

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 359 of 2020**Tuesday, this the 28th day of September, 2021**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 270360A Ex Rect Munesh Kumar, S/o Tej Pal Singh, R/o Village – Hasanpur Jarolie, Post Office – Hetalpur, District-Aligarh (U.P.).

..... Applicant

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

Versus

1. Second Appellate Committee on Pension (SACP) Additional Director General of Personal Services, Adjutant Generals Branch/PS-4 (Imp-II), Integrated Headquarters of MoD (Army) Room No 11, Plot No 108 (West) Brassey Avenue, Church Road, New Delhi – 110011.
2. Commandant cum Chief Records Officer, Grenadiers Regimental Centre and Record, Jabalpur.
3. Union of India, through Secretary, Ministry of Defence (Army), South Block, New Delhi-110011.

.....**Respondents**Ld. Counsel for the Respondents. : **Ms. Amrita Chakraborty,
Central Govt. Counsel**

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

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 rejection order of the Adjutant General’s Branch, IHQ of MoD (Army) New Delhi bearing No B/38046A/742/2019/AG/PS-4 (2nd Appeal) dated 29 Jul 2020 rejecting the final Appeal of the applicant with all the consequential benefits to the applicant.*
- (b). *To quash the rejection order of the Additional Directorate General New Delhi letter No. B/40502/754/2019/AG/PS-4 (Imp-II) dated 30 Aug 2019 rejecting the First Appeal of the applicant with all the consequential benefits to the applicant.*
- (c). *to grant disability pension to the applicant as claimed in the rejection order of Adjutant Generals branch, IHQ of MoD (Army), New Delhi bearing No B/38046A/742/2019/AG/PS-4 (2nd Appeal) dated 29 July 2020 (Annexure A-1 refers) between 15% - 19% from the date of medical board out i.e. 18 Dec 2006 with all the consequential benefits to the applicant.*
- (d). *To grant the benefits of broad banding (rounding off) of the disability pension to 50% as laid down paragraph 7.2 of the Government of India, Ministry of Defence, New Delhi letter No. 1(2)97/D(Pen)-C, dated 31 Jan 2001, effective from 01 Jan 1996 with all the consequential benefits to the applicant.*
- (e). *To issue any other order or direction considered expedient and in the interest of justice and equity.*

2. Briefly stated facts of the case are that applicant was enrolled in the Indian Army on 29.07.2005. During the training applicant was granted 28 days recruit leave with effect from 26.12.2005 to 22.01.2006. On joining duty he complained illness and was admitted to Military Hospital Jabalpur where he was diagnosed as a patient of **“TUBERCULAR PLEURAL EFFUSION”** and was discharged from service on 18.12.2006 before completion of his terms of engagement. Delayed Release Medical Board of the applicant held at Base Hospital, Delhi on 08.06.2019 assessed his disability **“TUBERCULAR PLEURAL EFFUSION”** @ 15%-19% for two years and opined the disability as attributable to military service. The applicant approached the respondents for grant of disability pension but the same was rejected vide letter dated 30.08.2019. His appeal for grant of disability pensions was also rejected vide letter dated 29.07.2020 as the disability was assessed less than 20%. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned counsel for the applicant pleaded that at the time of enrolment, he was found mentally and physically fit for service in the army and there is no note in the service documents that he was suffering from any disease at the time of enrolment. He submitted that the disease of the applicant occurred during service hence RMB has conceded it as aggravated by service. He further submitted that claim for the grant of disability pension was wrongly

rejected on the ground of disability percentage being less than 20%. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension as well as arrears thereof and its rounding off to 50%. He also relied upon the judgment of the Hon'ble Apex Court in the case of **Sukhvinder Singh vs Union of India & Ors**, Civil Appeal No. 5604 of 2010, decided on 25.06.2014 and pleaded that he is entitled to grant of disability pension and its rounding off.

