

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 60 of 2019**Wednesday, this the 14<sup>th</sup> day of July, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)****Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

Pritam Singh Arun, Service No. JC190121-P Rank – Ex Sub Maj S/o Sri Lavkush Ram, R/O Bungalow no. 41, Cantt, Post-Sadar (Cantt), District-Bareilly, State U.P.

..... Applicant

Ld. Counsel for the Applicant: **Shri Lal Chandra Sahu**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi-110011.
2. The Director General Medical Services, Army Headquarter, New Delhi.
3. The Officer In-Charge Sena Seva Corps Abhilekh (Dakshin), ASC Records (South) Bangalore-7.
4. Director, P.S.-4, AG's Branch, Integrated H.Q of M.O.D.(Army) D.H.Q. P.O. – New Delhi-110011.
5. P.C.D.A. Pension Draupadi Ghat Allahabad-14.

..... Respondents

Ld. Counsel for the Respondents : **Shri RKS Chauhan**,  
Central 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) The Hon'ble Tribunal may please set aside the order dated 07.02.2017 passed by respondents on the second appeal of the applicant

(b) The Hon'ble Tribunal may please to issue order or direction Commanding respondents to grant 20% disability pension and disability benefits with rounding off benefits.

(c) The Hon'ble Tribunal may please to issue order or direction to the respondents to pay his 10 months leave encashment.

(d) The Hon'ble Tribunal may please to issue order or direction to the respondents to which this Hon'ble Court may deem fit and proper under circumstances of the case."

2. Briefly stated facts of the case are that applicant was enrolled in the Indian Army on 27.08.1968 and was discharged from service on 31.07.1998 in low medical category and has rendered more than 29 years of service. At the time of discharge his Release Medical Board (RMB) was conducted at Military Hospital, Jhansi on 31.07.1998 which assessed his disability 'Tuberculosis' @ 15-19% for 02 years attributable to military service and disability element for the period from 01.08.1998 to 29.09.2000 was granted to him vide PPO No DE/010755/99 accordingly. Thereafter, Re-Survey Medical Board (RSMB) for the period 30.07.2000 to 27.02.2005 held on applicant assessed his disability @ below 20% and his disability element of pension was stopped. Thereafter, final RSMB was held in the year 2005 which again assessed applicant's disability @ below 20% for life. Disability element of pension claim was submitted but was rejected by PCDA (P) vide order dated 28.08.2000 stating that disability was reassessed at less than 20% for five years w.e.f. 30.07.2000 to 27.02.2005, therefore, disability element of pension is not admissible to the applicant. Decision of the Pension Sanctioning authority PCDA (P), Allahabad was communicated to applicant by Records (South) vide letter dated 19.02.2003 with an advice that applicant to prefer an appeal against the decision within six month

from 10.01.2003, but applicant failed to do so. Thereafter, applicant filed an Original Application No. 107 of 2015 before this Tribunal to decide the second appeal dated 29.04.2010 and to reinstate in service or provide service benefit of 32 years service as Honorary Captain's pension, gratuity, 10 months leave encashment and other benefits. The aforesaid O.A. was decided vide order dated 30.10.2015 with an advice to applicant to submit fresh appeal and directions to the respondents to decide the appeal within three months. Thereafter, on the authority of directions issued by Second Appellate Authority, Resurvey Medical Board (RSMB) of the applicant was carried out on 11.01.2017 in which applicant's disability was assessed @11-14% for life (i.e. below 20%). This O.A. has been filed for grant of disability element of pension.

3. Ld. Counsel for the applicant pleaded that the 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 the applicant was under stress and strain due to rigors of service conditions which may have led to occurrence of the disability. He further stressed that the Medical Board has assessed percentage of disability @ 11-14% 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 percentage of disability element is 11-14% i.e. below 20%, therefore, condition for grant of disability element of pension does not fulfil in terms of Para 26 Chapter-VI of Military Pension, 2008 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. On scrutiny of the documents, we find that proceedings of Re-survey Medical Board (RSMB) have not been filed by either of the parties.

6. On careful perusal of the medical documents, it has been observed that applicant was enrolled on 27.08.1968 and he was found to be suffering with the aforesaid disease during 30.5.1994, i.e. after lapse of 26 years of completion of military service. He was administered treatment at Military Hospital, Namkum and by various Military Hospitals. Resurvey Medical Board conducted on applicant has assessed his disability @ 11-14% (i.e. below 20%) for life for which he is not entitled to disability element of pension in terms of the Hon'ble Apex Court judgment 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.

7. In the above scenario, we are of the view that since the last RSMB conducted on 11.01.2017 has assessed applicant's disability @ 11-14% for life which is less than 20% for life, therefore, he is not entitled to disability element of pension in terms of the judgment of **Wg Cdr SP Rathore** (supra).

8. In view of the above, the Original Application is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

9. No order as to costs.

10. Pending applications, if any disposed off.

(Vice Admiral Abhay Raghunath Karve)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated : 14<sup>th</sup> July 2021

Rspal/\*