



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



D.B. Civil Writ Petition No. 6739/2024

1. Union Of India, Represented By Secretary, Ministry Of Defence, South Block, New Delhi- 110011.
2. The Principal Controller Of Defence Accounts, Draupadi Ghat, Allahabad (Up), Pin- 211014.
3. The Oic Records, The Grenadiers, Post Bag No.17, Jabalpar (Mp)- 482001.

----Petitioners

Versus

No. 2648428 Ex- Hav And Hony Nb/sub Raghbir Singh S/o Shri Norang Ram, Aged About 77 Years, R/o Village And Post- Ghandawa, Tehsil- Chirawa, District- Jhunjhunu (Rajasthan).

----Respondent

For Petitioner(s) : Mr. Mohit Balwada

For Respondent(s) :

**HON'BLE THE CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA
HON'BLE MR. JUSTICE ANAND SHARMA**

Order

08/04/2025

1. Heard.
2. This petition under Article 227 of the Constitution of India is preferred against the order dated 26.04.2022 passed by the Armed Forces Tribunal, Regional Bench, Jaipur whereby the Tribunal has allowed the OA and directed to grant benefit of Disability Element of Disability Pension @ 20% duly rounded off to 50% w.e.f. 25.03.1998 for life along with direction for payment of arrears within a period of four months as also interest @ 8% per annum till the actual date of payment.



3. Submission of learned counsel for the petitioners is that the learned Tribunal acted with perversity and committed serious error of jurisdiction as well in allowing the OA ignoring that the medical opinion on the basis of examination held on 12.03.1998 was again assessed by Medical Board on 05.04.2003 and disability was assessed at less than 20% (11 to 14%) for life. In view of the decision of the Hon'ble Supreme Court in the case of **Union of India and Ors. Vs. Wing Commander S.P. Rathore (Civil Appeal No. 10870/2018)** decided on 11.12.2019, once disability is reduced to 20%, disability pension is not admissible under the Regulation 37(a) of the Defence Service Regulations Pension Regulations for the Air Force, 1961. Since the provisions contained in Regulation 37(a) of the Defence Service Regulations Pension Regulations for the Air Force, 1961 are *pari materia* para 186(2) of the Pension Regulation for the Army under the similar rules of Army 1961, the order of the Tribunal is not only perverse but is in excess of jurisdiction.

4. It appears that the RSMB examined the respondent on 12.03.1998 and assessed the disability of the respondent at 20% for life. The MA(P) at the PCDA(P) however, reassessed the same at less than 20% i.e. 11 to 14% for five years w.e.f. 25.03.1998 to 11.03.2003.

5. Applying the ratio laid down by the Hon'ble Supreme Court in the case of **Ex Sapper Mohinder Singh Vs. UOI (Civil Appeal No. 164 of 1993)** decided on 14.01.1993, the learned Tribunal held that the accounts department does not have authority or any expertise to sit over the assessment made by the Medical Board with regard to extent and period of disability.



6. PCDA(P) reassessment made on 05.04.2003, in our opinion, was not permissible in law because the Chief Controller of Defence Accounts (Pension) did not have any expertise to sit over the correctness of opinion of the Medical Board held on 12.03.1998.

The decision of the Hon'ble Supreme Court in the case of **Union of India Vs. Wing Commander S.P. Rathore (supra)** is distinguishable on facts. That was a case where it was held that the disability element is not admissible if the disability is less than 20% and in such a case, there would be no question of rounding off. However, in the present case, on facts, it has been found that the action of reducing and declaring the disability to less than 20% itself was contrary to the decision of the Hon'ble Supreme Court in the case of **Ex Sapper Mohinder Singh Vs. UOI (supra)**. The aforesaid judgment is clearly distinguishable.

7. In the result, we do not find any error of jurisdiction or any perversity in the order passed by learned Armed Forces Tribunal, Regional Bench, Jaipur and the writ petition is accordingly, dismissed.

(ANAND SHARMA),J

(MANINDRA MOHAN SHRIVASTAVA),CJ

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