4. Rebutting arguments of the applicant, Ld. Counsel for the respondents submitted that on returning from leave, applicant reported sick. The applicant was admitted in Military Hospital, Jabalpur on 09.008.2006 and finally discharged from hospital on 25.11.2006 in Medical Category SHAPE-1. As per Paragraph 6 of Integrated Headquarters of Min of Def letter dated 28.02.1986, *“if a recruit is being discharged for being absent from training for more than 180 days purely on medical grounds, the period of absence may be extended to 210 days provided the recruit forgoes his annual leave of 30 days which he is entitled during recruit training. This period of annual leave will be utilised for carrying out important aspects of training missed during his absence on medical grounds.”* Since the applicant had already availed 28 days of recruit leave, he was absented from training for 299 days purely on medical grounds. Accordingly, A show cause notice was issued stating that “Why you should not be discharged from service in terms of the

above said ruling, under Army Rule 13 (3) Item III (iv) being Unlikely to become an efficient soldier.” Applicant replied to the show cause notice, yet he was liable to be discharged from service in terms of existing policies. Subsequently, applicant was discharged from service on 18.12.2006 (FN) in Medical Category SHAPE-1 after rendering one year, four months and 20 days service in the army. After discharge from army applicant submitted a petition to Chief of the Army Staff for re-instatement into service by waiving off the excess period of hospitalisation which was rejected. The applicant again filed O.A. No 417 of 2017 at Tribunal which was disposed of with the direction to respondents to decide his statutory appeal dated 31.01.2017. Appeal of the applicant was considered and a direction was given to respondents to conduct a delayed Release Medical Board. Delayed Release Medical Board of the applicant was conducted and medical board assessed his disability @ 15%-19% for two years and was considered as attributable to military service. Claim of the applicant for grant of the disability pension was rejected because medical board has assessed the degree of disablement between 15 -19% which is less than the minimum requirement of 20% for the grant of disability pension, therefore, the disability pension is inadmissible to the applicant.

5. We have heard learned counsel for the parties and perused the record. The questions which needs to be answered are of three folds:-

- (a) Whether the applicant is entitled to disability pension despite disability being less than 20%?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability pension?

6. In the instant case applicant was discharged from service before completion of terms of engagement. In this regard it is relevant to quote from Entitlement Rule for Casualty Pensionary Award, 1982, Para 4 which form part of Pension Regulations Appendix II-

“Para 4.

Invaliding from service is a necessary condition for grant of 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.”

7. Thus in the instant case the applicant having been discharged in low medical category before completion of terms of engagement is deemed to have been invalidated out of service.

8. The law is settled that even if disability percentage is less than 20%, it would stand rounded off to 50% (in cases after their invalidation). The case in point relied upon by the Applicant is **Sukhhvinder Singh Vs. Union of India**, reported in (2014) STPL

(WEB) 468 SC. In para 9 of the judgment Hon'ble Apex Court has held 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 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.”

9. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Versus Union of India & Others***, 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)."

10. The initial presumption that the applicant was physically fit and free from any disease and in sound physical and mental

condition at the time of entering into service remains unrebutted. We are therefore of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant in view of ***Dharamvir Singh vs Union of India & Ors*** (supra) and the disability of the applicant should be considered as aggravated by military service.

11. Since the medical board has assessed the disability for two years, as such keeping in view the judgment of ***Veer Pal Singh vs Ministry of Defence***, reported in (2013) 8 SCC 83, we feel that the case of the applicant should be recommended for Re-survey Medical Board to reassess further entitlement of disability pension, if any.

12. In view of the above, the Original Application deserves to be allowed, hence **allowed**. The impugned orders rejecting claim for grant of disability pension are set aside. Respondents are directed to grant disability pension @ 15% -19% deemed to be 20% for two years to the applicant, which shall stand rounded off to 50% for two from the date of conduct of Delay Release Medical Board of the applicant. Delay Release Medical Board of the applicant was conducted at Base Hospital, Delhi Cantt on 01.04.2019. The respondents are further directed to refer the applicant's case to Re-survey Medical Board for further entitlement of disability pension. The entire exercise shall be completed by the respondents within four months from the date of production of a

certified copy of this order, failing which the respondents shall be liable to pay interest at the rate of 8% to the applicant on the amount accrued till the date of actual payment.

13. No order as to costs.

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

Dated : 28 September, 2021

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