

RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

COURT NO 1

O.A. No. 268 of 2012**Wednesday, this the 10th day of Feb, 2016****“Hon’ble Mr. Justice Virendra Kumar DIXIT, Judicial Member
Hon’ble Lt Gen Gyan Bhushan, Administrative Member”**

Harishanker Lawaniya, Ex- Rect, Sepoy No. 136953267 aged about
37 years S/o Sri Mahesh Chandra and R/o Gahari Kalan Post Office –
Kedia Pradhan District – Agra

-----**Applicant**

Versus

1. Union of India through Senior Accounts Officer, Department of Defence, 227, B Wing, Sena Bhawan, New Delhi.
2. Record Officer, Record of Brigade of Guards, Kamtee – 441001.
3. C.C.D.A. (Pension) Ministry of Defence, Government of India, Allahabad.

...Respondents**Ld. Counsel appeared for the
Petitioner**

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**Shri A.C. Mishra,
Advocate****Ld. Counsel appeared for the
Respondents**

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**Shri Sidharth Dhaon,
Advocate**

ORDER

“Per Se Hon’ble Virendra Kumar Dixit, Judicial Member”

1. Present Original Application has been filed on behalf of the Applicant under Section 14 of the Armed Forces Tribunal Act, 2007, and he has claimed the following reliefs:-

"1. That the Hon'ble Court may graciously may be please to direct the respondents to call the petitioner for his re-medical examination at any Medical Hospital preferably Agra which is nearer to his home, for re-Medical Examination and if is found fit, he may be provided any alternate Job suiting to his Medical Standard at early date.

2. That the applicant further prays for that if due to his bad luck he is not found fit for any alternate job under the respondents, his invalid pension may be stored as provide in the Military Rules, so that he may maintained the family and educate his children.

3. Any other relief as deem fit in the eyes of the Hon'ble Tribunal, may also be allowed to the applicant, in the interest of justice alongwith cost."

2. The facts in short are that the Applicant was enrolled in the Indian Army on 26.06.1993 and was discharged from service under item No IV, Rule 13 (3) of the Army Rules, 1954 on 06.11.1993 on the ground of being in low medical category. The Medical Board which assessed his disability for "PULMONARY TUBERCULOSIS" as 100% for one year and opined that the disability as attributable to military service. The disability pension was granted disability to the Applicant with effect from 07.11.1994 to 07.09.1995. The Applicant was again granted disability pension from 08.11.1995 to 07.09.1996 on the basis of disability assessed as 50% by the Re Survey Medical Board and based on the subsequent Medical Board, again the Applicant was granted disability pension for two years with effect from 08.11.1996 to

22.08.1998 on disability being assessed as 20%. Resurvey Medical Board was then held at Military Hospital Agra on 07.04.1998 and this time, his disability was assessed as less than 20% (6% to 10%) for life and thus, his disability pension was discontinued vide order dated 08.10.1998. Aggrieved, the Applicant preferred appeal which was rejected vide order dated 01.05.2000. The Resurvey Medical Board was again held on 03.05.2003 which assessed the disability of the Applicant as less than 20% for life. On his claim for disability pension being forwarded, the PCDA (P) Allahabad rejected his claim vide order dated 20th Nov 2003. It is stated in the counter affidavit that the Applicant despite being advised, did not prefer any appeal against the decision of the PCDA (P) Allahabad. The Applicant then preferred representation to the authorities concerned dated 18.09.2011 seeking alternative job for maintaining his family to which reply was received on 17.12.2011 advising the Applicant to file Appeal. He then sent an appeal dated 16.01.2012 to which reply was received vide letter dated 03.03.2012. Aggrieved, the Applicant filed the instant O.A.

3. To be precise, the submission of the Learned Counsel for the Applicant is that he was denied disability pension on mere ground that it was less than 20% though it was opined to be connected with Military Service.

4. **Per contra**, learned Standing counsel emphatically propped up the decision rejecting claim of disability pension referring to Para 173 of the Pension Regulation 1961 (Part-I) which postulated that the disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service and is assessed at 20 per cent or over. The Learned Counsel also adverted attention to the decision of Hon'ble

The Apex Court in the case of Shri A.V.Damodaran in SLP (Civil) No 23727 of 2008 in which it was held that "the Medical Board is an expert body and its opinion is entitled to be given weight, value and credence." He also submitted that since there was improvement in the disability and that it was assessed between 6 to 10%, the PCDA (P) rightly discontinued the disability pension. In so far as relief for alternative job is concerned, it is submitted that there is no provision under the Army Act to provide alternative job.

