

E -Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 777 of 2020**Wednesday, this the 11th day of August, 2021**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 5849859-Y Rfn Prem Bahadur Chetri (Retd), S/o Shri Pirtha Bahadur Chhetri, Permanent Resident of Vill- Sukhnagar, Post- Butwal, Dist- Rupandehi, State- Nepal and presently residing at K-67/84-B2 Nati Imli, Dist- Varanasi (U.P.) 221001.

..... Applicant

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

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi- 110011.
2. The Chief of Army Staff, IHQ of Ministry of Defence (Army), South Block, New Delhi- 110011.
3. Military Attache (Records), Record Office Indian Embassy, Kathmandu (Nepal), C/o Gorkha Recruiting Depot, Kunraghat, PIN- 901108, C/o 56 APO.
4. OIC Records 39 Gorkha Rifles, PIN- 900445, C/o 56 APO.
5. PCDA (Pensions), Draupadhi Ghat, Allahabad (UP)-211014.

.....Respondents

Ld. Counsel for the Respondents. : **Shri GS Sikarwar,
Central Govt. Counsel**

ORDER**“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs.

- (A). *To quash and set aside the Respondent No 4 letter 5849859Y/Dossier/DP/NE dated 24 Feb 2018. (Annexure A-1 of instant OA & impugned order).*
- (B). *To quash the disability re-assessment of 6-10% in RMB made by respondent without physical examination of the applicant and to treat earlier assessment of 30% of life as final and grant of disability pension to the applicant in terms of Hon’ble Apex Court Orders in Dharmvir Singh and Sukhwinder Singh Case.*
- (C). *To issue/pass an order or directions of appropriate nature to the respondents to grant disability pension @ 30% for life (rounded off to 50% for life in terms of Govt of Indiaa letter dated 31 Jan 2001 to the applicant from the date of his discharge from service (01.05.2009) and to pay the arrears accrued thereupon along with suitable rate of interest as deem fit by this Hon’ble Tribunal.*
- (D). *It is prayed that exemplary costs must be imposed on the respondents for their wrong advice to seek discharge and also for reassessing the applicant’s previous assessment of 30% for life to arbitrary assessment of 6-10% for life without physical examination of the applicant.*
- (E). *Any other relief as considered proper by the Hon’ble Tribunal be awarded in favour of the applicant.*

2. Briefly stated facts of the case are that applicant was enrolled in the Indian Army on 01.12.1997 and was discharged from service in Low Medical Category A2 (Permanent) for disability ‘**AMPUTED (LT) RING**

FINGER' on 01.05.2009 after rendering 11 years and 05 months of service in low medical category under Army Rule 13 (3) item III (iv) on his own request before fulfilling the conditions of enrolment of service. Release Medical Board (RMB) held at Military Hospital, Jamnagar (Gujrat) on 28.04.2009 considered the disability as attributable to military service and assessed the disability @ 6-10% for life. Disability pension claim of the applicant was rejected by the respondents vide order dated 24.02.2018 being less than 20%. It is in this perspective that the applicant has preferred the present Original Application.

3. Ld. Counsel for the applicant submitted that at the time of enrolment, the applicant was found mentally and physically fit for service in the army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in army. On 18.03.2001, while posted to D Company of 32 Rashtriya Rifles applicant was detailed in an escort party for ammunition collection and deposition of used packing material to the Battalion HQ wherein he suffered a severe injury **'AMPUTED (LT) RING FINGER'**. Court of Inquiry held on 19.06.2001 found the injury sustained by the individual on bonafide military duty and considered as attributable to military service in Counter Insurgency Operational Area (Kupwara) (J&K). In second Re-categorisation Medical Board conducted on 16.03.2005 at Military Hospital, Varanasi applicant was placed in low medical category A2 (Permanent) for two years wef 30.07.2005 and percentage of disability was 30%. On 15.09.2007 applicant's disability was assessed 30% for two years. On 24.12.2007 a show cause notice was issued to applicant by Officiating Commanding

Officer for terminating his service being in low medical category. Applicant requested for completing pensionable service but he was advised to seek discharge on medical ground and all benefits will be extended to him since his injury was attributable to military service. Applicant applied for discharge and his discharge was sanctioned. Release Medical Board of the applicant was held and disability of the applicant was assessed 6-10%. Applicant was discharged from service on 01.05.2009 under Rule 13 (3) III (iv) after rendering 11 years and 05 months so service. His claim for grant of disability was rejected by the respondents vide letter dated 24.02.2018 stating that he is not entitled any pension since he has not completed 15 years of service and he was discharged on his own request. Learned counsel for the applicant submitted that if the applicant was not fit for army duty, he should have been invalided out from service. He submitted that since the applicant was suffering from the disability **'AMPUTED (LT) RING FINGER'** while performing military duty and the RMB has opined the disability to be aggravated by military service, therefore the applicant is entitled to disability pension. He further pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension as well as arrears thereof.

