

**E-Court No. 1**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**Original Application No. 88 of 2022**

Tuesday , this the 26<sup>th</sup> day of April, 2022

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

Ex Hav (Hony Nb Sub) Shiv Narayan Rai, Son of Late Shri Ramji Rai, Resident of B5/C43 Vrindavan Colony, Sector- 5, PO-Vrindavan, Lucknow.

.... **Applicant**

Ld. Counsel for the : **No one is present on behalf of applicant.**  
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi – 110011.
2. Chief of Army Staff, Integrated head Quarters of Ministry of Defence, South Block, New Delhi – 110011.
3. The Appellate Committee Principal Controller of Defence Accounts (Pension) Draupadi Ghat, Allahabad (U.P.)- 211014.
4. Officer Incharge Army Medical Corps Records, PIN- 226002, C/o 56 APO.

... **Respondents**

Ld. Counsel for the: **Shri Shyam Singh,**  
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:-

- (i) Hon’ble Tribunal may be pleased to set aside the approval of release Medical Board recommendation dated 28.07.2007 (Annexure No A-1) and allow the 50% disability pension for life.
- (ii) Hon’ble Tribunal may be pleased further to grant benefit of disability pension of Diabetes Mellitus Type- II S1, H1, A1,P1,E1 dated 28.07.2007.
- (ii) To issue order or direction to respondents to pay arrears with interest @ 12% to the applicant.
- (iii) To issue order or direction to respondents to pay arrears with interest @ 12% to the applicant.
- (iv) Any other relief as considered by this Hon’ble Tribunal in awarded favour of the applicant.
- (v) Cost of the application be awarded to the applicant.

2. Briefly stated, applicant was enrolled in the Indian Army on 24.12.1983 and was discharged on 01.01.2008 in Low Medical Category on completion of his terms of engagement under Rule 13

(3) Item III (i) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at Base Hospital, Lucknow on 16.07.2007 assessed his disability **'DIABETES MELLITUS TYPE II'** @ 6-10% for life and disability was considered as neither attributable to nor aggravated by military service. The claim of the applicant for grant of disability element of disability pension was rejected vide letter dated 18.02.2008. The applicant submitted a legal notice for grant of disability pension which was replied by the respondents vide letter dated 28.02.2021. It is in this perspective that the applicant has preferred the present Original Application.

3. In the Original Applicant, learned counsel for the applicant has pleaded that applicant at the time of enrolment 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 at the time of enrolment. Claim of the applicant for the grant of disability pension was rejected on the ground of disability percentage being less than 20% and disability was considered as neither attributable to nor aggravated by military service. Learned counsel for the applicant in O.A. has pleaded that various Benches of Armed Forces Tribunal have granted disability element in similar cases, as such the applicant be granted disability element as well as arrears thereof and its rounding off to 50%.

4. Per contra, learned counsel for the respondents submitted that on retirement, applicant was granted service pension for the services rendered in the army. Since disability of the applicant was considered as neither attributable to nor aggravated by military service and assessed @ 6 - 10% (below 20%) for life by Release Medical Board, hence, applicant became ineligible for grant of disability element on account of disablement being below 20%. Learned counsel for the respondents pleaded that applicant was not fulfilling criteria prescribed in Para 179 of the Pension Regulations for the Army, 1961 (Part-I), hence the claim of the applicant for the grant of disability element was correctly rejected. He pleaded for dismissal of Original Application.

5. 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 applicant is entitled for grant of disability element even if the disability is considered as neither attributable to nor aggravated by military service and assessed below 20%?

6. It is undisputed case of the parties that applicant was enrolled in the Indian Army on 24.12.1983 and was discharged from service on 01.01.2008 in low medical category. The Release Medical Board held at the time of retirement assessed the degree of disability of the applicant @ 6 - 10% (less than 20%) for life and

considered as neither attributable to nor aggravated by military service. Accordingly, his claim for grant of disability element was rejected.

7. Since, applicant's disability element was assessed @ 6-10% (less than 20%) by the Release Medical Board, hence applicant does not fulfil the requirement of Regulation 186 (2) of Pension Regulations for the Army, 1961 (Part-I) for grant of disability element.

8. Further, Release Medical Board assessing disability of the applicant to the extent of 6-10% (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 04<sup>th</sup> 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)

9. 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. We do not see any reason to interfere with the impugned order.

10. 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.”*

11. In view of the discussions made above, Original Application lacks merit and same is accordingly **dismissed**.

12. No order as to costs.

13. Pending Misc. Applications, if any, stand disposed of.

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

Dated: 26 April, 2022

Ukt/-