

Court No. 1

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

**ORIGINAL APPLICATION No. 769 of 2022**

Friday this the 06<sup>th</sup> day of January, 2023

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

No. 2976290X Ex. L/NK Abdul Khalik S/o Late Deen Mohammed, R/o Village & Post – Ranipur, District -Basti (U.P) -272302.

..... **Applicant**

Ld. Counsel for : **Shri D.S. Tiwari**, Advocate.  
the applicant

**Versus**

1. Union of India, through the Secretary, Ministry of Defence, Govt. of India, New Delhi.
2. Chief of the Army Staff, Sena Bhawan, New Delhi, PIN -110106.
3. OIC Records, Rajput Regiment Centre, Fatehgarh (U.P).
4. The Principal Controller of Defence Accounts (pension), Draupadi Ghat, Allahabad (U.P)

.....**Respondents**

Ld. Counsel for the : **Dr. Gyan Singh**, 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:-

- (1) *The Hon’ble Tribunal may be pleased to direct the respondents to grant Disability Element of pension with effect from the date of discharge i.e. 01.05.1991 along with Broad Banding of Disability Pension to 50% & its arrears and interest thereon at the rate of 12% per annum.*

- (II) *Any other appropriate order or direction be passed which this Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case including cost of the litigation.*
- (III) *Cost of the application.*

2. The brief facts of the case are that the applicant was enrolled in the Rajput Regiment of the Indian Army on 12.06.1979 and discharged from service on 30.04.1991 (A/N) in Low Medical Category under Rule 13 (3) Item III (v) read in conjunction with Army Rule 12 2(A) of the Army Rules, 1954. At the time of discharge, Release Medical Board (RMB) held at Military Hospital, Bareilly on 14.11.1990 assessed his disability '**LOW BACKACHE**' @ 15-19% for two years as **aggravated by military service**. Applicant's claim for grant of disability pension was rejected vide letter No. G-3/83/128/8/91/Raj dated Nil which was communicated to the applicant vide letter dated 09.04.1992. Thereafter, applicant had sent several letters to the applicant for conducting Re-Survey Medical Board but he did not reported at Base Hospital, Lucknow. 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. '**LOW BACKACHE**' was 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 since applicant's services were cut short and he was discharged from service prior to completion of terms of engagement, therefore his discharge from service should be a deemed invalidation as held in the case of **Sukhwinder Singh** (supra) and applicant deserves to be granted disability pension.

4. On the other hand, Ld. Counsel for the respondents submitted that the disability of applicant has been assessed @15-19% for two years i.e. below 20% by the RMB. He further submitted that Re-Survey Medical Board held at Base Hospital, Lucknow on 18.09.1998, vide AFMSF-17 dated 12.12.1998, assessed applicant's disability as 15-19% with effect from 01.05.1991 to 30.04.1996 and Nil for life as such he is not entitled to disability pension in terms of para 173 of Pension Regulations for the Army, 1961 (Part-I) and his claim was rightly denied by the respondents being disability below 20%. 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 three issues; firstly, is the discharge of applicant a case of normal discharge or invalidation? secondly whether the Re-Survey Medical Board is believed to be true for the period for which the RMB has already assessed applicant's disability and thirdly is applicant is entitled to disability pension being disability below 20% attributable to military service.

7. For the purpose of first question as to whether the discharge of the applicant by Release Medical Board is a case of discharge or invalidation. In this context, it is clear that the applicant was discharged 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 enrolled and hence his discharge 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 disability '**LOW BACKACHE**' and infection contracted in service, therefore, the RMB has declared his disability as aggravated by military service. 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.

11. In view of the above, we are of the considered opinion that applicant's discharge vide Release Medical Board held on 14.11.1990 is to be treated as invalidation in terms of Rule 4 of the Entitlement Rules (supra).

12. With regard to second question i.e. whether the Re-Survey Medical Board is believed to be true for the period for which the RMB has already assessed applicant's disability, we are of the opinion that for the period for which the applicant's disability has been assessed by the RMB, Re-Survey Medical Board cannot be held for the same period. As such we are relying on the report of the RMB held at the time of applicant's discharge from service.

13. As for as the benefit of Broad Banding is concerned, since benefit of broad banding has been extended w.e.f. 01.01.1996, hence, prima facie

the applicant is not entitled to broad banding for period in question i.e. two years from 01.05.1990.

14. Since the applicant's RMB was valid for two years w.e.f. 01.05.1990, hence, the respondents will now have to conduct a fresh RSMB for him to decide his future eligibility to disability pension.

15. In view of the above, the **Original Application No. 769 of 2022** deserves to be allowed, hence, **allowed**. The impugned orders, rejecting the applicant's claim for the grant of disability pension, are set aside. The applicant is held entitled to get disability pension @20% for two years from the next date of his discharge. Respondents are directed to grant disability pension to the applicant @20% for two years from the next date of his discharge. The respondents are further directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement of disability pension. Respondents are further directed to give effect to the order within four months from the date of receipt of a certified copy of this order failing which the respondents shall have to pay interest @ 8% per annum till the date of actual payment.

No order as to costs.

(Vice Admiral Atul kumar Jain)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated: 06 January, 2023  
AKD/Ashok/--