4. Rebutting arguments of Ld. Counsel for the applicant, Ld. Counsel for the respondents submitted that the disability pension claim of the applicant was rightly rejected because the applicant was discharged on his own request and though the RMB had conceded the disability as attributable but it had assessed the degree of disablement @ 6- 10% for life which is less than the

minimum requirement of 20% for grant of disability pension and therefore the disability pension is inadmissible to the applicant.

5. We have heard Ld. Counsel for the parties and perused the material placed on record.

6. The question before us to decide is whether applicant discharged on his own request and his disability has been assessed below 20% is entitled disability pension and its rounding off or not?

7. Applicant was discharged from service before completion of terms of engagement in low medical category, his discharge from service should be considered as invalidation from service as has been held by the Hon'ble Apex Court judgment in the case of ***Sukhwinder Singh vs Union of India & Ors*** reported in (2014) STPL (WEB) 468 SC. In our view, the case is fully covered by the aforesaid decision of Hon'ble the Apex Court in which the substance of what has been held is that even if an individual is assessed to be less than 20%, the *“disability leading to invaliding out of service would attract the grant of fifty per cent disability pension.”* Para 9 of the judgment, being relevant is quoted below.

“9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any

*recompense, this morale would be severely undermined. Thirdly, there appears to be no provisions authorizing the discharge or invaliding out of service where the disability is below twenty per cent and seems to us to be logically so. Fourthly, wherever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent. **Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension.***

8. It is a fact that before 2006 i.e. pre-VI Central Pay Commission, as per the rules existing at that time, pre-mature discharge at own request made a soldier ineligible for disability pension. However, it is also a fact that with effect from 01.01.2006, as per recommendation of Sixth Central Pay Commission, soldiers proceeding on pre-mature discharge are also eligible for disability pension. This aspect of VI Central Pay Commission whereby Pre-mature discharge cases also become eligible for disability pension was clarified by Ministry of Defence letter No. 16(5)/2008/D (Pen/Policy) dated 29.09.2009 and Principal Controller of Defence Accounts (Pensions), Allahabad Circular No. 433 dated 25.03.2010.

9. The law on the point of rounding off of disability pension is no more RES INTEGRA in view of Hon'ble Supreme Court judgment in the case of **Union of India and Ors vs Ram Avtar & ors** (Civil appeal No 418 of 2012 decided on 10th December 2014). In this Judgment the Hon'ble Apex Court nodded in disapproval of the policy of the Government of India in granting the benefit of rounding off of disability pension only to the personnel who have been invalided out of service and denying the same to the personnel who have retired on attaining the age of

superannuation or on completion of their tenure of engagement. The relevant portion of the decision is excerpted below:-

“4. By the present set of appeals, the appellant (s) raise the question, whether or not, an individual, who has retired on attaining the age of superannuation or on completion of his tenure of engagement, if found to be suffering from some disability which is attributable to or aggravated by the military service, is entitled to be granted the benefit of rounding off of disability pension. The appellant(s) herein would contend that, on the basis of Circular No 1(2)/97/D (Pen-C) issued by the Ministry of Defence, Government of India, dated 31.01.2001, the aforesaid benefit is made available only to an Armed Forces Personnel who is invalidated out of service, and not to any other category of Armed Forces Personnel mentioned hereinabove.

5. We have heard Learned Counsel for the parties to the lis.

6. We do not see any error in the impugned judgment (s) and order(s) and therefore, all the appeals which pertain to the concept of rounding off of the disability pension are dismissed, with no order as to costs.

7. The dismissal of these matters will be taken note of by the High Courts as well as by the Tribunals in granting appropriate relief to the pensioners before them, if any, who are getting or are entitled to the disability pension.

8. This Court grants six weeks' time from today to the appellant(s) to comply with the orders and directions passed by us.”

10. In the instant case, there is no dispute that the applicant's disability has been assessed @ 6-10% for life and has been conceded as attributable to military service. This fact has also been accepted by the respondents. Thus in view of the law settled by the Hon'ble Apex Court on this matter, we are of the considered opinion that the applicant is entitled for the benefit of rounding off in terms of Government letter dated 31.01.2001 and the disability element of the pension @ 10% treated as 20% for life shall stand rounded off to 50% for life from three years prior to filing of O.A.

11. In view of the above, the Original Application deserves to be allowed, hence **allowed**. The impugned order rejecting disability pension claim is set aside. The respondents are directed to grant disability element of the pension @ 10% deemed to be 20% for life to the applicant, which shall stand rounded off to 50% for life from three years prior to filing of O.A. The O.A. was filed on 16.12.2020. The entire exercise shall be completed by the respondents within four months from the date of production of a certified copy of this order, failing which the respondents shall be liable to pay interest at the rate of 8% to the applicant on the amount accrued till the date of actual payment.

12. No order as to costs.

13. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 11 August, 2021

Ukt/-