

Court No. 1 (E-Court)**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 387 of 2022**

Monday, this the 10th day of October, 2022

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

No. 13866755-Y NK (T/S) Ram Bachan Pandey (Retd), S/o Shri (Late) Surat Bali Pandey, R/o Village- Pure Bhopi, Post-Vishwanath Ganj, District Pratapgarh (U.P) - 230404.

.... **Applicant**

Ld. Counsel for the : **Shri Shailendra Kumar Singh**, Advocate and Applicant
Shri Mahendra Kumar Singh, Advocate.

Versus

1. Union of India, through the Secretary, Govt. of India, Ministry of Defence (Army), South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of MoD (Army), Post – DHQ, New Delhi-110011.
3. O IC Records, ASC Records (South), PIN - 900493, C/o 56 APO.
4. O/o the PCDA (P), Draupadi Ghat, Allahabad (U.P)-212114.

... **Respondents**

Ld. Counsel for the: **Shri G.S. Sikarwar**, 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. To quash the Respondents letter dated 04 Apr 2021 (Annexure No.A-1) wherein applicant's holding of Resurvey Medical Board has been denied/rejected.
- B. To summon the FIRST RSMB proceedings and set aside the disablement percentage wherein same has been reduced as less than 20% and direct the respondents hold afresh RSMB of the Applicant to re-asses his entitlement of disability element FOR LIFE wef 01 Feb1997.
- C. To direct respondents to pay the arrears of disability wef 01.02.1997 subject to outcome of RSMB along with suitable rate of interest as deemed fit and proper by this Hon'ble Tribunal to meet the end of justice.
- D. Any other relief as considered deemed fit and proper in the circumstances by this Hon'ble Tribunal be awarded in favour of the applicant.

2. Briefly stated, applicant was enrolled in the Indian Army on 17.01.1978 and was discharged on 31.01.1995 (AN) in Low Medical Category on fulfilling the terms of engagement under Rule 13 (3) Item III (i) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at 176 Military Hospital, on 12.08.1994 assessed his disability '**CALCANEAL SPUR (RT) 739**' @20% for two years and disability considered to be aggravated to military service. Accordingly, the applicant was granted disability element of disability pension for two years i.e. from 01.02.1995 to 11.08.1996. Thereafter, on the basis of Re-Survey Medical Board held at Military Hospital, Allahabad on 09.07.1996 disability element of disability pension has been granted @20% from 12.08.1996 to 08.07.1999. The

applicant's Re-Survey Medical Board (RSMB) was held at Military Hospital, Allahabad on 22.03.1999, wherein the degree of disability has been assessed at 11 to 14% (less than 20%) for ten years. Accordingly, the applicant claim for grant of disability element of disability pension was rejected vide letter dated 13.12.1999 which was communicated to the applicant vide letter 05.01.2000. The applicant's RSMB was due in the year 2008. The applicant preferred representation dated 16.12.2020 which too was rejected vide letter dated 04.04.2021. 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 20% for two years as aggravated by military service and applicant was granted disability element @ 20 for two years which was later on extended from 12.08.1996 to 08.07.1999. However, in the RSMB held on 22.03.1999 the degree of the applicant's disability has been assessed at 11-14% (less than 20%) for life and disability element of disability pension stopped which is illegal and arbitrary. He submitted that the disability applicant suffers is a non-curable disease, as such it cannot be reduced subsequently. He submitted that as per Chapter VII – Appendix – I of Guide to Medical Officer, 2002 (Military Pensions) the degree of disablement in case of applicant's disability cannot be assessed less than 20%. He further submitted that He pleaded that various

Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension and its rounding off to 50%.

4. Per contra, learned counsel for the respondents submitted that despite continuous reminders issued on 14.08.2003, 15.10.2003, 13.02.2004, 29.05.2004, 15.07.2004 and 31.07.2004 applicant failed to report to Military Hospital, Allahabad for Re-Assessment Medical Board. He further submitted that since disability of the applicant has been assessed at 11-14% (below 20%) for ten years by Re-Survey Medical Board dated 22.03.1999, hence, the 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.

5. 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 of the applicant is a non-curable disease, whether the disability cannot be assessed less than 20% as per Chapter VII – Appendix – I Guide to Medical Officers, 2002 (Military Pensions), 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%?

6. It is undisputed case of the parties that applicant was enrolled in the Indian Army on 17.01.1978 and was discharged from service on 31.01.1995 in low medical category on fulfilling the terms of engagement. The applicant was in low medical category and his Release Medical Board was conducted on 12.08.1994 at Military Hospital, Allahabad. The Release Medical Board assessed applicant's disability @20% for two years as aggravated by military service. Accordingly, applicant was granted disability element of disability pension. Thereafter, on the basis of Re-Survey Medical Board disability element of disability pension was granted from 12.08.1996 to 08.07.1999. The Re-Survey Medical Board held on 22.03.1999 assessed the degree of disability of the applicant at 11-14% (less than 20%) for ten years. Thereafter, applicant did not report for Re-Assessment Medical Board despite several reminders issued by the respondents. Hence, respondents have stopped the applicant's disability element of disability pension.

7. On perusal of record we find that the submission of Ld. Counsel for the applicant that the disability to which applicant suffers is a non-curable disease, is supported by any medical opinion or authority. As such it cannot be held that the disease to which the applicant is suffers is a non-curable disease.

8. With regard to submission of Ld. Counsel for the applicant that as per Chapter VII – Appendix – I of Guide to Medical Officer, 2002 (Military Pensions) the degree of disablement in case of

applicant's disability cannot be assessed less than 20%, we find that the disease to which applicant suffers has not been mentioned in Chapter VII – Appendix – I of the Guide to Medical Officers, 2002 (Military Pensions).

9. 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 at 11-14% (less than 20%) by the Re-Survey Medical Board held on 22.03.1999, applicant does not fulfil the requirement of Regulation 186 (2) of Pension Regulations for the Army, 1961 (Part-I).

10. Further, contrary view to Re-Survey Medical Board held on 22.03.1999 to the extent of holding the applicant's disability at 11-14% (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 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)

11. 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.

12. 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.”

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

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

15. No order as to costs.

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

Dated: 10 October, 2022

AKD/-