

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BENCH AT NAINITAL)**

Original Application No. 124 of 2022

Monday, this the 5th day of September, 2022

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

No. 4167550H Hav. Udai Chand (Retd.), S/o Shri Mahajan Chand, R/o Village – Ratanpur, P.O. Jhanket, Tehsil – Khatima, District – Udham Singh Nagar, Uttarakhand, PIN-262308.

.... **Applicant**

Ld. Counsel for the : **Shri Sanjay Bhatt**, Advocate and
Applicant **Shri Prem Prakash Bhatt**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, Government of India, New Delhi.
2. Controller of Defence Accounts (Pension), PCDA (P), Allahabad.
3. Records, The Kumaon Regiment, PIN 900473, C/o 56 APO.

... **Respondents**

Ld. Counsel for the: **Shri Rajesh Sharma**, 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 set aside the impugned order dated 14.06.2019 communicated vide letter dated 08.05.2020 whereby the claim of the applicant seeking disability pension has been rejected.*
- II. *to direct the respondents to sanction and release disability pension to the applicant w.e.f. 16.01.2002 along with its arrears with penal rate of interest till the payment of arrears is made and to continue to pay the disability pension in future in accordance with law.*
- III. *to pass any other suitable order as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.*
- IV. *To allow the claim petition with cost.*

2. Briefly stated, applicant was enrolled in The Kumaon Regiment of Indian Army on 13.01.1976 and discharged on 04.12.1991 in Low Medical Category. At the time of discharge from service, the Release Medical Board (RMB) held at 166, Military Hospital on 21.09.1991 assessed his disability '**C. SOM (Rt) 382**' @20% for two years and disability considered to be attributable to military service. However, Principal Controller of Defence Accounts (Pension) [PCDA (P)], Allahabad granted disability pension @20% for five years with effect from 05.12.1991 to 04.10.1996. The applicant's Re-Survey Medical Board (RAMB) was held in the year, wherein the degree of disability has been assessed at 11 to 14% (less than 20%) for life, however, PCDA (P), Allahabad re-assessed his disability @11-14 (less than 20%) for five years with effect from 05.10.1996 to 16.01.2002 vide their letter dated 03.12.1997. Thereafter, in the year 2001 again Re-Survey Medical Board was conducted which assessed applicant's

disability @11-14 for life. The applicant preferred Appeal which too was rejected which was communicated to the applicant vide letter dated 19.08.2004. After laps of 14 years, the applicant preferred an application dated 27.11.2018 for conducting Re-Survey Medical Board. Accordingly, Re-Survey Medical Board was held which assessed applicant's disability @15-19% (less than 20%). Accordingly, applicant's claim for the grant of disability pension was rejected vide letter dated 14.06.2019. The applicant preferred an application which too was rejected vide letter dated 08.05.2020. 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 five years. However, in the Re-Survey Medical Board held in the years 1996 and 2001 the degree of the applicant's disability has been assessed at 11-14% (less than 20%) for life and disability pension stopped which is illegal and arbitrary. In the year Re-Survey Medical Board held in the year 2019 the degree of disability of the applicant's has been wrongly assessed @15-19 (less than 20%). The He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension a.

4. Learned Counsel for the applicant further submitted that applicant was diagnosed to be suffering from '**C. SOM (Rt) 382**' 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 pension which has been stopped by the respondents in very illegal and arbitrary manner. He pleaded to release disability pension of the applicant in the interest of natural justice.

5. Per contra, learned counsel for the respondents submitted that since disability of the applicant has been re-assessed at 11-14% (below 20%) and 15-19% for life by Re-Assessment Medical Boards held in the years 1996, 2001 and 2019, 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 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 pension 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 13.01.1976 and was discharged from service on 04.12.1991 in low medical category. The applicant was in low medical category and his Release Medical Board was conducted on 05.10.1991 at 166 Military Hospital, C/o 56 APO. The Release Medical Board assessed applicant's disability @20% for two years as attributable to military service. However, applicant was granted disability pension for five years by the PCDA (P), Allahabad. The Re-Survey Medical Boards held in the year 1996 and 2001 assessed the degree of disability of the applicant at 11-14% (less than 20%) for life and Re-Survey Medical Board held in the year 2019 assessed the degree of disability of the applicant 15-19% (less than 20%) for life. 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 at 11-14% (less than 20%) by the Re-Survey Medical Board held in the year 1996, 2001 and @15-19% by the Re-Survey Board held in the year 2019, 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-Surveyed Medical Boards held in the years 1996, 2001 and 2019 to the extent of holding the applicant's disability at 11-14% (less than 20%) and at 15-19% respectively are 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)

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: 05 September, 2022

AKD/-