

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 499 of 2021**

Thursday , this the 25th day of November, 2021

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

Ex. Hav. No. 01294222-L Raghbir Singh Yadav, S/o Shri Brindavan Singh R/o Village – Chinour, Fauzi Dairy Puvapa PO – Paina Bozurg, Tehsil – Shahjahanpur, District – Shahjahanpur (UP)-242001.

.... **Applicant**

Ld. Counsel for the : **Shri Virat Anand Singh**, Advocate and Applicant

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 PO, New Delhi-110011.
3. Senior Records Officer (Disability Pension Group), Artillery Records, PIN-908802, C/o 56 APO.

... **Respondents**

Ld. Counsel for the: **Ms. Appoli Srivastava**, 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 issue order or directions to the respondents to grant disability pension to the applicant for the disability he had, with effect from 01.11.1990 (Date of*

discharge : 31.10.1990) with all consequential benefits including rounding off benefit (as applicable) in terms of Govt. of India letter dated 31 Jan 2001.

(b) To pass orders which their lordships may deem fit and proper in the existing facts and circumstances of the case.

(c) Allow this application with cost.

2. Briefly stated, applicant was enrolled in the Regiment of Artillery of Indian Army on 12.09.1968 and was discharged on 30.09.1990 (AN) in Low Medical Category on fulfilling the conditions of his enrolment under Rule 13 (3) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at 2121 Field Ambulance on 27.07.1990 assessed his disability '**GENITO URINARY TUBERCULOSIS WITH EPIDIDYMITIS (RT) 016 V.67**' @30% for two years opined the disability to be **aggravated** by service. Accordingly, the applicant was granted disability element of disability pension vide P.P.O. dated 27.06.1991. The Re-Survey Medical Board (RSMB) held on 14.03.1992 assessed applicant's disability @20% for five years but the PCDA has accepted for two years. Accordingly, P.P.O. dated 21.07.1992 was issued. Again Re-Survey Medical Board held on 11.11.1993 assessed applicant's disability @0% for five years but PCDA has accepted less than 20% (15 to 19%). Further, Re-Survey medical Board held on 31.07.1998 assessed applicant's disability less than 20%. Last Re-Survey Medical Board held on 28.09.2002 assessed applicant's disability less than 20% (15-19%) for life. Accordingly, applicant's disability

element of disability pension was discontinued vide letter dated 20.03.2003. The applicant preferred Appeal dated 20.02.2019 which was rejected vide letter dated 07.10.2019. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that the disease of the applicant was contracted during the service, hence it has been opined by the RMB as aggravated by military service and accordingly the applicant was granted disability element of disability pension. However, later on RSMB has assessed applicant's disability less than 20% (15-19%) and disability element has been discontinued in an arbitrary manner. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension, its rounding off 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 the disease of the applicant has been cured due to continuous medication and since the assessment of the disability element is less than 20% (15-19%) by the last RSMB held on 28.09.2002, 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 discontinued 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 Board as well as Re-Survey Medical Boards proceedings. 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. It is undisputed case of the parties that applicant was enrolled in the Indian Army on 12.09.1968 and was discharged from service on 30.09.1990 on completion of terms of engagement. The applicant was in low medical category and his last RSMB was conducted on 28.09.2002. The last RSMB assessed applicant's disability less than 20% (15-19%) 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. Although the applicant disability has been opined by the RMB as aggravated by military service, but since, applicant's disability element has been decreased to 15-19% (less than 20%) for life, applicant does not fulfil the requirement of Regulation 173 of Pension Regulations for the Army, 1961 (Part-I) for further continuance of disability element of disability pension.

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 last RSMB dated 28.09.2002 to the extent of holding the applicant's disability less than 20% (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 further 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 Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 25 November, 2021

AKD/-