

**Court No.1**

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

**Original Application No. 210 of 2012**Monday, this the 08<sup>th</sup> day of February, 2016**Hon'ble Mr. Justice V.K. DIXIT, Member (J)**  
**Hon'ble Lt Gen Gyan Bhushan, Member (A)**

No. 4043628 Ex-RFN Alam Singh, aged 69 years, son of Late Shri Nator Singh, resident of VIII-Rawal Nagar, Post-Gauchar, Patti Ranigarh, District Chamauli Garhwal (U.K)

..... Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi-110011.
2. Chief of Army Staff, Integrated Headquarters, Ministry of Defence, South Block, New Delhi- 110011.
3. Officer In Charge, Records Garhwal Rifles Landsdowne, Pin 900400, C/O 56 A.P.O.
4. Additional Directorate General, Personnel Services (PS-4), Adjutant Generals Branch, Integrated Headquarter of MoD (Army), DHQ PO, New Delhi -110011.
5. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (UP).

..... Respondents

**Ld. Counsel appeared for the Applicant****- Shri S.K. Singh  
Advocate  
&  
Shri V.P. Pandey  
Advocate****Ld. Counsel appeared for the Respondents****- Shri D.K.Pandey,  
Central Government  
Counsel**

**ORDER**

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

1. The instant 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 reliefs as under:-

*“(a) To quash or set aside the PCDA (P) Allahabad Letter dated 01 Mar 1967 (Annexure CA-5 of the Counter Affidavit).*

*(b) To quash or set aside the Government of India, Min of Defence letters dated 30 Dec 1967 (Annexure CA-8 of the Counter affidavit and 06 Mar 1971 (Annexure CA-9 of the Counter Affidavit).*

*(c) To quash or set aside the Defence Pension Adalat Dehradun Letter dated 06 Sep2001 (Annexure CA-10 of the Counter Affidavit).*

*(d) To quash or set aside the Garhwal Rifles letter dated 27 Jan 2010 (Impugned Order & Annexure A-1` of Original Application).*

*(e) to issue order or direction to respondent to release the percentage of disability by conducting Re-survey Medical Board.*

*(f) to issue order or direction to respondent setting aside/quashing the medical board proceeding of the Applicant on 15 Sep1966 being not in consonance with disability suffered by summoning the same.*

*(g) to issue order or direction to pay service element/war injury pension w.e.f 15 Sep 1966.*

*(h) Any other relief as considered proper by the Hon’ble Tribunal be awarded in favour of the Applicant.”*

2. The facts of the case in short are that the Applicant was enrolled in the Indian Army on 24.07.1963 and was discharged from service on 15.09.1966 under Rule 13 (3) III (iii) of Army Rule01954 for the disability “G.S.W. Right Index Finger”. The Medical Board held on 28.07.1966 assessed his disability as 15 to 19% (Less than 20%)

permanent and considered it attributable to service but not aggravated by service. The total service rendered by the Applicant was three years, two months and twenty one days. The claim for disability pension was rejected by the PCDA (P) Allahabad vide communication dated 07.03.1967 on the ground that the disability was less than 20%. The first appeal filed against the decision of the PCDA stood rejected vide communication dated 30.12.1967. The second appeal was also rejected vide communication dated 06.03.1971. The Applicant then preferred representation before the Raksha Pension Adalat Dehradun which was also rejected vide communication dated 06.09.2001.

3. Learned Counsel sought dismissal of the Original Application submitting that the delay of more than 40 years was huge and inordinate and the Application merited to be dismissed on ground of delay and laches. The delay was condoned by this Court vide order dated 17.4.2014. The Applicant sought amendment to be incorporated in the Original Application which was allowed vide order dated 03.12.2015.

4. 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 attributable to Military Service. He also drew attention to the opinion of Surgical Specialist which clearly opined that the Applicant would not be able to achieve useful function of his fingers and with advancement of age this un-usefulness would exaggerate.

