

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 3 of 2019**Tuesday, this the 19<sup>th</sup> day of January, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**Ex Hav No. 1457333P Mahatama Giri,  
Son of Shri Tarkeshwar Giri,  
Resident of Vill- Piraounta, PO- Piraounta,  
The- Ballia, Distt – Ballia, U.P.- 277403.

..... Applicant

Ld. Counsel for the Applicant: **Shri Virat Anand 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 HQ of MoD (Army), DHQ P.O., New Delhi – 110011.
3. Records Officer, EME Records, PIN- 900453, C/o 56 APO.
4. PCDA (P) Draupadi Ghat, Allahabad, UP

..... Respondents

Ld. Counsel for the Respondents : **Ms. Deepti P Bajpai**,  
Central Govt Counsel.

**ORDER**

**“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

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

- “(i) To direct the respondents to grant 50% (after rounding off from 19%) disability pension to the applicant from 01 Oct 2009 date of sos) with 10% bank interest till date.
- (ii) To direct the respondents to issue relevant new/ fresh PPO to the applicant with this regards,
- (iii) To pass orders which their lordships may deem fit and proper in the existing facts and circumstances of the case.
- (iv) Allow this application with costs.”

2. The undisputed factual matrix on record is that applicant was enrolled in the Army on 01.10.1984 and retired from service on 30.09.2009 (AN) on completion of terms of engagement. The Release Medical Board (RMB) held at the time of retirement assessed the disability of the applicant **“TYPE II DIABETES MELLITUS”** @ 15-19% and opined to be neither attributable to nor aggravated (NANA) by military service. The applicant approached the respondents for grant of disability pension but the same was rejected vide letter dated 23.11.2009. The applicant preferred First Appeal which too was rejected vide letter dated 13.07.2017. It is in this

perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant submitted that applicant was enrolled 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. He pleaded that various Benches of the Armed Forces Tribunal have granted disability pension in similar cases, as such, the applicant is also entitled to disability pension and its rounding off to 50%.

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% and disability has been found as NANA, therefore, condition for grant of disability element of pension does not fulfil in terms of Para 173 of Pension Regulations for the Army, 1961, and, therefore, the competent authority has rightly denied the benefit of disability element of pension to applicant. He pleaded for dismissal of O.A. However, applicant has been paid all legitimate dues i.e.

service pension, death cum retirement gratuity, commutation and retiral dues.

5. We have heard Shri Virat Anand Singh, learned counsel for the applicant and Ms. Deepti P Bajpai, Ld. Counsel for the respondents and perused the record. 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. As per para 173 of Pension Regulations for the Army 1961, 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% and disability has been considered as neither attributable to nor aggravated by military service and since he was not invalidated out of service on account of this disability, the disability pension claim of the applicant has been rejected.

7. Further, in terms of judgment of the Hon'ble Apex Court 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)

8. 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.

9. In addition to above, a bare reading of Regulation 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.”*

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

11. Pending Misc. Application, if any, stands disposed of.

12. No order as to costs.

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

Dated: January, 2021

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