annexure A-1.*
- (II) *Direct/pass an order in appropriate nature to respondents to quash/set aside Army HQ letter No. 12656/IC-25849/T-6/MP-5 (b) dated 22 Dec 2016 rejecting the initial claim for disability pension filed as Impugned Order and is marked as Annexure A-4.*
- (III) *Direct/pass an order in appropriate nature to respondents to quash/set aside Army HQ letter No 12656/IC/25849/T-6/MP-5 (b) dated 13 Oct 2017 rejecting the first appeal against the rejection of initial for disability pension filed as Impugned Order and is marked as Annexure A-6.*
- (IV) *Direct/pass an order in appropriate nature to respondents to quash/set aside Army HQ letter No 12656/IC/25849/T-6/MP5 (b) dated 23 Oct 2018 forwarding the rejection order of second appeal dated 08 Oct 2018 against the rejection of second appeal filed as Impugned Order and is marked as Annexure A-8.*
- (V) *Direct/pass an order in appropriate nature to grant disability pension to the applicant @ 20% for life to be broad banded to 50% and hold it as attributable and aggravated with service with effect from the date of retirement.*
- (VI) *Direct respondents to grant benefit of rounding off/broad banding of existing disability percentage of 20% to 50% w.e.f. the date of retirement.*
- (VII) *Direct the respondents to pay an interest @ 12% per annum on the arrears of payment.*
- (VIII) *Award the cost of the litigation to the applicant.*

*(IX) Issue/pass an order or direction as the Honourable Tribunal may deem fit and proper in the circumstances of the case.*

*(X) Allow this original application with cost.*

2. Brief facts of the case giving rise to this application are that the applicant was commissioned in the Army on 31.03.1972. Before joining the pre-commission training, he was thoroughly medically examined and found absolutely fit and free from any disease or medical disability. The applicant took premature retirement on 27.01.2007, four months prior to date of his superannuation. Applicant's disability took place in the year 2003 and he was placed in low medical category. The record reveals that his re-categorisation medical board was held on 03.11.2006 in which he was placed in low medical category for two years but subsequently owing to his premature discharge RMB was conducted on 07.12.2006 which has assessed his disability Diabetes Mellitus @ 15-19% for life neither attributable to nor aggravated by military service. Disability pension claim was rejected vide order dated 22.12.2016 and thereafter 1<sup>st</sup> and 2<sup>nd</sup> appeals were rejected vide order dated 13.10.2017 and 23.10.2018 respectively. It is in this perspective that applicant has filed this O.A.

3. Learned Counsel for the applicant submitted that applicant was commissioned in the Army in medically and physically fit condition and there was no note in his service documents with regard to suffering from any disease prior to joining, therefore any

disability suffered by applicant after joining the service should be considered as attributable to or aggravated by military service and he should be entitled to disability pension. Learned Counsel for the applicant further submitted that disability pension claim of applicant has been rejected in a cavalier manner without assigning any meaningful reason. Further averments made by learned counsel for applicant is that applicant was fully fit till April, 2003 and the disability took place at fag end of his service. He pleaded for disability pension to be granted to applicant.

4. On the other hand, learned counsel for the respondents opposed the submissions of learned counsel for the applicant and submitted that since the assessment of the disability element is 15-19% i.e. below 20%, therefore, condition for grant of disability element of pension does not fulfil in terms of para 90 of Pension Regulations for the Army, 2008 and, therefore, the competent authority has rightly denied the benefit of disability element of pension to applicant. He pleaded for dismissal of O.A.

5. We have given our considerable thoughts to both sides and have carefully perused the records. The question in front of us is straight; whether the disability is attributable to/aggravated by military service and, if so, whether it is above or below 20% and also whether applicant was invalidated out of service on account of the disability?

6. It is undisputed case of the parties that applicant took premature retirement on 27.01.2007, four months prior to date of

his superannuation. The applicant was in low medical category and re-categorization medical board was held on 03.11.2006 which assessed his disability for two years, but since he was about to proceed on premature retirement, his RMB was conducted on 07.12.2006 at MH, Allahabad. The RMB assessed Diabetes Mellitus Type-II @ 15-19% neither attributable to nor aggravated by military service.

7. As per para 90 of Pension Regulations for the Army, 2008, disability element of pension is eligible only when the disability is assessed at 20% or more and accepted as attributable to or aggravated by military service. Since, applicant's disability element is 15-19% for life, applicant does not fulfil the requirement of para 90 of the Pension Regulations for the Army, 2008.

8. Since applicant took premature retirement prior to superannuation, his case does not fall within the category of invalidation in which circumstance he would have become eligible for grant of disability element of pension @ 20% (rounded off to 50%) in terms of reported judgment in the case of **Sukhwinder Singh vs Union of India & Ors**, (2014) STPL (WEB) 468 where the operative part of the order reads:-

*"9. 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 be 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 appears to be no provisions authorising 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, it 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."*

9. Further, prayer made by learned counsel for applicant in para 8 (a) of O.A. seeking to quash/set aside RMB dated 07.12.2006 to the extent of holding the disability 'Diabetes Mellitus' Type-II at 15-19% is not tenable in terms of Hon'ble Apex Court judgment in the case of ***Bachchan Singh vs Union of India & Ors***, Civil Appeal Dy No. 2259 of 2012 decided on 04<sup>th</sup> September, 2019 wherein their Lordships have held 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 travelling 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%."*

(underlined by us)

10. In light of the above judgment, inference may be drawn that Medical Board is a duly constituted body and findings of the board should be given due credence.

11. In addition to above, a bare reading of para 53 (a) of Pension Regulations makes it abundantly clear that an individual being assessed disability below 20% is not entitled to disability element irrespective of disability being attributable to or aggravated by the military service. The Hon'ble Supreme Court in

Civil Appeal No 10870 of 2018 **Union of India & Ors vs Wing Commander SP Rathore**, has made it clear vide order dated 11.12.2019 that disability element is inadmissible when disability percentage is below 20%. Para 9 of the aforesaid judgment being relevant is quoted as under:-

*“9. As pointed out above, both Regulation 37 (a) and Para 8.2 clearly provide that the disability element is not admissible if the disability is less than 20%. In that view of the matter, the question of rounding off would not apply if the disability is less than 20%. If a person is not entitled to the disability pension, there would be no question of rounding off.”*

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

13. Pending application, if any, stands disposed of.

14. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)  
Member (A) Member (J)

Dated: 09 December, 2020

rathore