

Court No. 1 (E-Court)**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 744 of 2021**

Thursday , this the 03rd day of March, 2022

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

No. 6313778 F, Ex. Hav. (Hony. Nb. Sub.) Lekh Raj, R/o Village-Fakirpur, Post Office : Kharsulia, District – Etah (U.P.).

.... **Applicant**

Ld. Counsel for the Applicant : **Shri Vijay Kumar Pandey**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, R.K. Puram, New Delhi.
2. Addl. Dte. Gen. Personnel Services, Adjutant General's Branch, IHQ of MoD (Army), 'A' Wing, Room No. 435, 4th Floor, Sena Bhawan, DHQ P.O., New Delhi-110011.
3. Officer-in-Charge, Signal regiment Records, C/o 56 APO.
4. Principal Controller of Defence Accounts (P), Draupadi Ghat, Allahabad (U.P.)-211014.

... **Respondents**

Ld. Counsel for the Respondents: **Shri D.K. Pandey**, Advocate
 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) *That this Hon'ble Tribunal may kindly be pleased to direct the opposite parties to grant the disability pension to the applicant @100% for life w.e.f. 02.02.1988, and provide the interest on the aforesaid delayed amount of disability pension with 18% p.a. since due date to actual date of payment in the interest of justice.*
- (ii) *That this Hon'ble Tribunal may kindly be awarded the cost Rs.20,20,000/- (Rs. Twenty Lac and Twenty Thousand) to the applicant against the opposite parties.*
- (iii) *That this Hon'ble Tribunal may be pleased to pass any other order or direction which this Hon'ble Court may deem just and proper be passed in favour of the applicant.*

2. Briefly stated, applicant was enrolled in the Regiment of Signal of Indian Army on 02.11.1965 and was discharged on 31.01.1988 (AN) in Low Medical Category under Rule 13 (3) Item III (v) read in conjunction with sub rule 2A of the Army Rules, 1954 after rendering 22 years and 91 days of service. At the time of discharge from service, the Release Medical Board (RMB) held at Military Hospital, Jodhpur on 19.08.1987 assessed his disability '**SCIATICA (RT) 724 (c)**' @20% for two years opined the disability to be **aggravated** by service. Accordingly, the applicant was granted disability element of disability pension for two years from 01.02.1988 to 18.08.1990 vide PPO dated 21.06.1988. Thereafter, on the basis of Re-Survey Medical Board (RSMB) carried out from time to time, applicant was granted disability element @20% upto 28.12.2000. Re-Survey Medical Board held

on 09.10.2000 assessed applicant's disability @20% but pension sanctioning authority i.e. Controller of Defence Accounts (Pensions), Allahabad has accepted applicant's disability less than 20% (11-14%) for five years from 29.12.2000 to 08.10.2005. Accordingly, disability element of disability pension was discontinued vide letter dated 02.02.2001. Last Re-Survey Medical Board held at Military Hospital, Agra on 03.03.2004 assessed applicant's disability less than @20% (11-14%) accordingly, applicant's disability element of disability pension was discontinued vide letter dated 17.04.2004. The applicant preferred Petition dated 25.09.2021 which was also rejected vide letter dated 23.10.2021. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that the disease of the applicant was contracted during the service, hence it has been opined by the RMB as aggravated by military service and accordingly the applicant was granted disability element of disability pension. However, later on last RSMB held on 03.03.2004 has assessed applicant's disability less than 20% (11-14%) and disability element has been discontinued in an arbitrary manner. 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, its rounding off as well as arrears thereof.

4. On the other hand, learned counsel for the respondents opposed the submissions of learned counsel for the applicant and submitted that the disease of the applicant has been cured due to continuous medication and since the assessment of the disability element is less than 20% (11-14%) by the last RSMB held on 03.03.2004, therefore, condition for grant of disability element of pension does not fulfil in terms of Regulation 173 of Pension Regulations for the Army, 1961 (Part-I) and, therefore, the competent authority has rightly discontinued the benefit of disability element of pension to applicant. He pleaded for dismissal of Original Application.

5. We have given our considerable thoughts to both sides and have carefully perused the records including Release Medical Board as well as Re-Survey Medical Boards proceedings. 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. It is undisputed case of the parties that applicant was enrolled in the Indian Army on 01.11.1965 and was discharged from service on 31.01.1988 after rendering 22 years and 91 days of service. The applicant was in low medical category and his last RSMB was conducted on 03.03.2004. The last RSMB assessed applicant's disability less than 20% (11-14%) for life.

7. As per Regulation 173 of Pension Regulations for the Army, 1961 (Part - I), 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. Although the applicant disability has been opined by the RMB as aggravated by military service, but since, applicant's disability element has been decreased to 11-14% (less than 20%) for life, applicant does not fulfil the requirement of Regulation 173 of Pension Regulations for the Army, 1961 (Part-I) for further continuance of disability element of disability pension.

8. Further, contrary view to last RSMB dated 03.3.2004 to the extent of holding the applicant's disability less than 20% (11-14%) 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)

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.

10. In addition to above, a bare reading of Regulation 173 of Pension Regulations for the Army, 1961 (Part-I), makes it abundantly clear that an individual being assessed disability below 20% is not entitled to further 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.”

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

12. Pending application, if any, stands disposed of.

13. No order as to costs.

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

Dated: 03 March, 2022

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