

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 750 of 2020**Friday, this the 26th day of March, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No. 14349080F Ex Hav Sidhnath Pandey, S/o Shri Ramjeet Pandey, R/o – 0003N, Jharana Tola Khorabar @ Suba Bazar, District – Gorakhpur, U.P.

..... **Applicant**Ld. Counsel for the Applicant: **Shri SG Singh and
Shri Anand Yadav**

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Integrated Headquarters of the Ministry of Defence (Army) South Block, New Delhi- 110011.
3. Commanding Officer/Office In Charge 212 Rocket Regiment.
4. Chief Record Officer for OIC Records.

..... **Respondents**Ld. Counsel for the Respondents : **Shri Adesh Kumar Gupta,
Central Govt Counsel.****ORDER**

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

- (a). *Issue/ pass an order or direction of appropriate nature whereby commanding the respondents to grant the disability pension to the applicant from 01.04.2003 (Date of retirement of applicant).*

(b). Allow the application with all consequential benefits with exemplary cost.

2. The undisputed factual matrix on record is that applicant was enrolled in the Army on 11.06.1980 and discharged from service on 01.04.2003 in Low Medical Category P2 (Permanent) under Rule 13 (3) of Army Rule, 1954. At the time of discharge, Release Medical Board (RMB) held at 176 Military Hospital, on 31.12.2002 assessed the disability of the applicant “**NON INSUN DEPENDENT DIABETES MELLITUS (ICD NO-E11)**” @ 11-14% and opined to be neither attributable to nor aggravated (NANA) by military service. Applicant has been granted service pension from date of retirement. The applicant approached the respondents for grant of disability pension but the same was rejected vide letter dated 06.02.2004. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant submitted that applicant was enrolled in the Army in medically and physically fit condition and there was no note in his service documents with regard to suffering from any disease prior to joining, therefore any disability suffered by applicant after joining the service should be considered as attributable to or aggravated by military service and he should be entitled to disability pension. Learned Counsel for the applicant further submitted that disability pension claim of applicant has been rejected in a cavalier manner without assigning any meaningful reason. He pleaded that various Benches of the Armed Forces Tribunal have

granted disability pension in similar cases, as such, the applicant is also entitled to disability pension and its rounding off to 50%.

4. On the other hand, learned counsel for the respondents opposed the submissions of learned counsel for the applicant and submitted that since the assessment of the disability element is 11- 14% i.e. below 20% and disability has been found as NANA, therefore, condition for grant of disability element of pension does not fulfil in terms of Para 173 of Pension Regulations for the Army, 1961, and, therefore, the competent authority has rightly denied the benefit of disability element of pension to applicant. He pleaded for dismissal of O.A. However, applicant has been paid all legitimate dues i.e. service pension, death cum retirement gratuity, commutation and retiral dues.

5. We have heard learned counsel for the parties and perused the record. The question in front of us is straight; whether the disability is attributable to/aggravated by military service and, if so, whether it is above or below 20% and also whether applicant was invalidated out of service on account of the disability?

6. As per para 173 of Pension Regulations for the Army 1961, disability element of pension is eligible only when the disability is assessed at 20% or more and accepted as attributable to or aggravated by military service. Since, applicant's disability element is 11-14% and disability has been considered as neither attributable to nor aggravated by military service and since he was not invalidated out

of service on account of this disability, the disability pension claim of the applicant has been rejected.

7. Further, in terms of judgment of the Hon'ble Apex Court 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:-

1. *“..... 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)

8. 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.

9. In addition to above, a bare reading of Regulation 53 (a) of Pension Regulations makes it abundantly clear that an individual being assessed disability below 20% is not entitled to disability element irrespective of disability being attributable to or aggravated by the military service. 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.”

10. In view of the discussions made above, O.A. lacks merit and same is accordingly **dismissed**.

11. Pending Misc. Application, if any, stands disposed of.

12. No order as to costs.

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

Dated: 26 March, 2021

Ukt/-