

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

Original Application No. 495 of 2019

Friday, this the 11th day of December, 2020

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Rinku Sinha wife of Late Pravin Kumar Sinha (No. 675590R Ex SGT), resident of House No 120, Lane No 12, Sainik Nagar, Telibagh, Lucknow (Uttar Pradesh)-206029.

.... Applicant

Ld. Counsel for the: **Shri Yashpal Singh**, Advocate.
Applicant

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi.
2. Air Officer-in-Charge, Administration, Air Headquarters (JDPA-III), Vayu Bhawan, New Delhi-110011.
3. Air Officer Commanding, Air Force Record Office, Subroto Park, New Delhi-110010.
4. Deputy Controller of Defence Accounts (Air Force), New Delhi.
5. Principal Controller of Defence Accounts (Pension) Draupadi Ghat, Allahabad.

... Respondents

Ld. Counsel for the: **Shri RC Shukla**, 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) *Issue/pass an order or direction setting aside the recommendations of the Release Medical Board held in the month of March 2006 (Annexure No 1 to the Original Application), and order/letter dated 14.10.2011 passed/issued on behalf of the Air Force Records (Annexure No 2 to the Original Application) rejecting the claim of the applicant's husband for grant of disability pension, after summoning the relevant original records; and consider case of the applicant and grant arrears of disability pension till death of her husband extending the benefit of rounding off, and consequential pensionary benefits to the applicant with interest.*
- (II) *Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.*
- (III) *Allow this Original Application with cost.*

2. Brief facts of the case giving rise to this application are that applicant's husband was enrolled in the Indian Air Force on 12.05.1982, and after having completed more than 23 years of service, he was discharged in low medical category 'A4G2 (Permt)' on 14.05.2006. Prior to discharge from service, he was brought before Release Medical Board (RMB) held on 10.04.2006 in which he was found to be suffering from 'Diabetes Mellitus-II' @ 15-19% for life and disease was opined to be neither attributable to nor aggravated by military service (NANA). During life time, applicant's husband had approached competent authority for grant of disability element but the same was rejected vide order

dated 14.10.2011, but records show that no appeal was preferred against rejection of disability element which was required to be preferred within six months from the date of rejection of claim. Now this O.A. has been filed by deceased soldier's wife for grant of disability element with effect from date of discharge of her late husband to 26.06.2018 (date of death of her husband). Records reveal that no appeal was preferred.

3. Learned Counsel for the applicant submitted that deceased soldier was recruited in the Air Force 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 husband of 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 her husband has been rejected in a cavalier manner without assigning any meaningful reason. Further averments made by learned counsel for applicant is that her husband was fully fit till February, 1994, and the disability took place during March, 1994, i.e. after approx 12 years of service, therefore, disability should be aggravated by military 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 26 Chapter-VI of Military Pension, 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 disability?

6. It is undisputed case of the parties that applicant's husband proceeded on retirement prematurely on 14.05.2006 i.e. at his own request. He was in low medical category at the time of discharge from service and his disability was assessed @ 15-19% for life neither attributable to nor aggravated by military service..

7. As per para 5.1 to 5.2 of Rule 153 of Pension Regulations for Air Force, 1961 (Part-I) 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 husband's disability element was 15-19% for life, he did not fulfil the requirement of aforesaid Regulations.

8. Since applicant's husband 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 10.04.2006 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 04th 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, the Hon'ble Supreme Court in Civil Appeal No 10870 of 2018, **Union of India & Ors vs Wing Commander SP Rathore**, decided on 11.12.2019 has made it clear that disability element is inadmissible when disability percentage is below 20%. Para 9 of the aforesaid judgment being relevant is quoted here 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 the same is accordingly **dismissed**.

13. Pending applications, if any, stand disposed of.

14. No order as to costs.

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

Dated: 11th December, 2020

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