

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

Original Application No. 175 of 2021

Monday, this the 15th day of November, 2021

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

No. 4052600W Ex. Naik (TS) Ram Chandra Bhatt, S/o Sri Narayan Datt, R/o Village & Post Kathur, Kathur Talla, Ghansali, District Garhwal (Uttarakhand).

.... **Applicant**

Ld. Counsel for the Applicant : **Shri C.S. Rawat**, Advocate and Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, Central Civil Secretariat, South Block, New Delhi-110011.
2. Director General Personnel Services, Adjutant General's Branch, Army Headquarters, DHQ PO, New Delhi-110011.
3. Senior Record Officer, Garhwal Rifles, Lancedown.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (U.P.)-211014.
5. Commandant, 2nd Garhwal Rifles.

... **Respondents**

Ld. Counsel for the Respondents: **Shri Neeraj Upreti**, Advocate
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:-

“Humble petitioner/applicant seeks prayer to summon the entire records including on the file of PCDA (P), Allahabad and to grant/sanction of disability pension to the applicant with arrear w.e.f. 17.11.2001 (till date disability pension stopped) or to reinstate the petitioner in service notionally till his superannuation from Army, thereafter grant the regular pension to the petitioner as per the provisions of Pension Regulation, otherwise petitioner shall suffer irreparable loss and injury. Such other suitable order is deemed fit and proper in the facts and circumstances of the case also kindly be pleased to meet in the interest of justice.”

2. Briefly stated, applicant was enrolled in the Garhwal Rifles of Indian Army on 20.10.1971 and was discharged on 31.10.1986 (an) in Low Medical Category on fulfilling the conditions of his enrolment under Rule 13 (3) Item III (i) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) assessed his disability '**WEDGE FRACTURE LV IV (EFFECTS OF) V-67**' @ 20% for life opined the disability to be attributable to military service. Accordingly, the applicant was granted disability element of disability pension. The applicant's Re-Survey Medical Board was held at Military Hospital, Dehradun on 09.06.1989 and assessed his disability @20% for with effect from 05.06.1989 to 08.06.1989. Accordingly, the disability element was granted to the applicant. The applicant's Re-Survey Medical Board (RSMB) held at Military Hospital, Dehradun on 05.02.1994 assessed his disability @15-19% (less than 20%) for life. Hence, disability element of disability pension has been stopped by the respondents. The applicant's claim for grant of disability element

of pension was rejected vide letter dated 23.07.1994 which was communicated to the applicant vide letter dated 08.08.1994. The applicant's Re-Survey Medical Board again held on 28.08.1999 at Military Hospital, Dehradun assessed his disability @11-14% (less than 20%) for life. Accordingly, applicant's claim for grant of disability element of disability pension was rejected vide letter dated 11.01.2000 which was communicated to the applicant vide letter dated 27.01.2000. Again applicant's Re-Survey Medical Board was held at Military Hospital, Dehradun which assessed his disability @11-14% (less than 20%) for life. Accordingly, applicant's claim for grant of disability element was rejected by the respondents vide letter dated 20.10.2008. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Army and there is no note in the service documents that he was suffering from any disease/injury at the time of enrolment in Army. The disease/injury of the applicant was contacted during the service, and it has been opined by the RMB as attributable to military service. He pleaded that various Benches of Armed Forces Tribunal have granted disability element of disability pension in similar cases, as such the applicant be granted disability pension as well as arrears thereof.

4. On the other hand, learned counsel for the respondents opposed the submissions of learned counsel for the applicant and

submitted that since Re-Survey Medical Board has assessed the disability element @11-14% i.e. below 20%, therefore, condition for grant of disability element of pension does not fulfil in terms of Regulation 173 of Pension Regulations for the Army, 1961(Part-I)and, therefore, the competent authority has rightly denied the benefit of disability element of pension to applicant. He pleaded for dismissal of Original Application.

5. We have given our considerable thoughts to both sides and have carefully perused the records including Release Medical Boardas well as Re-Survey Medical Board proceedings.The question in front of us is straight; whether the disability 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 was enrolled in the Indian Army on 21.10.1971 and was discharged from service on 31.10.1986 (AN) on completion of terms of engagement. The last Re-Survey Medical Boardassessed applicant's disability @ 11-14% for life.

7. As per Regulation 173 of Pension Regulations for the Army, 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, as per last Re-Survey Medical Board, applicant's disability element is 11-14% for life, applicant does not fulfil the requirement of Regulation 173 of Pension Regulations for the Army, 1961 (Part-I).

8. Since applicant was discharged from service on completion of terms of engagement, 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% 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, contrary view to Release Medical Board dated 27.11.2018 to the extent of holding the applicant's disability at 15-19% for life 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 173 of Pension Regulations for the Army, 1961 (Part-I), 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, Original Application lacks merit and same is accordingly **dismissed**.

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

14. No order as to costs.

(Vice Admiral AbhayRaghunathKarve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member(J)

Dated: 15November, 2021

AKD/-