

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 202 of 2019**Monday, this the 18<sup>th</sup> day of January, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**Ex Sep Jiledar Singh  
Village and Post – Damras  
Tehsil – Kalpi, Dist – Jaloun (UP)-285001

..... Applicant

Ld. Counsel for the Applicant: **Shri Rohitash Kumar Sharma**, Advocate

Versus

1. Union of India, through, The Secretary Ministry of Defence, DHQ PO, New Delhi – 110011.
2. The Chief of the Army Staff, Integrated HQ of MoD (Army), DHQ P.O., New Delhi – 110011.
3. Additional Directorate General Personnel Services (PS-4), Integrated HQ of MoD (Army), DHQ PO, New Delhi-110011.
4. Officer In Charge, RAJPUT Regimental Centre, PIN – 900427, C/o 56 APO.
5. Controller Defence Account (Pension), Draupadi Ghat, Allahabad, UP.

..... Respondents

Ld. Counsel for the Respondents : **Shri Shyam Singh**,  
Central Govt Counsel.**ORDER**

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

- “(a) Call for records including the Invalid Medical Board proceedings.
- (b) Quash the order dated 14.12.2018 of respondents rejecting the appeal of the Applicant dated 21.10.2018 for

grant of disability pension as well as finding of medical board by which the applicant has been denied disability pension.

- (c) Issue directions to respondents to grant disability pension to the Applicant w.e.f. 12.01.1987 and arrears to be paid along with interest of 18 percent in a time bound manner.
- (d) Issue such other order/direction as may be deemed appropriate in the facts and circumstances of the case.

2. The facts of the case, in brief, are that applicant was enrolled in the Army on 10.12.1980. The applicant served in J&K and also participated in Operation 'BLUE STAR' in Punjab, Operation BATTLE AXE at Mizoram for which he was awarded SAINYA SEWA MEDAL with CLASP MIZORAM. The applicant sustained injury on 02.08.1985 while on bonafide military duty. A Court of Inquiry was conducted and injury report was submitted to MH Silchar. His Invaliding Medical Board was conducted at 188 MH on 29.07.1986 and his disability "**FRACTURE LOWER THIRD SHAFT OF ULNA**" was assessed @ 20% for two years as attributable to military service. The applicant was discharged on 11.01.1987 before completion of terms of engagement in low medical category.

3. Learned Counsel for the applicant submitted that since at the time of enrolment, the applicant was in fit medical condition and the disability occurred during service, as considered attributable to service, hence, as per judgment of the Hon'ble Apex Court in the case of ***Dharamvir Singh vs. Union of India***, decided on 02.07.2013, applicant should be granted disability pension.

4. Learned counsel for the applicant further submitted that applicant submitted an application to Respondent No. 4 i.e. OIC

Rajput Regimental Centre for financial help being in penury state which was replied vide letter dated 11.06.2015 to liaise with his concerned Zila Sainik Board. HQ Paschim MP Sub Area vide letter dated 12.07.2016 also requested Respondent No. 4 and Zila Sainik Board, Jalaun to give financial help which was denied by the respondents vide letter dated 20.07.2016. The applicant is presently living in Shamshan, known as 'Baba Bhutnath' in his area. The applicant made a representation on 06.04.2018 seeking copy of medical board. Respondent No. 4 forwarded copy of IMB and injury report to applicant on 27.06.2018. Applicant preferred first appeal on 21.10.2018 which was replied by Respondent No. 4 on 14.12.2018 to approach AFT for grant of disability pension. Accordingly, applicant has filed the instant Original Application.

5. **Per contra**, learned counsel for the respondents submitted that applicant was discharged under the provisions of rule 13 (3) III (iv) of the Army Rules at his own request on compassionate ground, as such disability pension was not granted to him. As per Government of India, Ministry of Defence letter dated 29.09.2009, disability pension is applicable to only those army personnel who have retired on or after 01.01.2006.

6. Learned counsel for the respondents further submitted that applicant had applied for premature discharge from service on compassionate grounds with reasons to look after his domestic assignments due to non availability of any male member at his home. Commanding Officer of 2 RAJPUT interviewed the applicant and considering his problems sanctioned his premature discharge from

service. Thereafter, applicant was brought before Release Medical Board and his disability was considered as attributable to military service. Disability pension claim of the applicant was returned by the PCDA (Pension) Allahabad with observation that ***“the applicant has been discharged before completion of terms of engagement under clause 13(3)(iii) (iv) as such he is not entitled for any pensionary benefits”***.

7. Heard learned counsel for the parties and perused material on records.

8. On perusal of records, it appears that Court of Inquiry held in the matter had concluded that applicant was on bonafide military duty and the injury sustained was attributable to military service.

