

**Court No.1**  
**Reserved Judgment**

ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW

**Original Application No. 326 of 2013**

Thursday this the 5<sup>th</sup> day of November, 2015

**Hon'ble Mr. Justice V.K. DIXIT, Member (J)**  
**Hon'ble Lt Gen Gyan Bhushan, Member (A)**

No.2984484W Ex Nk Lalla Singh aged about  
46 years son of Sri Pooran Singh resident of  
Village Nagla Nain P.O. Fatehgarh  
District Farrukhabad. U.P. PIN-209601.

..... Applicant

By Legal Practitioner Shri V.P. Pandey, Advocate

Versus

1. Union of India through the Secretary,  
Ministry of Defence New Delhi.
2. Chief of Army Staff Integrated Head Quarter  
Ministry of Defence South Block New Delhi.
3. Officer Incharge, Records The Rajpoot Regiment  
PIN-900427 C/O 56 APO.
4. Addl. Directorate General, Personnel Services, (PS-4)  
Adjutant Generals Branch Integrated Head Quarter  
of MoD (Army) DHQ PO New Delhi-11.
5. Principal Controller, Defence Account (Pension)  
Draupadi Ghat, Allahabad.

..... Respondents

By Legal Practitioner Mrs. Deepti Prasad Bajpai, Learned  
Counsel for the Central Government

**ORDER**

**“Hon’ble Lt Gen Gyan Bhushan, Member (A)”**

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 main reliefs as under:-

- “(i) to set aside/quash the impugned order dated 24 July, 2013 and order dated 24 Sept. 2009 passed by respondent no. 4 as contained in Annexure No. A-1 and A-2.*
- (ii) to issue order or direction to Respondents to pay disability pension to the applicant from the date of his discharge i.e. 30 Nov.2002 and continuing paying the same month to month.*
- (iii) Any other relief as considered proper by this Hon’ble Tribunal be awarded in favour of the applicant.*
- (iv) Cost of the application be awarded to the applicant.”*

2. The learned counsel for the petitioner, in addition to the above relief, also prayed orally for the relief of rounding off of disability pension, in case the Hon’ble Court converges to the view holding the petitioner entitled to get disability pension.

3. The factual matrix of the case is that the applicant was enrolled in the Indian Army on 26.05.1984 and was discharged from service on 30.11.2002 (afternoon) under rule 13 (3) III (iv) of the Army Rules, 1954 before fulfilling

the conditions of his enrollment on compassionate ground at his own request in low medical category P3 (Permanent). Medical board assessed his disability for his disease “MULTIPLE RIBS FRACTURE (RT) 03 AND 08 RIBS S-22 V-74” @ 30% for 02 years and considered it attributable to military service and he was not granted disability pension because he was discharged on compassionate ground at his own accord. The applicant after six years of discharge forwarded his appeal, but it was not accepted by the Rajput Regiment, stating that the appeal was time barred. Subsequently, the applicant filed O.A. No.71 of 2012 in the Armed Forces Tribunal, Regional bench, Lucknow seeking a direction for grant of disability pension. The applicant’s case was disposed of with direction that if the applicant files second statutory appeal, the same would be entertained by the competent authority ignoring the period of limitation. Based on the direction of the Tribunal, the applicant submitted his second appeal, which was rejected, stating that the disability pension is not applicable to the applicant, as he was discharged from service at his own accord. Aggrieved, the applicant has filed the instant Original Application.

4. Heard Shri V.P. Pandey, Learned Counsel for the applicant, Mrs. Deepti Prasad Bajpai, Learned Counsel for the respondents and perused the record.

5. Learned Counsel for the applicant submitted that while taking part in OP RAKSHAK, the applicant was travelling in a Gypsy as a member of protection party of General Officer Commanding, 4 Infantry Division and when the vehicle, in which he was travelling, had slipped and skidded due to wet weather condition, and he had

