

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 373 of 2020****Friday, this the 17th day of September, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)No.7119309F Ex CFN Inderjit Sharma, S/o Late Banke Lal Sharma,
R/o H. No. C-136, Ramesh Vihar Colony, Ramghat Road, Dist -
Aligarh, Pin 202001 (U.P)

..... Applicant

Ld. Counsel for the Applicant: **Shri Om Prakash Kushwaha,**
Advocate

Versus

1. Union of India, through its Secretary, Ministry of Defence, New Delhi-110011.
2. The Chief of Army Staff, COAS Sectt, South Block, New Delhi - 110001.
3. The Officer In-Charge, EME Records Secunderabad -500021
4. MCEME, Military College of Electronics & Mech Engineering, Secunderabad Pin -500015.
5. PCDA (Pension), Draupadi Ghat, Allahabad (UP) -14.

..... Respondents

Ld. Counsel for the: **Shri Anurag Mishra,** Advocate
Respondents Govt. Standing Counsel.**ORDER**

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

- (a) To issue/pass an order or direction to set – aside/quash the EME Records, Secundrabad letter No. 7119309/RA-1/Pen dated 10.10.2019, is being annexed as Annexure No. A-I to this

Original Application, in which the applicant has been unjustly denied for Disability Pension approved by the Medical Board at the time of discharge from service, subsequently Re-survey Medical Board was held time to time.

(b) To issue / pass an order or directions to the respondents to consider the applicant for restore the disability element of disability pension from 28.01.1996 with 18% interest on arrear and benefit of Rounding of/Board banding of disability element of disability pension @ 20% to 50% w.e.f. 28.01.1996 to till date, in terms of Govt of India letter dated 31.01.2001, and Ministry of Defence, Department of Ex-Servicemen Welfare (Pension/Legal) letter dated 18.04.2016 with all consequential benefits.

(c) To issue /pass any other or direction as this Hon'ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.

(d) To allow this original application with costs.

2. Briefly stated facts of the case are that applicant was enrolled in the EME Branch of the Indian Army on 28.03.1972 and was invalided out from service on 10.05.1982 in low medical category having rendered 10 years, 01 month and 12 days of service. At the time of discharge from service, his Release Medical Board (RMB) was conducted at Military Hospital, Secunderabad on 06.02.1982 which assessed his disability '**LOW BACKACHE**' @ 20% for 02 years neither attributable to nor aggravated by military service and disability element for the period from 10.05.1982 to 27.01.1984 i.e. for two years was granted to him vide PPO No D/4076/1982 dated 19.08.1982 accordingly. Thereafter, applicant underwent subsequent Re-Survey Medical Board (RSMBs) for the period from 28.01.1984

and the last RSMB has assessed his disability percentage @ 20% for ten years i.e. from 18.01.1986 to 22.01.1996 and he was granted disability element vide PPO No. D/RA/6923/86 dated 12.08.1986 amended vide PPO No. D/R/4112/87 dated 09.10.1987. The final RSMB which was held on 02.02.1996 has assessed his disability @ below 20% for life and hence his disability element was discontinued. The claim preferred in this regard was rejected vide order dated 02.07.1996 on the ground of disability being below 20%. Against discontinuation of his disability element of pension, applicant submitted representations dated 13.01.1996 and 06.03.1996 for conducting his RSMB at any Military Hospital except MH, Agra. The concerned authorities have denied his request for conduct of RSMB vide letter dated 17.04.1999. Against aforesaid denial, applicant has submitted an appeal to Chief of Army Staff dated 10.07.2019 which is still pending, hence this O.A.

3. Ld. Counsel for the applicant pleaded that applicant was enrolled in the Army in medically and physically fit condition. It was further pleaded that an individual is to be presumed in sound physical and mental condition upon entering service if there is no note or record to the contrary at the time of entry. In the event of his subsequently being discharge from service on medical grounds, any deterioration in his health is to be presumed due to service conditions. He pleaded that since applicant's disability 'Low Backache' resulted due to stress and strain of military service, therefore, he is entitled to get disability element of pension. He further stressed that the Medical Board has assessed percentage of disability less than @ 20% (Nil %

for life) neither attributable to nor aggravated by military service, therefore, in view of Hon'ble Apex Court judgment delivered in the case of ***Sukhwinder Singh vs Union of India & Ors***, Civil Appeal No 5605 of 2010 decided on 25.06.2014, applicant is eligible for grant of disability element of pension. Applicant is in receipt of service element of pension.

4. On the other hand, learned counsel for the respondents opposed the submissions of learned counsel for the applicant and submitted that since the condition for grant of disability pension is 20% and above, this not being in the case in hand, applicant is not entitled for disability element of pension, therefore, condition for grant of disability element of pension does not fulfil in terms of Para 26 Chapter-VI of Pension Regulations for the Army, 2008 (Part-I) and, therefore, the competent authority has rightly denied the benefit of disability element of pension to applicant. He pleaded for dismissal of O.A.

5. We have heard learned counsel for both sides and perused the material placed on record.

6. On careful perusal of the medical documents, it has been observed that applicant was enrolled on 28.03.1972 and he was found to be suffering with the aforesaid disease during Dec 1979, after lapse of more than 07 years of completion of military service. He was administered treatment by various Military Hospitals. Re-Survey Medical Board conducted on applicant has assessed his disability @ 20% for two years from 28.01.1984 to 27.01.1986 and

thereafter from 28.01.1986 to 22.01.1996 for ten years and disability element has been received by applicant. Thereafter, RSMB held on 02.02.1996 assessed applicant's disability @ below 20% (i.e. Nil) and he was denied disability element of pension on the ground of disability being below 20% (i.e. Nil). The Hon'ble Apex Court in the case of ***Union of India & Ors vs Wg Cdr SP Rathore***, delivered in Civil Appeal No 10870 of 2018 decided on 11.12.2019 has held that an incumbent is not entitled to disability element of pension if his disability has been assessed @ below 20%. Even otherwise once disability is assessed as Nil by the medical authorities, claim for disability element of disability pension is untenable vide Rule 186 (1) of Pension Regulations for the Army, 1961 (Part I) which envisage that whenever disability % falls below 20% (Nil in this case) disability element shall be stopped.

7. In the above scenario, we are of the view that since the last RSMB conducted on 02.02.1996 has assessed applicant's disability @ 20% Nil, therefore, he is not entitled to disability element of pension in terms of the judgment of ***Wg Cdr SP Rathore*** (supra) and Rule 186 (1) of Pension Regulations for the army, 1961 (Part I).

8. As a result of foregoing, the O.A. is **dismissed**.

9. Pending applications, if any disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 17th September, 2021

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