

**Court No. 1**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**ORIGINAL APPLICATION No. 518 of 2022**

Thursday, this the 12<sup>th</sup> day of January, 2022

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

**“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

Lt. Col. Alok Shankar Pandey (Retd.) S/o Shri S.K. Pandey,  
R/o Flat No. 503, Building 4M. Phase –III, AWHO, Gurjinder  
Vihar, Sector Chi I, Pocket -5, Greater Noida, Uttar Pradesh –  
201310.

..... **Applicant**

Ld. Counsel for : **Shri Raj Kumar Mishra**, Advocate and  
the applicant **Shri Aditya Singh Puar**, Advocate.

**Versus**

1. Union of India Ministry of Defence, Through its Secretary,  
South Block, New Delhi – 110001.
2. Additional Director General of Personnel Services, PS  
Directorate, Sena Bhawan, DHQ PO, New Delhi -110001.
3. Principal Controller of Defence Accounts (Pensions),  
Draupadi Ghat, Allahabad (U.P) .

.....**Respondents**

Ld. Counsel for the: **Shri J.N. Mishra**, Advocate  
Respondents. Central Govt Counsel.

**ORDER**

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

- (i) *Petitioner, hence , prays for grant of disability pension  
in accordance with the applicable rules and as held by  
the Hon’ble Supreme Court as mentioned herein, and  
The Entitlement Rules, 1982, by setting aside that part  
of the Medical Board (Impugned Order (1) and the  
consequent rejections (impugned Order (2) Colly  
wherein his disability has been denied, as being not*

*only in conflict with the Rules but also in direct contravention of a series of decisions of the Hon'ble Supreme Court (as seen supra).*

- (ii) With a further prayer that the Respondents may be directed to release disability pension for life, along with arrears to the petitioners, along with the benefit of Broad banding in accordance with the Judgement of the Hon'ble Supreme Court in Union of India V/s Ram Avatar with heavy costs and compensation and interest within a time bound manner.*
- (iii) Any other relief which the Hon'ble Tribunal may deem fit in the interest of Petitioner.*

2. The brief facts of the case are that the applicant was commissioned in the Indian Army on 07.06.1997 and prematurely retired from service on 26.12.2019 in Low Medical Category. At the time of retirement, Release Medical Board (RMB) held at Base Hospital, Delhi Cantt on 12.12.2019 assessed his disabilities **(i)'RECURRENT DISOCATION PATELLA (LT) KNEE (OPTD)'** @10%, attributable to military service and (ii) **DIFUSE IDIOPATHIC SKELETAL HYPEROSTOSIS'** @10% as NANA and **composite assessment @ 19%** for life. Applicant's claim for grant of disability element of disability pension was rejected vide letter dated 31.07.2020. The applicant preferred First Appeal which too was rejected vide letter dated 07.05.2021. The applicant also preferred Second Appeal which was too rejected vide letter dated 21.07.2022. It is in this perspective that the applicant has preferred the present Original Application.

3. Ld. Counsel for the applicant pleaded that the applicant was fully fit at the time of enrolment and the said disability i.e. **'RECURRENT DISOCATION PATELLA (LT) KNEE (OPTD)'** and **DIFUSE IDIOPATHIC SKELETAL HYPEROSTOSIS'** were

assessed by the RMB as attributable to military service. Ld. Counsel for the applicant has relied upon the Hon'ble Apex Court judgment in the case of ***Sukhwinder Singh vs Union of India & Ors***, reported in (2014) STPL (WEB) 468 SC and contended that although on his own request on compassionate grounds but since applicant's services were cut short and he was retired from service prior to completion of terms of engagement, therefore his retirement from service should be deemed invalidation as held in the case of ***Sukhwinder Singh*** (supra) and applicant deserves to be granted disability element of disability pension.

4. On the other hand, Ld. Counsel for the respondents submitted that as the composite disabilities of applicant have been assessed @19% for life i.e. below 20%, he is not entitled to disability element of pension in terms of para 37 & 53 of Pension Regulations for the Army, 2008 (Part-I) and his claim was rightly denied by the respondents being disability below 20%. His further submission is that since the applicant was retired on his own request on compassionate grounds, he is not entitled for grant of disability element of disability pension. He pleaded for dismissal of the Original Application.

5. We have heard learned counsel for the parties and perused the material placed on record.

6. For adjudication of the controversy involved in the instant case, we need to address only two issues; firstly, is the discharge of applicant a case of normal discharge or invalidation? and

secondly is applicant is entitled to disability element of pension being disability below 20% attributable to military service.