sustained injuries of “MULTIPLE RIBS FRACTURE (RT) 03 AND 08 RIBS S-22 V-74”. He further submitted that the applicant had earlier applied for premature discharge from service due to some domestic problems in 2001, but it was not approved by the competent authority and there was no communication to him about it. However, when the applicant sustained injuries and was placed in low medical category, he was discharged on the pretext of his earlier application for premature discharge under Rule 13 (3) III (iv) whereas he should have been discharged under Rule 13 (3) III (iii) of the Army Rules, 1954 on medical ground being in low medical category. The applicant had served for over 18 years with utmost devotion and his selection for protection party of General Officer Commanding, 4 Infantry Division in OP RAKSHAK is an example of his commitment and dedication. Injury sustained during such duty cannot be considered as neither attributable to nor aggravated by military service. He further submitted that in view of Government of India letter No. 16(5)/2008/D (Pen/Policy) dated 29 September, 2009 armed force personnel being discharged on compassionate ground are also entitled for disability pension, but this is applicable to the personnel, who have retired on or after 01.01.2006. This benefit should be also extended to personnel who have retired before 01.01.2006 as such the applicant is entitled to disability pension. Learned counsel for the applicant further submitted that since at the time of enrollment, the applicant was in fit medical condition and was injured while performing protection duties of General Officer Commanding, 4 infantry Division, as such the disability should be considered as attributable to and aggravated by

military service and disability pension should be granted to the applicant.

6. Per contra, the learned counsel for the respondents submitted that the applicant was deployed in field area at OP Rakshak (J&K) and was attached with Headquarters 4 Infantry Division. On 15.01.2002, the applicant was member of protection party for General Officer Commanding 4 Infantry Division and was travelling in a Gypsy, which skidded and overturned due to rain and wet weather condition. All the occupants of the said vehicle sustained minor injuries except the applicant and one other soldier. The applicant was evacuated to military hospital and was diagnosed as a case of "MULTIPLE RIBS FRACTURE (RT) 03 AND 08 RIBS S-22 V-74". After continuous treatment and sick leave, finally, the applicant was placed in low medical category P3 (Temporary) for six months with effect from 18.03.2002. Learned counsel for the respondents further submitted that the applicant had applied for premature discharge from service on compassionate ground owing to his personal problems. Based on his request, he was discharged under the provisions of rule 13 (3) III (iv) of the Army Rules. Disability pension had not been granted him, because he was discharged from service at his own request. As per Government of India, Ministry of Defence letter of September, 2009, disability pension is applicable to only those, who have retired on or after 01.01.2006.

7. Precise reason for not granting disability pension is that the applicant was discharged at his own request before fulfilling his terms and conditions on compassionate

ground. Although, the Government of India vide letter dated 29.09.2009 has changed policy, wherein the disability pension has been provided to personnel of Armed Forces, who have retired voluntarily or who have sought discharge on their own accord. However, the provisions of this policy are applicable to those personnel, who have retired/discharged from service on or after 01.01.2006. However, the respondents in their counter affidavit have accepted that the case of the applicant is being processed for obtaining Government sanction and as per instructions such cases should not be contested and processed for Government sanction.

8. Before dealing with the rival submissions, it would be appropriate to examine the relevant Rules and Regulations on the point. Relevant portions of the Pension Regulations for the Army 1961 (Part I), relevant portion of policy letter of Sep. 2009 and the provisions of Rules 4, 5, 9, 14 and 22 of the Entitlement Rules for Casualty Pension Award, 1982 are reproduced below:-

“(a) **Pension Regulations for the Army 1961 (Part I)**

*“Para 173. Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20 percent or over.*

*The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II.”*

**“(b) Govt. of India , Ministry of Defence Letter No. 16(5)/2008/D (Pen/Policy) Department of Ex-Servicemen Welfare dated 29 September, 2009**

*“The undersigned is directed to refer to Note below Para 8 and Para 11 of this Ministry’s letter No.1(2)/97/DO Pen-C) dated 31.01.2001, wherein it has been provided that Armed Forces personnel who retire voluntarily or seek discharge on request, shall not be eligible for any award on account of disability.*

*In pursuance of Government decision on the recommendation of Sixth Central Pay Commission vide Para 5.1.69 of their Report, President is pleased to decide that Armed Forces personnel who are retained in service despite disability, which is accepted as attributable to or aggravated by Military Service and have foregone Lump-sum compensation in lieu of that disability, may be given disability element/war injury element at the time of their retirement/discharge whether voluntarily or otherwise in addition to Retiring/Service Pension or Retiring/Service Gratuity.*

