

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 656 of 2020**Thursday, this the 16<sup>th</sup> day of December, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

No. 13880112 Ex. Nk. Rambir Singh, S/o Sri Giriraj Singh, R/o Village – Kukha Garh, PO – Kagarol, District Agra (UP).

**.... Applicant**Ld. Counsel for the : **Shri Parijaat Belaura**, Advocate holding brief  
Applicant of **Shri K.K. Misra**, Advocate  
Versus

1. Union of India, through its Secretary, Ministry of Defence, New Delhi.
2. The Chief of Army Staff, South Block, New Delhi.
3. Officer-in-Charge, ASC, Records, Bengaluru.
4. PCDA (P), Allahabad.

**... Respondents**Ld. Counsel for the: **Shri Adesh Kumar Gupta**, 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:-

- (i) *To quash CDA (P) Allahabad letters No. G3/RA/7/98/9500V dt 18 Dec 98, and No. G3/RA/10/02/22141/IV dt 30 Dec 02 (Annexure A-4 and A-5 to OA).*

- (ii) *Grant 50% disability pension to the applicant as per his entitlement w.e.f. the date of his discharge from service i.3. 15 Jan 2005.*
- (iii) *Thereafter, round of this percentage of disability to 75% and pay the arrears of pension from the date of his discharge as applicable, with interest.*
- (iv) *Any other relief which Hon''ble Court may think just and proper may be granted in favour of the applicant.*

2. Briefly stated, applicant was enrolled in the Army Service Corps of Indian Army on 30.06.1979 and was discharged on 28.06.1996 (AN) in Low Medical Category. At the time of discharge from service, the Release Medical Board (RMB) assessed his disability '**COMPOUND FRACTURE TIBIA (LT)**' @20% for two years and disability considered to be attributable to military service. Accordingly, the applicant was granted disability element of disability pension for two years i.e. from 01.07.1996 to 05.09.1998. The applicant's Re-Survey Medical Board was held in September, 1998 wherein the degree of disability has been assessed less than 20% i.e. 11 to 14% for five years. Accordingly, the disability element of disability element of the applicant was stopped vide letter CDA (P), Allahabad letter No.G3/RA/7/98/9500/V dated 18.12.1998. Thereafter, applicant's Re-Survey Medical Board was held in November, 2002 but the degree of disability is not known by the applicant. However, the applicant claim for grant of disability element was rejected by the CDA (P), Allahabad vide letter No. G3/RA/10/02/22141/IV dated 30.12.2002 on the ground of disability percentage being below 20%. The

applicant preferred representations dated 15.07.2003 and 10.12.2003 but of no avail. 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 attributable to military service and applicant was granted disability element @ 20% for two years. However, in the Re-Survey Medical Board held in September, 1998 the degree of the applicant's disability has been assessed less than 20% (11-14%) for five years and disability element of disability pension stopped which is illegal and arbitrary. Further, in the Re-Survey Medical Board held in November, 2002, as per letter dated 30.12.2002 the applicant's disability has been assessed less than 20% and applicant's claim for grant of disability was rejected. 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 element of disability pension and its rounding off as well as arrears thereof.

4. Learned Counsel for the applicant further submitted that applicant was diagnosed to be suffering from '**COMPOUND FRACTURE TIBIA (LT)**' 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 ***Sukhvinder Singh Vs. Union of India and Others*** (Civil Appeal No. 5605 of 2010, decided on 25.06.2014) and therefore, applicant is entitled for disability

element of disability pension which has been stopped by the respondents 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. Despite several opportunities the respondents have not filed Counter Affidavit, hence, opportunity to file Counter Affidavit was closed vide order dated 07.10.2021. However, during the course of hearing, learned counsel for the respondents submitted that since disability of the applicant has been assessed below 20% by Re-Survey Medical Board, hence, applicant became ineligible for grant of disability element on account of disablement being below 20%, 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. 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 30.06.1979 and was discharged from service on 28.06.1996 in low medical category. The applicant was in low medical category and his Release Medical Board was conducted in the year 1996 at Command Hospital, Udhampur. The Release Medical Board assessed applicant's disability @20% for two years as attributable to military service. Accordingly, applicant was granted disability element of disability pension. The Re-Survey Medical Board held in September, 1998 assessed the degree of disability of the applicant less than 20% i.e. 11-14% for five years. The Re-Survey Medical Board held in November, 2002 also assessed the degree of disability of the applicant less than 20%. Hence, respondents have stopped the applicant's disability element of disability pension.

8. 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 Boards held in September, 1998 and November, 2002 less than 20%, applicant does not fulfil the

requirement of Regulation 186 (2) of Pension Regulations for the Army, 1961 (Part-I).

9. Further, contrary view to Re-Survey Medical Boards held in September, 1998 and November, 2002 to the extent of holding the applicant's disability 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)

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 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.”*

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

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

14. No order as to costs.

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

Dated: 16 December, 2021

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