9. Para 16 &17 of the counter affidavit which are relevant to decide the controversy involved in Original Application read as below :-

*“16. (a) Learned counsel for the respondents submitted that in accordance with IHQ, MoD letter dated 17.03.1998, Para 173 and 179 of Pension Regulations for the Army 1961 (Part-1), applicant is not entitled for grant of disability pension being discharged on compassionate grounds at his own request.*

*(b) Furthermore, Integrated Headquarter of Ministry of Defence (Army) vide letter no. B/39022/Misc/AG/PS-4(L)/BC dated 03.08.2010 clarified that as and when a Pre-2006 retiree PBOR files a court case claiming pension which denied to him merely because he had proceeded to premature retirement, such cases will be immediately processed for Government sanction through respective Line Directors and NOT CONTESTED. Govt. sanction in such cases will also be processed in the same manner as that followed in cases of Govt. sanction issued in compliance of court cases.*

*17. Therefore, in order to avoid any litigation, it is recommended that the case be examined at appropriate level at Integrated Headquarters of Ministry of Defence (Army) and necessary sanction for grant of disability pension to the applicant.”*

10. The Records, The Rajput Regiment letter dated 05.09.1990, forwarded to CCDA (Pension) Allahabad, is also relevant in the matter and it reads as below :-

*“Rajput Regiment Abhilekh Karyalaya,  
Records The Rejput Regiment  
Fatehgarh (UP) – 209601*

2980211/23/DP/PG

05 Sep 90

Office of the CCDA (P)  
Grants-3 Group III  
Allahabad (UP)

**Disability Pension in Respect of No. 2980211 Ex Sep Jiledar Singh**

1. Refer to your letter No G3/87/4287/III/616 dated 02 Mar 90.
2. The individual has been discharged from service wef 12 Jan 87 in low medical category CEE (P) through Release medical Board. As per AFMSF-16, he has not 20% disability, which is attributable to military service. The individual fulfills all requisite qualifications vide Rule 173 of Pension Regulation part I 1961 for grant of disability pension. Since the individual has been discharged from service from prior to completion of conditions for enrolment at his own request, he has correctly been discharged under Army Rule 13 (3) III (iv) which is not a disqualification for grant of disability pension.
3. Please reconcile. Sheet Roll of the individual alongwith a copy of AFMSF-16 is enclosed herewith for reference and return please. In case the individual is not entitled to disability pension, please intimate the specific authority for rejection of the claim.

Sd/- x x x x  
(Ranbir Singh Rawat)  
Capt Record Officer  
For OIC Records”

11. Records, The Rajput Regiment once again processed the case of the applicant with PCDA (P) Allahabad for reconsideration of applicant's disability pension claim. However, PCDA (P) returned the case without any remarks. Thereafter, after a lapse of 28 years, applicant preferred an appeal dated 21.10.2018 under the RTI Act, 2005 which was replied by Records, Rajput Regiment vide letter dated 24.11.2018.

12. Precise reason for not granting disability pension is that the applicant was discharged at his own request before fulfilling his terms and conditions of engagement on compassionate ground. Although, the Government of India vide letter dated 29.09.2009 has changed the 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.

13. 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 dated 29.09.2009 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.

XXX XXX XXX XXX

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.”*

14. Having given considerations to the rival submissions made on behalf of the parties, we find that the applicant suffered disability 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 **Dharamvir Singh Vs. Union of India & Ors** reported in (2013) 7 Supreme Court cases 316 and **Sukhvinder Singh Vs. Union of India & Ors** reported in 2014 STPL (Web) 468 SC, 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 is liable 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. It is also evident from the judgment of Principal Bench, which has even been followed by Chandigarh Bench in O.A. No.1019 of 2013, **Wg Cdr GBS Kang vs. Union of India & others**. The Principal Bench has 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 03 August 2010*

*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.  
ddl Dte Gen Personnel Services
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.*

xxx      xxx      xxx      xxx".

15. The Principal Bench has then struck down clause 3 of the Notification dated 29.09.2009 and has held that it would be open to the petitioner to make representation to the authority to seek the disability benefit in terms of the aforesaid circular and has also

directed the Government to examine the matter and to pass appropriate order in accordance with law.

16. We have bestowed our anxious consideration to the facts of the present case qua the judgment of the Principal Bench and we have no reason to express opinion different from the opinion of the Principal Bench, regard being had to the fact that clause 3 of the Notification dated 29.09.2009 has been struck down being violative of Article 14 of the Constitution of India.

17. In its decision in case 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. 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 O.A. No.1019 of 2013, ***Wg Cdr GBS Kang vs. Union of India & others***. Therefore, the applicant also deserves the benefit of this and as such he is entitled to disability pension.

18. In the above conspectus, we are also 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 therefore deserve to be set aside and the applicant deserves to be entitled to disability pension @ 20% for 02 years from the date of discharge.

19. In the result, Original Application succeeds and is allowed. The impugned orders are set aside. The respondents are directed to grant disability pension to the applicant @ 20% for 2 years from the date of discharge. Since applicant's disability was assessed for two years from the date of discharge, he is eligible for disability element for that period only. The respondents are directed to hold applicant's Re-survey Medical Board (RSMB) afresh for re-assessing his present medical condition within a period of four months from the date of receipt of certified copy of the order. Further entitlement of disability element of pension shall be subject to outcome of RSMB. Default will invite interest @ 8% per annum till actual payment.

20. No order as to costs.

**(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)**  
**Member (A) Member (J)**

Dated: January, 2021

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