*The provisions of this letter shall apply to the Armed Forces personnel who are retired/discharged from service on or after 1.1.2006”*

**“(c) Entitlement Rules for Casualty Pensionary Awards, 1982**

*4. Invaliding from service is necessary condition for grant of a disability pension. An individual who, at the time of his release under the Release Regulation, is in a lower medical category than that in which he was recruited, will be treated as invalided from service. JCOs/ORs & equivalents in other services who are placed permanently in a medical category other than ‘A’ and are discharged because no alternative employment suitable to their low medical category can be provided, as well as those who having been retained in alternative employment but are discharged before the completion of their engagement will be deemed to have been invalided out of service.*

5. *The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions:-*

**Prior to and during service.**

- (a) *A member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance.*
- (b) *In the event of his subsequently being discharged from service on medical grounds any deterioration in his health which has taken place is due to service.*

**Onus of Proof.**

9. *The claimant shall not be called upon to prove the conditions of entitlement. He/she will receive the benefit of any reasonable doubt. This benefit will be given more liberally to the claimants in field/afloat service cases.*

**Disease**

14. ***In respect of disease, the following rules will be observed:-***

(a) *For acceptance of a disease as attributable to military service, the following two conditions must be satisfied simultaneously:*

*i) That the disease has arisen during the period of military service, and*

*ii) That the disease has been caused by the conditions of employment in military service.*

(b) *If medical authority holds, for reasons to be stated, that the disease although present at the time of enrolment could not have been detected on medical examination prior to acceptance for service, the disease, will not be deemed to have arisen during service. In case where it is established that the military service did not contribute to the onset or adversely affect the course disease, entitlement for casualty pensionary*



*award will not be conceded even if the disease has arisen during service.*

*(c) Cases in which it is established that conditions of military service did not determine or contribute to the onset of the disease but, influenced the subsequent course of the disease, will fall for acceptance on the basis of aggravation.*

*(d) In case of congenital, hereditary, degenerative and constitutional diseases which are detected after the individual has joined service, entitlement to disability pension shall not be conceded unless it is clearly established that the course of such disease was adversely affected due to factors related to conditions of military services.*

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**22. Conditions of unknown Aetiology:-** There are a number of medical conditions which are unknown aetiology. In dealing with such conditions, the following guiding principles are laid down-

*(a) If nothing at all is known about the cause of the disease, and the presumption of the entitlement in favour of the claimant is not rebutted, attributability should be conceded.*

*(b) If the disease is one which arises and progresses independently of service environmental factors than the claim may be rejected.”*

9. In the case of **Dharmvir Singh Vs. Union of India & Ors** reported in (2013) 7 Supreme Court cases 316, The Hon’ble Apex Court has held as under:

*“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 Pension), 2002 -“Entitlement : General*

*Principles”, including paragraphs 7,8 and 9 as referred to above (para 27).”*

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31. *In the present case it is undisputed that no note of any disease has been recorded at the time of the appellant’s acceptance for military service. The respondents have failed to bring on record any document to suggest that the appellant was under treatment for such a disease or by hereditary he is suffering from such disease. In the absence of any note in the service record at the time of acceptance of joining of appellant, it was incumbent on the part of the Medical Board to call for records and look into the same before coming to an opinion that the disease could not have been detected on medical examination prior to the acceptance for military service, but nothing is on record to suggest that any such record was called for by the Medical Board or looked into it and no reasons have been recorded in writing to come to the conclusion that the disability is not due to military service. In fact, non-application of mind of Medical Board is apparent from clause (d) of Para 2 of the opinion of the Medical Board, which is as follows :-*

*“(d) In the case of a disability under C the board should state what exactly in their opinion is the cause thereof.*

**YES** *Disability is not related to military service”.*

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33. *In spite of the aforesaid provisions, the pension sanctioning authority failed to notice that the Medical Board had not given any reason in support of its opinion, particularly when there is no note of such disease or disability available in the service record of the appellant at the time of acceptance for military service. Without going through the aforesaid facts the Pension Sanctioning Authority mechanically passed the impugned order of rejection based on the report of the Medical Board. As per Rule 5 and 9 of the Entitlement Rules for Casualty Pensionary Awards, 1982, the appellant is entitled for presumption and benefit of*

