RESERVED
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 189 of 2017

Friday, this the 25th day of May, 2018

"Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)"

No 3185973 H Ex Sepoy Bhagwan Singh Mauni, resident of village Kanjabag Post office Khatima District Udham Singh Nagar (Uttrakhand) through Smt Pushpa Devi wife of Ex Sepoy Bhagwan Singh Mauni residentof Village Kanjabag Post office Khatima, District Udham Singh Nagar (UK).

..... Applicant

Ld. Counsel for the Applicant : Shri K.K.Mishra, **Advocate**.

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.

2. The Chief of the Army Staff, Army Headquarters, New Delhi.

3. Officer-In-charge Records, The JAT Regiment, PIN 900496 C/O 56 APO.

4. PCDA (Pension), Allahabad.

.....Respondents

Ld. Counsel for the Respondents. :Shri R.C. Shukla, Advocate, Central Govt. Standing Counsel.

ORDER

"Per Hon'ble Air Marshal BBP Sinha, Member (A)"

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

> *"(i) To direct the respondents to declare the applicant's husband disability as attributed to Mil Service and grant 20% disability pension to the applicant w.e.f. 31 May 2000.*
> *(ii) To direct the respondents to round of this percentage of disability pension to 50% and thereafter pay the arrears of pension from the date it was entitled to her with interest as applicable."*

2. The facts in nutshell are that the applicant's husband was enrolled in the Indian Army on 19.09.1992 and was discharged from service on medical grounds on 31.05.2000. While he was posted at 9 JAT in Tejpur in Assam under the jurisdiction of 4 Corps. In the year Feb 1997, he suffered some health problem and was downgraded to low medical category (temporary). During the year 1998, while the applicant's husband was posted at JAT Regimental Centre Bareilly, the problem got aggravated and he was admitted to Military Hospital where he was administered requisite treatment. In the year 1999, the husband of the applicant was posted back to his Unit at 9 JAT which was then located

at Gwalior where on account of ill health, he was admitted to Military Hospital Gwalior for investigation and treatment. It was there that the Applicant's husband was diagnosed with suffering from **"UNSPECIFIED PSYCHOSIS ICD - 298"**. The Applicant was finally discharged on 31.05.2000 under Army Rule 13 (3) III (V) read with Rule 13 (2A) of the Army Rules 1954. Before discharge he was brought before Release medical Board which was held at Military Hospital Gwalior wherein he was diagnosed to be suffering from **"UNSPECIFIED PSYCHOSIS ICD -298"** and his disability was assessed as 15-19% for two years. The Release medical Board opined his disability as neither attributable to nor aggravated by military service. Since the sheltered appointment was not available in the Unit commensurate to the rank of the Applicant's husband, he was not accommodated and was discharged as aforesaid. After discharge, his case for disability pension was processed and forwarded to the PCDA (P) Allahabad which was rejected vide communication dated 12.12.2000 on the ground that it was neither attributable to nor aggravated by military service. The Applicant's husband then preferred appeal against the order of rejection of disability pension which also culminated in being rejected by Govt of India vide communication dated 09.01.2004. A second statutory

appeal was also preferred on 30th June 2015 which was duly replied by communication dated 25th Sep 2015.

3. In the instant case, since the Applicant's husband on account of ill health is not in a fit mental condition, the instant O.A. has been filed through the Applicant.

4. The only ground put forth by the respondents for denial of disability pension is that the applicant's husband had been discharged on account of disability which had been opined to be neither attributable to nor aggravated by military service, and since primary condition of grant of disability pension prescribed in Rule 173 and Rule 179 of Pension Regulations for the Army, 1961 (Part 1) was not met, hence he was not found to be entitled to disability pension. It is pointed out that as per existing policy the individual who is invalided out from service on account of a disability which is attributable to or aggravated by such service is only entitled to disability pension consisting of service element and disability element. The Applicant's husband has rendered only a little over 7 years of service and thus he is not entitled to disability pension for which at least 10 years of service is required.

5. After hearing the Ld. Counsels for applicant and respondents and after perusing the material on record, we are of the opinion that there are basically three questions which need to be answered, i.e.- Firstly, was it correct to discharge the applicant through Release Medical Board (RMB)

and not Invaliding Medical Board (IMB). Secondly, is it correct to discharge a person with less than 20% disability on medical grounds and thirdly, is the disability attributable to or aggravated by military service.

