

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 238 of 2020**Thursday , this the 2nd day of December, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

JC 236227 K Ex. Naib Risaldar Ram Lakhan Mishra S/o Shri Rishikesh Mishra R/o- Village –Raghwapur, Post Office-Laxamanpur, District-Pratapgarh, Uttar Pradesh.

.... **Applicant**Ld. Counsel for the : **Shri Shashank Kumar**, Advocate and
Applicant **Shri Prashant Shukla**, Advocate
Versus

1. Union of India, through the Secretary, Department of Defence, New Delhi.
2. The Chief of Army, IHQ of MoD, Sena Bhawan, New Delhi.
3. Office In Charge, The Records Armed Core Pin 900476 C/o 56 APO.
4. The Principal Controller of Defence Accounts (Pension) Draupadi Ghat, Prayagraj/ (Allahabad) U.P.

... **Respondents**Ld. Counsel for the: **Shri Amit Jaiswal**, 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) *The Hon'ble Tribunal may kindly be pleased to set-aside Armed Corps Board No. JC 236227H/DP/Pen dated 28.07.2018, Re-Survey Medical Board dated 04.02.2005 and directed the opposite party No. 3 to*

conduct the Re-Survey Medical Board of the applicant for re-assessment of his disability.

- (B) The Hon'ble Tribunal may kindly be pleased directed the opposite party No.3 to released the disability pension of the applicant, which has been withdrawn by the opposite party No.3 on basis of the Re-Survey Medical Board dated 04.02.2005.*
- (C) To pay arrear of the disability pension along with 18% interest from the date 04.02.2005 of his disability pension withdrawn by the opposite party No.3.*
- (D) To award the cost of the petition in favour of the applicant from the respondents.*
- (E) Any other or further orders which this Hon'ble Tribunal deems fit and proper under the circumstances be granted to the applicant.*

2. Briefly stated, applicant was enrolled in the Armoured Corps of Indian Army on 25.07.1974 and was discharged on 31.07.2000 (AN) in Low Medical Category under Rule 13 (3) Item I (i) (a) of the Army Rules, 1954 on completion of service limit. At the time of discharge from service, the Release Medical Board (RMB) held at 176, Military Hospital on 18.02.2000 assessed his disability '**PIVD L4-5, L3-4 722(a)**' less than 20% (@15-19)% for two years and disability considered to be aggravated by military service. The claim of the applicant was sent to PCDA (P), Allahabad who accepted his disability @ 20% and granted disability element for five years with effect from 01.08.2000 to 17.02.2005 vide P.P.O. dated 18.12.2000. The applicant's Re-Survey Medical Board was held at Military Hospital, Allahabad on 04.02.2005 wherein the

degree of disability has been assessed as Nil for life long. Accordingly, the applicant's claim for grant of disability pension was rejected vide letter dated 05.04.2005. The applicant preferred petition dated 22.06.2007 which too was rejected vide letter dated 30.07.2007. The applicant again preferred petitions which were replied by the respondents vide letters dated 28.07.2018 and 14.01.2019 denying grant of disability element to the applicant. 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 aggravated by military service and applicant was granted disability element @ 20% for five years. However, in the Re-Survey Medical Board held on 04.02.2005 the degree of the applicant's disability has been assessed as Nil and disability pension stopped which is illegal and arbitrary. The applicant submitted several applications and representation dated 20.12.2018 to opposite party No. 3 for conducting another RSMB but nothing materialised. During the course of hearing, Ld. Counsel for the applicant submitted that, at present, on the recommendation of Army Hospital's Doctor the applicant has approached the empanelled Hospital who assessed the applicant's disability more than 90%. In view of above, Ld. Counsel for the applicant submitted that respondents be directed to hold fresh R.S.M.B. for assessment of his degree of disablement. 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 as well as arrears thereof.

4. Learned Counsel for the applicant further submitted that applicant was diagnosed to be suffering from PIVD L-4 L3-4 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 ***Dharambir Singh vs. Union of India*** (Civil Appeal No. 4949 of 2013) treating disability of the applicant attributable to and aggravated by military service and therefore, applicant is entitled for disability pension which has been withdrawn by opposite party No. 3 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. On the other hand, learned counsel for the respondents submitted that applicant was enrolled in the Army on 25.07.1974 and was discharged from service on 31.07.2000 (AN) in Low Medical Category under Rule 13 (3) Item I (i) (a) of the Army Rules, 1954 on completion of service limit in the rank of Naib Subedar after rendering 26 years of service. He opposed the

submissions of learned counsel for the applicant and submitted that since disability of the applicant has been assessed as Nil% for life by Re-Survey Medical Board, hence, applicant became ineligible for grant of disability element on account of disablement being Nil%, 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 including Release Medical Board proceedings as well as Re-Survey Medical Board proceedings. 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 25.07.1974 and was discharged from service on 31.07.2000 in low medical category on completion of service limit. The applicant was in low medical category and his Release Medical Board was conducted on 18.02.2020 at 176 Military Hospital. The Release Medical Board assessed applicant's disability @ 15-19% for two years as aggravated by military service. However, the PCDA (P), Allahabad has accepted

the applicant's disability @ 20% for five years and accordingly, P.P.O. was issued. The Re-Survey Medical Board held on 04.02.2005 at Military Hospital, Allahabad assessed the degree of disability of the applicant as Nil % for life. Hence, respondents have stopped the applicant's disability element of disability pension.

8. Since the applicant has been discharged from service in low medical category on completion of service limit in the rank of Naib Subedar which is maximum 26 years, therefore, it cannot be a case of invalidation, hence, applicant has been discharged from service on 31.07.2000 on completion of 26 years and 6 days of service as per rules and therefore, **Dharamvir Singh's** case (supra) for attributability or aggravation is not applicable in this case as degree of disablement has been assessed as Nil% by RSMB.

9. With regard to submission Ld. Counsel for the applicant that at present on the recommendation of Army Hospital's doctor the applicant has approached the E.C.H.S. empanelled hospital who assessed the applicant's disability more than 90%, therefore, respondents be directed to hold fresh R.S.M.B. for assessment of his disability, we are of the opinion that the R.S.M.B. was held in the year 2005 which assessed the disability as Nil% and now, after the elapse of a considerable time, on the basis of E.C.H.S. empanelled Hospital's assessment of disability of the applicant more than 90%, it cannot be appropriate to direct the respondents

to hold fresh R.S.M.B. Since, the degree of disablement has been considered as Nil% for life by the RSMB, the prayer of the applicant to issue direction to the respondents to hold fresh R.S.M.B. is rejected.

10. Further, 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 by the Re-Survey Medical Board as Nil % for life, applicant does not fulfil the requirement of Regulation 186 (2) of Pension Regulations for the Army, 1961 (Part-I).

11. Further, contrary view to Re-Survey Medical Board dated 04.02.2005 to the extent of holding the applicant's disability at Nil 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)

12. 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.

13. 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.”

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

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

16. No order as to costs.

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

Dated: 02 December, 2021
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