*presumption in his favour. In the absence of any evidence on record to show that the appellant was suffering from “Generalised Seizure (Epilepsy)” at the time of acceptance of his service, it will be presumed that the appellant was in sound physical and mental condition at the time of entering the service and deterioration in his health has taken place due to service.*

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35. *In view of the finding as recorded above, we have no option but to set aside the impugned order passed by the Division Bench dated 31-7-2009 in Union of India v. Dharamvir Singh and uphold the decision of the learned Single Judge dated 20-5-2004. The impugned order is set aside and accordingly the appeal is allowed. The respondents are directed to pay the appellant the benefit in terms of the order passed by the learned Single Judge in accordance with law within three months if not yet paid, else they shall be liable to pay interest as per the order passed by the learned Single Judge. No costs.”*

10. In **Sukhvinder Singh Vs. Union of India & Ors** reported in 2014 STPL (Web) 468 SC, The Hon’ble Apex Court has held as under:

*“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 percent 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 percent. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty percent disability pension.”*

11. In the case of **Veer Pal Singh vs. Ministry of Defence** reported in (2013) 8 SCC 83, the observations made by Hon’ble the Apex Court are as under :

*“11. A recapitulation of the facts shows that at the time of enrolment in the army, the appellant was subjected to medical examination and the Recruiting Medical Officer found that he was fit in all respects. Item 25 of the certificate issued by the Recruiting Medical Officer is quite significant. Therein it is mentioned that speech of the appellant is normal and there is no evidence of mental backwardness or emotional instability. It is, thus, evident that the doctor who examined the appellant on 22.05.1972 did not find any disease or abnormality in the behaviour of the appellant. When the Psychiatrist Dr (Mrs) Lalitha Rao examined the appellant, she noted that he was quarrelsome, irritable and impulsive but he had improved with the treatment. The Invaliding Medical Board simply endorsed the observation made by Dr Rao that it was a case of “Schizophrenic reaction”.*

*12. In Merriam Webster Dictionary “Schizophrenia” has been described as a psychotic disorder characterized by loss of contact with the environment, by noticeable deterioration in the level of functioning in everyday life, and by disintegration of personality expressed as disorder of feeling, thought (as in delusions), perception (as in hallucinations), and behavior – called also dementia praecox; schizophrenia is a chronic, severe, and disabling brain disorder that has affected people throughout history.*

*13. The National Institute of Mental Health, USA has described “schizophrenia” in the following words:*

*“Schizophrenia is a chronic, severe, and disabling brain disorder that has affected people throughout history. People with the disorder may hear voices other people don’t hear. They may believe other people are reading their minds, controlling their thoughts, or plotting to harm them. This can terrify people with the illness and make them withdrawn or extremely agitated. People with schizophrenia may not make sense when they talk. They may sit for hours without moving or talking. Sometimes people with schizophrenia seem perfectly fine until they talk about what they are really thinking. Families and society are affected by schizophrenia too. Many people with schizophrenia have difficulty holding a job or caring for themselves, so they rely on others for help. Treatment helps relieve many symptoms of schizophrenia, but most people who have the disorder cope with symptoms throughout their lives. However, many people with schizophrenia can lead rewarding and meaningful lives in their communities”.*

17. *Unfortunately, the Tribunal did not even bother to look into the contents of the certificate issued by the Invaliding Medical Board and mechanically observed that it cannot sit in appeal over the opinion of the Medical Board. If the learned members of the Tribunal had taken pains to study the standard medical dictionaries and medical literature like *The Theory and Practice of Psychiatry* by F.C. Redlich and Daniel X. Freedman, and *Modi’s Medical Jurisprudence and Toxicology*, then they would have definitely found that the observation made by Dr Lalitha Rao was substantially incompatible with the existing literature on the subject and the conclusion recorded by the Invaliding Medical Board that it was a case of schizophrenic reaction was not well founded and required a review in the context of the observation made by Dr Lalitha Rao herself that with the treatment the appellant had improved. In our considered view, having regard to the peculiar facts of this*

*case, the Tribunal should have ordered constitution of Review Medical Board for re-examination of the appellant.*