5. **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 from the very inception, the Applicant claimed disability pension and war injury pension has been subsequently added as an after-thought. The claim put forth before the PCDA (P) was for disability pension which was rejected and subsequently appeals were against the decision of the PCDA (P) rejecting the claim for disability pension.

6. In the instant case, it brooks no dispute that the Applicant suffered wounds, while he was posted at AAJLLA post of Barmer Section of Rajasthan on 17.12.1965. It also brooks no dispute that the injury suffered by the Applicant was attributable to military service. In the circumstances, the short question that remains for consideration, is whether the Applicant would be entitled to disability/war injury pension vis a vis the disability assessed as less than 20%.

7. We have heard learned counsel for the parties and perused the records thoroughly. From a close scrutiny of the record, it would clearly transpire that from the very beginning, the case of the Applicant was for grant of disability pension which was rejected initially by the PCDA (P) Allahabad, then both his appeals were also rejected. It would further transpire that the amendment was moved and allowed by order dated 03.12.2015 and it was by way of this amendment that the Applicant introduced the relief for war injury pension. In the facts

and circumstances of the case, we are of the considered view that no case for war injury pension is made out at this stage. The situation would have been different, had the Applicant had claimed the war injury pension from the very inception. Hence, we propose to proceed further taking the case of the Applicant for disability pension.

8. In connection with the above plea, we would like to refer to the decisions of Hon'ble The Apex Court as cited by Learned Counsel for the Applicant in the case of **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.

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 invalided 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 invalidated 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. In the above conspectus, we are of the considered view that the impugned orders dated 07.03.1967 (Annexure CA 5), 30.12.1967 (Annexure C.A 8), 06.03.1971 (Annexure CA 9) and 06.09.2001 (C.A.10) 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 which would stand rounded off to 50% as per decision of **Sukhvendra Singh (supra)**. The Applicant also deserves interest at the rate of 9% per annum.

11. At this stage, the Learned Counsel for the Respondents at this stage submitted that it should be restricted to three years prior to filing of the Original Application on the ground of delay and laches. It would appear that there was a delay of more than 41 years in filing of the Original Application. The delay has been condoned vide order of the Court dated 17.4.2014. Besides, we have considered this submission in the light of the various decisions of Hon'ble The Apex Court and looking into the services rendered by the Applicant in the Indian Military and regard being had to the facts and circumstances of the case and also looking into the nature of the case, we are of the considered view that the contention of the Learned counsel for the Respondents has no legs to stand. Looking to the facts and circumstances that the Applicant has knocked every door and has suffered a lot due to financial straits, we are of the considered view that the Applicant is entitled to arrears to be paid from the date as determined by the Policy decision of the Govt vide Circular dated 31.1.2001.

#### ORDER

12. Thus in the result, the Original Application succeeds and is allowed. The impugned orders dated 07.03.1967 (Annexure CA 5), 30.12.1967 (Annexure C.A 8), 06.03.1971 (Annexure CA 9) and 06.09.2001 (C.A.10) passed by the Respondents are set aside. The

Applicant is entitled for disability pension @ 20% for life from the date as decided by the policy decision of the Govt as contained in Circular letter dated 31.01.2001 which would stand rounded off to 50% in terms of Sukhvinder Singh and Ram Avtar (supra). The Respondents are also directed to pay arrears of aforesaid disability pension in terms of policy decision as contained in Circular dated 31.01.2001 till the date of payment within a period of three months from the date of production of a certified copy of this order. In case, the payment of arrears is not made within the stipulated period, the Applicant would be entitled to interest at the rate 9% per annum on the payment of arrears. 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.

13. However, the Applicant would be at liberty to prefer representation before the authorities concerned for the relief of war injury pension.

14. No order as to costs.

(Lt Gen Gyan Bhushan)  
Member (A)

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

Date: .02.2016

**MH/-**