

Court No. 1
Reserved Judgment

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW
ORIGINAL APPLICATION NO. 122 of 2018**

Friday, this the 27th day of April, 2018

**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal BBP Sinha, Member (A)”**

No. 9511853-N Hav Anant Bahadur Singh (Invalided), son of Late Raja Ram resident of village Bhawant Khera, Post Dhani Khera Distt Unnao U.P.-229501.

....Applicant

Ld. Counsel for the Applicant : **Shri Shailendra Kumar Singh, Advocate.**

Verses

1. Union of India, through its Secretary, Min of Defence, (Army), Govt of India, West Block-2 R.K.Puram, New Delhi.
2. Chief of Army Staff, Integrated Headquarters, Ministry of Defence, South Block, New Delhi-110 011
3. Officer-in-Charge, Records, Army Educational Corps, Records PIN-908777, C/O 56 APO.
4. PCDA (Pension), Draupadi Ghat, Allahabad (U.P.)-211014.

.....Respondents

Ld. Counsel for the Respondents : **Shri RC Shukla
Advocate, Sr. Central
Govt Standing Counsel.**

Assisted by : Maj Salen Xaxa, OIC Legal Cell.

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.

“(A) To quash the impugned order dated 24 Jul 2001 (Annexure A-1 of Instant OA) wherein claim of the applicant has been denied for continuance of disability pension with effect from 07 Aug 1997 owing to reduction of disablement percentage to less than 20% (11%-14%).

(B) To issue suitable orders or directions to the Respondents for grant of rounding off benefit of his disability element from 40% to 50% from 01.01.1996 to 06 Aug 1997 and thereafter from 07 Aug 1997 for life in terms of Govt of India letters dated 31 Jan 2001.

(C) To pay the arrears of said difference of disability element with effect from 07 Aug 1997 (date of discontinuance) for till actual payment date alongwith suitable rate of interest as deemed fit and proper by this Hon’ble Tribunal.”

2. Shorn of Unnecessary details, the facts of the case are that the applicant was enrolled in the Indian Army on 27 Sep 1991 as Havildar Education Instructor. During the course of undergoing Basic Recruit Training at Grenadiers Regimental Centre, he suffered injuries and was admitted to Military Hospital Jabalpur on 15 Feb 1992 for injury “FRACTURE TIBIA RT UPPER 1/3rd”. As a result of aforesaid injury, the applicant was invalidated out from service on 30 Aug 1992 under the

provisions of Army rule 13 (3) III (iii), being in medical category "EEE" on the recommendation of the Invaliding Medical Board held on 12 Aug 1992. The aforesaid Medical Board opined the disability as attributable to military service and assessed the disability as 40% for two years w.e.f 30 Aug 1992. The case for disability pension was processed and forwarded to PCDA (P) Allahabad. The PCDA (P) Allahabad in consultation with Medical Advisor attached with PCDA (Pension) Allahabad notified service element of disability pension w.e.f 30 Aug 1992 for life and disability element of disability pension for five years w.e.f 30 Aug 1992 to 06 Aug 1997 vide communication dated 11 Mar 1993. On expiry of aforesaid period, the applicant was again brought before Resurvey medical Board which assessed his disability as 0%. In the light of the opinion of the aforesaid Medical Board, the claim for disability pension was again processed and forwarded to PCDA (P) Allahabad. The PCDA (P) Allahabad in consultation with the Medical Advisor attached with it, reassessed the disability as less than 20% (11-14%) for five years w.e.f. 07 Aug 1997 to 05 Jun 2002 vide their communication dated 12 Oct 1998 but his claim for disability pension was rejected and the disability pension was discontinued. Aggrieved, the applicant preferred appeal which was rejected vide communication dated 24 Jul 2001 on the ground of disability being less than 20%. Again on expiry of

five years, the Applicant was brought before Resurvey Medical Board which reassessed his disability as 11-14% for life w.e.f. 06.06.2002. The case of the applicant was again processed for grant of disability pension and forwarded to PcDA (P) Allahabad which rejected the claim for disability pension vide communication dated 06 Sep 2002. It is in this backdrop that the present O.A has come to be filed after efflux of 16 years.

3. We have heard learned counsel for the Applicant as also learned counsel for the respondents. We have also perused the material facts on record.

4. The main brunt of contentions raised by learned counsel for the respondents is that since the disability of the applicant was less than 20%, and he having not satisfied the primary condition for grant of disability pension as specified in Para 173 of Pension Regulations for the Army 1961 in which the percentage of disability must be 20% or above for grant of disability element of disability pension, the applicant was not entitled to disability element of disability pension which was discontinued w.e.f 07 Aug 1997.

5. The only question for consideration is whether the Applicant shall be entitled to disability pension in terms of his disability which was assessed at less than 20%. It brooks no dispute that the applicant was invalidated out from service on

account of being in low medical category. In this connection, we feel called to refer to ex-cathedra decision of the Apex Court in **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."* Para 9 of the judgment, 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."***

6. In the facts and circumstances of the case, we are of the view that the applicant being a case of invalidation is entitled

to disability element of pension through rounding off even if his disability was assessed as less than 20%.

7. Accordingly, the O.A is allowed. The impugned orders are set aside. The disability of the Applicant is assessed as 11-14% for life which in terms of the aforesaid decision would stand rounded off to 50% for life w.e.f. 03 years prior to filing this O.A. The date of filing O.A. is 11.04.2018. The respondents are also directed to round off the disability element of disability pension of the Applicant from 40% to 50% for the period from 01.01.1996 to 06 Aug 1997. The arrears of disability pension shall be paid within four months from the date of production of a certified copy of this order. For default the applicant shall be entitled to interest at the rate of 9% on the amount accrued from due date till the date of actual payment.

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

Dated: April, 27 , 2018

MH/-