*18. In Controller of Defence Accounts (Pension) vs. S Balachandran Nair on which reliance has been placed by the Tribunal, this Court referred to Regulations 173 and 423 of the Pension Regulations and held that the definite opinion formed by the Medical Board that the disease suffered by the respondent was constitutional and was not attributable to military service was binding and the High Court was not justified in directing payment of disability pension to the respondent. The same view was reiterated in Ministry of Defence vs A.V. Damodaran. However, in neither of those cases, this court was called upon to consider a situation where the Medical Board had entirely relied upon an inchoate opinion expressed by the psychiatrist and no effort was made to consider the improvement made in the degree of illness after the treatment.*

*19. As a corollary to the above discussion, we hold that the impugned order as also the orders dated 14.07.2011 and 16.09.2011 passed by the Tribunal are legally unsustainable. In the result, the appeal is allowed. The orders passed by the Tribunal are set aside and the respondents are directed to refer the case to the Review Medical Board for reassessing the medical condition of the appellant and find out whether at the time of discharge from service he was suffering from a disease which made him unfit to continue in service and whether he would be entitled to disability pension.”*

**12. In Union of India and Ors vs. Ram Avtar & ors Civil Appeal No 418 of 2012 dated 10<sup>th</sup> December 2014)** in which Hon’ble The Apex Court nodded in disapproval the policy of the Government of India in not granting the benefit of rounding off of disability pension to the personnel who have been invalided out of service on account of being in low medical category or who has

retired on attaining the age of superannuation or completion of his tenure of engagement, if found to be suffering from some disability. The relevant portion of the decision being relevant 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.*

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*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.”*

13. The bunch of appeals culminated in being dismissed and the judgments of the High Court and Armed Forces Tribunal Benches were nodded in approval attended with direction that the dismissal of those appeals will be taken note of by the High Courts as well as by the Armed Forces Tribunal Benches in granting appropriate relief to the pensioners before them. When the peremptory direction of

Hon'ble The Apex Court is applied to the present case, it would lead us to the conclusion that the applicant, who was invalided out of service on account of his being in low medical category or who has retired on attaining the age of superannuation or completion of his tenure of engagement, if found to be suffering from some disability, would also be entitled to the benefit of rounding off.

14. Having given considerations to the rival submissions made on behalf of the parties' Learned Counsel, we find that the applicant sustained injuries while on military duty and the medical board has considered the disability as attributable to military service. Also in view of the judgment and order of Hon'ble The Apex Court in the cases of **Dharmvir Singh vs. Union of India & others** (supra) and **Sukhvinder Singh vs. Union of India & others** (supra), disability, in the circumstances of the instant case, has to be considered as attributable to military service. Therefore, the only reason for non-grant of disability pension is that the applicant was granted discharge on compassionate ground at his own accord. However, as per revised policy of September, 2009, disability pension has to be granted to the personnel of Armed Forces, who have retired voluntarily or have been discharged on their own accord on or after 01.01.2006.

15. From perusal of paragraphs 24 and 26 of the counter affidavit, it is apparent that the respondents are also inclined to grant disability pension and extend the benefit of letter of September, 2009 to those who have retired before 2006. It is also evident from the judgment of Principal Bench, which has even been followed by Chandigarh Bench in its judgment passed in O.A. No.1019



of 2013, **Wg Cdr GBS Kang vs. Union of India & others.**  
 The Principal Bench quoted the Notification dated 3.8.2010 relating to the personnel below officer rank (PBORs) which runs as under:

“Tele – 23335048

*Addl Dte Gen Personnel Services  
 Adjutant General's Branch  
 Integrated HQ of MoD (Army)  
 DHQ PO, New Delhi-110011  
 B/39022/Misc/AG/PS-4 (L)/BC*