7. For the purpose of first question as to whether the retirement of the applicant by Release Medical Board is a case of retirement or invalidation. In this context, it is clear that the applicant was retirement from service on his own request on compassionate grounds before completion of his terms of engagement in low medical category. In this regard, Rule 4 of the Entitlement Rules for Casualty Pensionary Awards, 1982 defines invalidation as follows:

*“Invaliding from service is a necessary condition for grant of a disability pension. An individual, who, at the time of his release under the Release Regulations, is in a lower medical category than that in which he was recruited will be treated as invalided from service. JCOs/ORs and equivalent 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.”*

8. Thus, in light of above definition, it is clear that the applicant was in low medical category as compared the one when he was commissioned and hence his retirement is to be deemed as invalidation out of service.

9. The law on this point is very clear as reported in (2014) STPL (WEB) 468, ***Sukhwinder Singh vs Union of India & Ors.*** Para 9 of the aforesaid judgment being relevant is reproduced 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 authorising the discharge or invaliding out of service where the disability is below twenty percent and seems to us to be logically so. Fourthly, 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. 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. From the above mentioned Rule on disability pension and ratio of law emerging out of above Hon'ble Apex Court's judgment, it is clear that once a person has been recruited in a fit medical category, the benefit of doubt will lean in his favour unless cogent reasons are given by the Medical Board as to why the disease could not be detected at the time of enrolment. In this case, we find that the applicant was placed in low medical category due to his both disabilities '**RECURRENT DISLOCATION PATELLA (LT) KNEE (OPTD)**' and '**DIFUSE IDIOPATHIC SKELETAL HYPEROSTOSIS**' and disabilities contracted in service, therefore, the RMB has declared his disabilities, first as attributable to military service and second as NANA. The aforesaid law also makes clear that in case of invalidation the disability percentage is presumed to above 20% irrespective of the disability percentage assessed by RMB/IMB.

11. In view of the above, we are of the considered opinion that applicant's retirement vide Release Medical Board held on

12.12.2019 is to be treated as invalidation in terms of Rule 4 of the Entitlement Rules (supra).

12. Government of India, Ministry of Defence letter No. 16(5)/2008/D(Pen/Policy) dated 29.09.2009 stipulates that *"In pursuance of Government decision on the recommendations of the 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."* In view of aforesaid letter, the applicant is entitled for grant of disability element of disability pension even if he has been discharged on his own request on compassionate grounds.

13. 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.”

14. Additionally, consequent upon the issue of Government of India, Ministry of Defence letter No. 17(01)/2017(01)/D(Pen/Policy) dated 23.01.2018, Principal Controller of Defence Accounts (Pensions), Prayagraj has issued Circular No. 596 dated 09.02.2018 wherein it is provided that the cases where Armed Forces Pensioners who were retired/discharged voluntary or otherwise with disability and they were in receipt of Disability/War Injury Element as on 31.12.2015, their extent of disability/War Injury Element shall be re-computed in the manner

given in the said Circular which is applicable with effect from 01.01.2016.

15. It is also observed that claim for pension is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. In the case of **Shiv Dass vs. Union of India**, reported in 2007 (3) SLR 445, Hon'ble Apex Court has observed:

"In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone."

16. As such, in view of the decision of Hon'ble Supreme Court in the case of **Shiv Dass** (supra) as well as Government of India, Ministry of Defence letter No. 17(01)/2017(01)/D(Pen/Policy) dated 23.01.2018, we are of the considered view that benefit of rounding off of disability pension @ 20% for life to be rounded off to 50% for life may be extended to the applicant from three preceding years from the date of filing of the Original Application.

17. In view of the above, the **Original Application No. 518 of 2022** deserves to be allowed, hence allowed. Both the disabilities of the applicant are to be considered as attributable/aggravated by military service. The impugned orders, rejecting the

applicant's claim for grant of disability element of disability pension, are set aside. The disabilities of the applicant are held above 19%, i.e. @ 20% for life. The applicant is entitled to get disability element @20% for life which would be rounded off to 50% for life from the next date of his retirement. The respondents are directed to grant disability element to the applicant @20% for life which would stand rounded off to 50% for life from next date of his retirement. The respondents are further directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 8% per annum till the actual payment

18. No order as to costs.

19. Pending Misc. Application(s), if any, shall stand disposed off.

**(Vice Admiral Atul Kumar Jain)**  
**Member (A)**

Dated: 12 January, 2023  
Ashok/SB

**(Justice Umesh Chandra Srivastava)**  
**Member (J)**