

Court No. 1 (E-Court)**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 575 of 2021**

Monday, this the 31st day of January, 2022

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

No. 13831865 Ex. Nk. Jagropann Singh, Son of Late Bhagi Singh, resident of Village – Baraura, Post Office – Derhgawan, District – Ghazipur (U.P.) – 232328.

.... **Applicant**

Ld. Counsel for the : **Shri V.P. Pandey**, Advocate and
 Applicant **Shri R.K. 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 Headquarters, Ministry of Defence (Army), South Block, New Delhi-110011.
3. Officer-In-Charge Records, ASC Records (South), Bangalore-560007.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

... **Respondents**

Ld. Counsel for the: **Shri Arun Kumar Sahu**, Advocate
 Respondents. 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, whereby the applicant has sought following reliefs:-

- (a) *To set aside/quash the Re-Survey Medical Board proceedings dated 13.03.2003.*
- (b) *To issue/pass an order or direction to the respondents to continue payment of disability pension.*
- (c) *To issue/pass an order or direction to the respondents to pay arrears along with interest from the date of discontinuation.*
- (d) *Any other relief as considered proper by this Hon'ble Tribunal be awarded in favour of the applicant.*
- (e) *Cost of the O.A. be awarded to the applicant.*

2. Briefly stated, applicant was enrolled in the Indian Army on 03.03.1969 and was discharged on 28.08.1985 (AN) in Low Medical Category under Rule 13 (3) Item III (V) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at Military Hospital, Gwalior on 27.03.1985 assessed his disability '**COMPOUND FRACTURE SHAFT OF RADIUS (RT) UPPER 1/3RD (OPTD) N813, E819**' @20% for two years and disability considered to be attributable to military service. Accordingly, the applicant was granted disability element of disability pension for two years i.e. from 29.08.1985 to 26.03.1987. Thereafter, on the basis of Re-Survey Medical Boards disability element of disability pension have been revised from 27.03.1987 to 09.01.1989, 10.01.1989 to 02.02.1999 and 03.02.1999 to 25.09.2008. The applicant's Re-Assessment Medical Board (RAMB) was held at Military Hospital, Allahabad on

13.03.2003, wherein the degree of disability has been assessed at 11 to 14% (less than 20%) for life. Accordingly, the applicant claim for grant of disability element of disability pension was rejected vide letter dated 24.06.2003 which was communicated to the applicant vide letter 23.07.2003. The applicant submitted an application dated 08.06.2021 under Right to Information Act asking copy of RAMB which was provided to him vide letter dated 13.07.2021. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant submitted that disability of the applicant has been regarded as attributable to military service and applicant was granted disability element @ 20% for two years which was later on extended from time to time. However, in the RAMB held on 13.03.2003 the degree of the applicant's disability has been assessed at 11-14% (less than 20%) for life and disability element of disability pension stopped which is illegal and arbitrary. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability element of disability pension and its rounding off to @50% as well as arrears thereof.

4. Learned Counsel for the applicant further submitted that applicant was diagnosed to be suffering from '**COMPOUND FRACTURE SHAFT OF RADIUS (RT) UPPER 1/3RD (OPTD) N813, E819**' at the time of discharge from service, therefore, applicant's case is fully covered with law laid down by the Hon'ble

Apex Court in ***Sukhvinder Singh Vs. Union of India and Others*** (Civil Appeal No. 5605 of 2010, decided on 25.06.2014) and therefore, applicant is entitled for disability element of disability pension which has been stopped by the respondents in very illegal and arbitrary manner. He also submitted that the Hon'ble Apex Court in ***Union of India vs. Ram Avtar*** has held that service personnel who were in low medical category at the time of their retirement/release they are deemed to be invalided out of service and not released from service as such applicant is entitled for the benefit of Govt. of India letter dated 31.01.2001. He pleaded to release disability pension of the applicant in the interest of natural justice.

5. Per contra, learned counsel for the respondents submitted that since disability of the applicant has been assessed at 11-14% (below 20%) for life by Re-Assessment Medical Board dated 13.03.2003, hence, applicant became ineligible for grant of disability element on account of disablement being below 20%, therefore, condition for grant of disability element of pension does not fulfil in terms of Regulation 179 of Pension Regulations for the Army, 1961 (Part-I) and the competent authority has rightly stopped the benefit of disability element of disability pension to applicant. He pleaded for dismissal of Original Application.

6. 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 re-assessed above or below 20%

and also whether the applicant is entitled for disability element even if the disability is re-assessed below 20%?

7. It is undisputed case of the parties that applicant was enrolled in the Indian Army on 03.03.1989 and was discharged from service on 28.08.1985 in low medical category. The applicant was in low medical category and his Release Medical Board was conducted on 27.03.1985 at Military Hospital, Gwalior. The Release Medical Board assessed applicant's disability @20% for two years as attributable to military service. Accordingly, applicant was granted disability element of disability pension. Thereafter, on the basis of Re-Survey Medical Board disability element of disability pension was revised from time to time. The Re-Assessment Medical Board held on 13.03.2003 assessed the degree of disability of the applicant at 11-14% (less than 20%) for life. Hence, respondents have stopped the applicant's disability element of disability pension.

8. As per Regulation 186 (2) of Pension Regulations for the Army, 1961 (Part - I), an individual who was initially granted disability pension but whose disability is re-assessed at below 20% subsequently shall cease 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. Since, applicant's disability element has been assessed at 11-14% (less than 20%) by the Re-Assessment Medical Board held on 13.03.2003, applicant does not fulfil the requirement of

Regulation 186 (2) of Pension Regulations for the Army, 1961 (Part-I).

9. Further, contrary view to Re-Assessment Medical Board held on 13.03.2003 to the extent of holding the applicant's disability at 11-14% (less than 20%) 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, a bare reading of Regulation 186 (2) of Pension Regulations for the Army, 1961 (Part-I), makes it abundantly clear that an individual being re-assessed disability below 20% subsequently shall cease to draw disability element of disability pension from the date it falls below 20 per cent. 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, Original Application lacks merit and same is accordingly **dismissed**.

13. Pending Misc. 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: 31 January, 2022

AKD/-