*All Legal Cells*

*All line Dtes*

*GRANT OF DISABILITY PENSION TO PREMATURE RETIREMENT  
 CSES PROCEEDING ON DISCHARGE PRIOR TO 01 JAN 2006*

- 1. Further to this office note No. A/39022/Misc/AG/PS-4 (Legal) dt 22 Feb 2010 on subject matter.*
- 2. It is clarified that as and when a pre-2006 retiree PROB files a court case to claim disability pension which was denied to him merely because he had proceeded on Pre-Mature Retirement, such cases will be immediately processed for Government Sanction through respective Line Dtes and Not contested. Government Sanctions in which cases will also be proposed in the same manner as that followed in cases of Government Sanctions issued in compliance of court cases.*
- 3. This arrangement will be affective till MoD /D(Pen/ Legal) formulated and issues comprehensive Govt orders.*
- 4. It is re-iterated that only those cases where disability pension was denied to a PBOR solely on the grnds that he had proceeded on PMR will be processed for sanction and will not be contested. Which implies that as and when a PBOR files a case of similar nature their case files will be processed for Govt sanction without awaiting court order.*
- 5. Contents of this letter are not applicable to offers as PRA, Rule 50 has been upheld by Hon'ble Supreme Court in judgment dt 06 July 2010 in case of Lt Col Ajay Wahi (SLP. No. 25586/2004, Civil Appeal No. 1002/2006).*
- 7. All lime Dtes are requested to give vide publicity to this letter amongst all Record Offices.*

(Ajay Sharma)  
Col  
Dir Ag/PS-4 (Legal)  
For Adjutant General

Copy to:  
MoD/D(Pen/Legal)  
JAG Deptt”

The Principal Bench then made the following observation:

*“It has been clarified that as and when a pre 2006 retiree PBOR files a court case to claim disability pension which was denied to him merely because he had proceeded on Pre-Mature Retirement, such cases will be immediately processed for Government sanction through respective Line Dtes and not contested Government sanctions in which cases will also be processed in the same manner as that followed in cases of Government sanctions issued in compliance of court cases. That means Government has relaxed the condition for the PBOR, even if they sought voluntary retirement prior to 2006 they will not be denied the benefits of disability pension as per rules. If the Government can show benevolence for PBOR then why not same benefit can be given to the officers who are far less in number than PBOR.*

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16. In its latest decision titled ***AN Sachdeva Vs MDU, Rohtak, Civil Appeal Nos. 626 & 627 of 2008***, the Hon’ble Apex Court has held that cut-off dates cannot come in the way of upward liberalization of pensionary benefits. The Apex Court, after going into the length and breadth of the issue and all past decisions on the subject, has again come to the conclusion that retirees retiring prior to the cut-off date of liberalization of a pensionary scheme would also be entitled to the said benefits with monetary benefits from the said cut-off date which happened to be 2001 in this case. In view of the judgment of Hon’ble The Apex Court in the case of ***AN Sachdeva Vs MDU, Rohtak***

(Supra), we are of the considered view that the benefit of Government of India letter No. 16(5)/2008/D (Pen/ Policy) dated 29 September, 2009 should also be extended to the personnel who have retired before 01.01.2006. This has also been clarified by the Principal Bench of the Tribunal, which has even been followed by Chandigarh Bench in its judgment passed in O.A. No.1019 of 2013, **Wg Cdr GBS Kang vs. Union of India & others**. Therefore, the applicant also deserves the benefit of this, as such he is entitled to disability pension.

17. In the above conspectus, we are of the considered view that the impugned orders passed by the respondents were not only unjust, illegal but also were not in conformity with rules, regulations and law. The impugned orders passed by the respondents deserve to be set aside and the applicant is entitled to disability pension @30% for 02 years from the date of discharge along with interest @ 9% per annum. We are also of the view that the case of the applicant be referred to Review Medical Board for reassessing the medical condition of the applicant for further entitlement of disability pension, if any.

18. In the result, O.A. No. 326 of 2013 is allowed. The impugned orders dated 24.07.2013 and 24.09.2009 are set aside. The respondents are directed to grant disability pension to the applicant @ 30% for 2 years from the date of discharge which would stand rounded off to 50% in terms of the decision of Hon'ble The Apex Court in the case of **Sukhvinder Singh vs. Union of India & others** (supra) and **Union of India and Ors vs. Ram Avtar & ors** (supra). The respondents are directed to pay arrears of disability pension with interest @ 9% per annum from the date of

discharge till the date of actual payment. The respondents are also directed to refer the applicant's case to Review Medical Board for reassessing the medical condition of the applicant for further entitlement of disability pension, if any. Respondents are directed to give effect to the order within three months from the date of receipt of a certified copy of this order.

19. No order as to costs.

(Lt Gen Gyan Bhushan)  
Member (A)

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

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Dated : Nov. 2015