5. We have heard learned counsel for the parties at length. Have also gone through the records and materials on record and examined the rival submissions in all its pros and cons.

6. In so far as relief for alternative job is concerned, we do not propose to go into that aspect and thus we confine ourselves to the question whether Applicant is entitled to disability pension or not on account of his disability being assessed as less than 20%.

7. On the vexed question of attributability, we would first of all refer to the decision of Hon'ble the Apex Court in **Dharamvir Singh Vs. Union of India and Ors** reported in **(2013) 7 Supreme Court Cases 316**, in which Hon'ble The Apex Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers, the ratios flowing from the aforesaid decision can well be imported for adjudication of the present case. The legal position emerging from the same may be summed up in the following words.

"29.1. Disability pension to be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether

a disability is attributable to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).

29.2. A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service [Rule 5 read with Rule 14(b)].

29.3. The onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).

29.4. If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service [Rule 14(c)]. [pic]

29.5. If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service [Rule 14(b)].

29.6. If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons [Rule 14(b)]; and 29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 - "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."

8. Whether the individual should be granted disability pension on the ground of his being assessed as less than 20% is a question which has been settled by a catena of decision. The relevant decision on the point decided by Hon'ble The Apex Court is **Sukhvinder Singh** reported in **2014 STPL (WEB) 468 SC**, in which Hon'ble The Apex Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers. In the

9. Having heard the learned Counsel for the parties, we converge to the view that the controversy involved in this case is squarely

covered by the Judgment of Hon'ble the Supreme Court in the case of **Sukhvinder Singh (supra)**, wherein Hon'ble The Apex Court ruled that "wherever a member of the Armed Forces is invalidated out of service, it perforce has to be assumed that his disability was found to be above twenty per cent." Hon'ble the Apex Court further ruled that "as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension". The relevant portion of the observations of Hon'ble The Apex Court in the case of **Sukhvinder Singh (supra)** are quoted below.

"7.Therefore, on both counts viz. disability to the extent of less than 20 per cent, as well as it having been occurred in the course of Military Service, the findings have to be in favour of the Appellant.

8. Paragraph 183 of the Pension Regulations for the Army 1961, (Part-I) stipulates as under:-

"183. The disability pension consists of two elements viz. Service element and disability element which shall be assessed as under:

(1) Service element

(2) Disability element

In case where an individual is invalidated out of service before completion of his prescribed engagement/service limit on account of disability which is attributable to or aggravated by military service and is assessed below 20 percent, he will be granted an award equal to service element of disability pension determined in the manner given in Regulation 183 Pension Regulations for the Army Part-I(1961). "

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 authorising 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.

10. In view of our analysis, the Appellant would be entitled to the Disability Pension. The Appeal is, accordingly, accepted in the above terms. The pension along with the arrears be disbursed to the Appellant within three months from today.

11. As there is no representation on behalf of the Appellant, a copy of this Order be dispatched to the Appellant at the given address. There will be no order as to costs."

10. It would thus appear that Hon'ble The Apex Court categorically held that *"whenever 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."* And further that *a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension.*" In the above conspectus, we are of the considered view that the impugned orders dated 08.10.1998, 01.05.2000 and 2011.2003 passed by the Respondents rejecting his claim for disability pension were not only unjust, illegal but also were not in conformity with rules, regulations and law. The impugned orders passed by the Respondents thus deserve to be set aside and the Applicant is held entitled to disability pension @ 20% for life from the date the disability pension was discontinued which would stand rounded off to 50% with interest at the rate of 9% per annum in terms of policy letter dated 31.01.2001 and the decisions of Hon'ble The Apex Court in **Sukhvinder Singh** (supra) and **Union of India Vs Ram Avtar** rendered in **Civil Appeal No 418 of 2012 dated 10th December 2014.**

ORDER

11. Thus in the result, the Original Application succeeds and is allowed. The impugned orders dated 08.10.1998, 01.05.2000 and 20.11.2003 passed by the Respondents are set aside. The applicant is entitled for disability pension @ 20% for life from the date the disability pension was discontinued which would stand rounded off to 50% in terms of policy letter dated 31.01.2001 the case of **Sukhvinder Singh** (supra) and **Union of India Vs Ram Avtar** rendered **in Civil Appeal No 418 of 2012 dated 10th December 2014**. The Respondents are also directed to pay arrears of aforesaid disability pension alongwith interest @ 9% per annum till the date of payment. The Respondents are directed to give effect to the order within three months from the date of receipt of a certified copy of this order.

12. No order as to costs.

(Lt Gen Gyan Bhushan)
Member (A)

(Justice V.K. DIXIT)
Member (J)

Date: .02.2016

MH/-