6. Coming to first question of discharge from service on medical grounds, the law is well settled on this subject by Hon'ble Apex Court in ***Union of India & Ors vs Rajpal Singh***, **[2008] INSC 1913 (7 November 2008)** whereby it is mandatory to discharge a person prematurely, on medical grounds through Invaliding Medical Board and not through Release Medical Board. The relevant extracts of Apex Court judgement on **Union of India & Ors vs Rajpal singh** is Appended below:-

> *"18.The afore-extracted Rule 13 (1) clearly enumerates the authorities competent to discharge from service, the specified person; the grounds of discharge and the manner of discharge. It is manifest that when in terms of this Rule an army personnel is discharged on completion of service or tenure or at the request of the person concerned, no specific manner of discharge is prescribed. Naturally, the Regulations or Army Orders will take care of the field not covered by the Rules. However, for discharge on other grounds, specified in Column (2) of the Table, appended to the Rule, the manner of discharge is clearly laid out. It is plain that a discharge on the ground of having been found "medically unfit for further service" is specifically dealt with in Column (I) (ii) of the Table, which stipulates that discharge in such a case is to be carried out only on the recommendation of the Invalidating Board. It is a cardinal principle of interpretation of a Statute that only those cases or situations can be covered under a residual head, which are not covered under a specific head. It is, therefore,*

clear that only those cases of discharge would fall within the ambit of the residual head, viz. I (iii) which are not covered under the preceding specific heads. In other words, if a JCO is to be discharged from the service on the ground of "medically unfit for further service", irrespective of the fact whether he is or was in a low medical category, his order of discharge can be made only on the recommendation of an Invalidating Board. The said rule being clear and unambiguous is capable of only this interpretation and no other.

19. Having reached the said conclusion, we feel that the appellants were bound to follow Rule 13 (3) (I) (ii), more so having placed the respondent in low medical category (permanent) for a period of two years from October, 2001 he was discharged from service on 31st August, 2002, relying on the recommendation of the Re-categorisation Board held on 24th October, 2001. As noted in the show cause notice, extracted above, the said Board had placed the respondent in "permanent low medical category". Be that as it may, the main ground of discharge being medical unfitness for further service, the appellants were bound to follow the prescribed rule.

20. It is well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. This rule was enunciated by Justice Frankfurter in Viteralli Vs. Saton7, where the learned Judge said:

359 U.S. 535 : Law Ed (Second series) 1012 "An executive agency must be rigorously held to the standards by which it professes its action to be judged... Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed...This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with that sword."

Thus in light of above judgment and the fact that the applicant was prematurely discharged on medical grounds the discharge of the applicant through Release Medical Board was not correct and it is to be deemed that the applicant has been discharged through Invaliding Medical Board.

7. Coming to the second question as to whether invalidation/discharge from service on medical grounds can be done for a disability which is below 20%. This issue has been well settled by the Hon'ble Apex Court in its judgment of ***Sukhwinder Singh vs Union of India & Ors,*** wherein it has been clearly spelt out that Invalidation out cannot be done for a disability below 20%.

Hence in light of the above judgment it can be clearly seen that invalidation out of the applicant with 15 to 19% disability was incorrect hence it will be deemed that the applicant had a disability of 20%. Para 9 of the judgment, *of* ***Sukhvinder Singh Vs Union of India and Ors*** reported in 2014 STPL (WEB) 468 SC being relevant is quoted below.

> *"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 per cent and seems to us to be logically so. Fourthly, 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. ***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."***

8. Coming to the third question of deciding attributability, the same has already been well settled by Hon'ble Supreme Court in the case of ***Dharamvir Singh Vs. Union of India and Ors*** reported in (2013) 7 Supreme Court Cases 316. In this case the Apex Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words.

"29.1. Disability pension to be granted to an individual who is invalided from service on account of a disability which is attributable to

or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).

29.2. A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service [Rule 5 read with Rule 14(b)].

29.3. The onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).

29.4. If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service [Rule 14(c)]. [pic]

29.5. If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service [Rule 14(b)].

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 Pensions), 2002 - "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."

