

**RESERVED**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW  
(CIRCUIT BENCH NAINITAL)**

**Original Application No. 400 of 2019**

Tuesday, this the 24<sup>th</sup> day of November 2020

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

JC-404550N Ex Nb Sub Chander Singh Bohra, S/O Sh. Nian Singh Bohra, Village-Malla Bapru, PO-Bapru, Tehsil-Lohaghat, District-Champawat, Uttarakhand-262525.

..... Applicant

Ld. Counsel for the: **Shri Kishore Rai**, Advocate  
Applicant

Versus

1. Union of India, Ministry of Defence through its Secretary, South Block, New Delhi-110011.
2. P.C.D.A. (P) Allahabad, Uttar Pradesh.
3. Addl Dte Gen Personnel Services Adjutant General's Branch IHQ of MoD (Army), Room No-11, Plot No-108 (West) Brassey Avenue, Church Road, New Delhi-110001.
4. Senior Record Officer, Records, Brigades of the Guards, PIN 900746, c/o 56 APO.
5. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence, South Block, New Delhi-110001.

..... Respondents

Ld. Counsel for the :**Ms Pushpa Bhatt**  
Respondents Central Govt Counsel assisted by  
**Col Subodh Verma**, Departmental  
Representative.

**ORDER**

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:-

- "(a) A direction to quash the order dated 26.10.2018 passed by respondent No. 3 (contained as Annexure No. 4 to this original application) or to -*
- (b) A direction to grant the disability pension to the applicant from the date of his retirement i.e. 01.10.2012 along with rounding off to the tune of 50%.*
- (c) To summon the entire records of the applicant pertaining to computation of his disability pension.*
- (d) Any other relief to which the applicant is found entitled may also very kindly be granted to the applicant."*

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 10.09.1986 and after rendering 26 years and 21 days service he was discharged from service on 30.09.2012 in low medical category under Rule 13 (3) I (i) (a) of Army Rules 1954. Prior to discharge, Release Medical Board (RMB) conducted on 16.02.2012 assessed applicant's disability @ 6-10% for life attributable to military service. Disability pension claim, first and second appeals have been rejected vide orders dated 10.11.2012, 08.08.2014 and 26.10.2018 respectively. It is in this perspective that this O.A. has been filed.

3. Learned counsel for the applicant submitted that applicant was found fit in all respects at the time of enrolment in the Army and there was no note in his primary service documents with regard to any disease/disability. Therefore, whatever disease with which applicant suffered during service is attributable to military service

as has been rightly assessed by RMB. The learned counsel pleaded that disability pension be granted to the applicant.

4. On the other hand, learned Counsel for the respondents submitted that applicant is in receipt of service pension granted vide PPO No S/033155/2012 (Army) and has been denied the disability pension on the ground that his disability is less than 20%. He further emphasised that competent authority has rightly rejected the disability pension claim in terms of para 53 (a) of Pension Regulations for the Army, 2008 (Part I) which reads as under:-

*"An individual released/retired/discharged on completion of term of engagement or on completion of service limits or on attaining the prescribed age (irrespective of his period of engagement), if found suffering from a disability attributable to or aggravated by military service and so recorded by Release Medical Board, may be granted disability element in addition to service pension or service gratuity from the date of retirement/discharge, if the accepted degree of disability is assessed at 20 percent or more."*

Learned counsel for the respondents further submitted that since the percentage of disability in this case is less than 20%, therefore, applicant is not entitled to disability pension and O.A. deserves to be dismissed.

5. We have heard learned counsel of both sides and found that moot question involved in this case is whether disability pension is payable to an incumbent whose disability is less than 20%?

6. 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. Further, 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%.

7. In view of above, the O.A. is liable to be dismissed and is therefore **dismissed**.

8. No order as to costs.

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

Dated : November, 2020  
rathore