9. The above judgment has been constantly followed and further explored by the Supreme Court in ***Union of India and others v. Rajbir Singh*** (CA No. 2904 of 2011 decided on 13.2.2015)**;** ***Union of India and others v. Manjit Singh*** (CA No. 4357-58 of 2015 (arising out of SLP (C) No. 13732-33 of 2015) decided on 12.5.2015; ***Union of India v. Angad Singh*** (CA No. 2208 of 2011 decided on 24.2.2015); ***KJS Butter v. Union of India*** (CA No. 5591 of 2006 decided on 31.3.2011; ***Ex. Hav Mani Ram Bharia v. Union of India and others,*** Civil Appeal No. 4409 of 2011 decided on 11.2.2016; ***Satwinder Singh v. Union of India;*** OA 621 of 2014 ***Bharat Kumar Vs UOI & Ors*.;** OA 1235 of 2014 ***Hoshiar Singh Vs UOI & Ors*.** and 480 of 2015 ***Jasbir Singh Vs UOI & Ors*.** 18 and others Civil Appeal No. 1695 of 2016 (arising out of SLP (c) No. 22765 of 2011) and decided on 11.2.2016. Thus in light of the well settled law on attributability the disability of the applicant's husband is to be considered as attributable to military service.

10. The learned counsel for the respondents in para 11 of the counter affidavit has extensively relied upon the case of ***Union of India Vs Damodaran AV*** rendered on 20 Aug 2009 in SPL (C) No 23727 of 2008. Suffice it to say, the Hon'ble Apex Court in ***Dharamvir Singh's*** case has also considered the case of Damodran to arrive at the conclusion

aforesaid. Therefore the relevance put forth on Damodran's case by the respondents' counsel is absolutely misplaced.

11. The second limb of argument centres round the fact that the disability of the Applicant's husband was constitutional attended with the submission that there is no sophisticated medical apparatus to detect disease of Idopathi Etiology at the time of enrolment. In connection with the above argument we may note that this issue has been recently gone into by the Hon'ble Apex Court in ***Satwinder Singh Vs Union of India and others*** decided on 11.02.2016 in Civil Appeal No 1695 of 2016. Observations at page 13 and at page 14 being relevant are quoted below.

> *"Page 13*
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> *In the light of the above, there is no gainsaying that a presumption arises in favour of the applicant being fit on the date of his recruitment and the disease subsequently detected being attributable to military service. The presumption is no doubt rebuttable. The question is whether the respondents have been able to rebut the same. Reliance by the learned counsel for the respondents upon the report of the medical board to the effect that the disease is constitutional does not in our view constitute sufficient rebuttal of the presumption.*
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> *Page 14.*
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> *Be that as it may, the Medical Board simply opined that the disease is constitutional. There*

is no explanation or justification leave alone any cogent analysis of the cause or the basis on which the said opinion is recorded. Simply declaring that the disease is constitutional would not in the facts and circumstances of the case, suffice."

12. In so far as the relief of rounding off is concerned, it is no more res integra. On the issue of rounding off of disability pension, we are of the opinion that the case is squarely covered by the decision of ***K.J.S. Buttar*** vs. ***Union of India and Others***, reported in (2011) 11 SCC 429 and Review Petition (C) No. 2688 of 2013 in Civil appeal No. 5591/2006, ***U.O.I. & Anr vs. K.J.S. Buttar*** and ***Union of India vs. Ram Avtar & Others***, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014.

13. The issue of rounding off of disability pension has been well settled by Hon'ble Apex court. Thus, we would like to refer to the decisions of Hon'ble the Apex in the case of ***Sukhvinder Singh Vs Union of India and Ors*** reported in 2014 STPL (WEB) 468 SC**.** In our view, the case is fully covered by the aforesaid decision of Hon'ble The Apex Court in which the substance of what has been held is that even if an individual is assessed to be less than 20%, the *"disability leading to invaliding out of service would attract the grant of fifty per cent disability pension.".*

14. As a result of foregoing discussions, the O.A is **allowed**. The impugned orders are set aside. The disability of the Applicant's husband is held to be attributable to and aggravated by military service and the applicant shall be held to be invalided out of service with 20% disability. He is held entitled to disability pension for a period of two years from the date of discharge. The disability of the Applicant which was initially assessed as 15-19% for two years is deemed to be 20% for two years which shall stand rounded off to 50%. The Applicant shall be paid arrears of disability pension within four months of receiving a certified copy of this order. For default, the applicant shall be entitled to interest at the rate of 9% on the arrears aforesaid. The Applicant shall also be brought before Resurvey Medical Board to assess his present state of disability within three months from the date of this order and further payment of disability pension shall be subject to the recommendations of the Resurvey Medical Board.

15. No order as to costs.

(Air Marshal BBP Sinha) **(Justice S.V.S. Rathore)**
Member (A) **Member (J)**

Dated: May , 2018
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