

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**ORIGINAL APPLICATION No. 393 of 2020**

Tuesday, this the 28th day of September, 2021

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

No. 4197930W Ex MACP Hav Tejpal Singh Chand, son of Shri Jag Mohan Singh Chand, permanent residence of SFR, Rampura Road Shantinagar, Post-Kashipur, District-Udham Singh Nagar (UK), Pin-244713, Present Address-C/O Shri Satnan Singh, Sector-B, Vijaynagar, Hariharpur, Nilmatha, Lucknow-226002.

.....Applicant

Ld. Counsel for :**Shri Manoj Kumar Awasthi**, Advocate.
the applicant

Versus

1. Union of India through Secretary Ministry of Defence (Army), South Block, New Delhi-110011.
2. Chief of the Army Staff, IHQ of MoD (Army), Army HQ, South Block, New Delhi-110010.
3. The Officer-in-Charge, Records, The Kumaon Regiment, Pin-900473, C/O 56 APO.
4. Principal Controller of Defence Accounts (P), Draupadighat, Allahabad.

.....Respondents

Ld. Counsel for the:**Shri Ashish Kumar Singh**,
Respondents. Central Govt Counsel.

ORDER (Oral)

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) *To issue/pass an order or direction to set aside/quash the rejection order dated 28.09.2018 and appellate order dated 21.08.2019, which is attached as Annexure No 1 and 2 respectively.*
- (ii) *To issue/pass an order or direction to the respondents for grant of disability element of disability pension from date of discharge i.e. 01.09.2018 (FN).*
- (iii) *To issue/pass an order or direction to the respondents for grant of disability element of disability pension of the applicant 6-10% to round off 50% vide Govt of India letter dated 31.01.2001 and also Hon'ble Apex Court judgment Union of India vs Ram Avtar.*
- (iv) *To issue/pass an order or direction to the respondent for reinstate in service and provide the all consequential benefits.*
- (v) *To issue/pass any other order or direction as this Hon'ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.*
- (vi) *To allow this original application with costs.*

2. The brief facts of the case are that the applicant was enrolled in the Indian Army on 22.01.2002 and was discharged from service in terms of clause 13 (3) I (i) of Army Rules, 1954 on 31.08.2018 in low medical category prior to completion of terms of engagements. The Release Medical Board (RMB) held at Base Hospital, Lucknow on 25.06.2018 assessed his disability 'Fracture Navicular (Lt) (S-62)' @ 6-10% for life attributable to military service. Disability pension claim was rejected vide order dated 28.09.2018 and thereafter, First Appeal was also rejected

vide order dated 21.08.2019. It is in this perspective that the applicant has preferred the present O.A.

3. Ld. Counsel for the applicant pleaded that the applicant was fully fit at the time of enrolment and the said disability i.e. 'Fracture Navicular (Lt) (S-62)' 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 element of pension.

4. On the other hand, Ld. Counsel for the respondents submitted that as the disability of applicant has been assessed @ 6-10% for life i.e. below 20%, he is not entitled to disability element of pension in terms of para 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 the Commanding Officer had provided sheltered appointment to applicant in the unit and since no further sheltered appointment was available, he was rightly discharged

from service being in low medical category. He pleaded for dismissal of the O.A.

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 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 medically boarded out from service before completion of his terms of engagement in low medical category and was, thus, discharged from service. 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 Hon'ble Apex Court's judgment (supra), 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 'Fracture Navicular (Lt)' and since his disability took place while serving in field area, therefore, the RMB has declared his disability as attributable to military service

in terms of Injury Report dated 20.11.2010. The aforesaid law also makes clear that in case of invalidation the disability percentage is presumed to 50% irrespective of the disability percentage assessed by RMB/IMB.

11. In view of the above, we are of the considered opinion that applicant's discharge vide Release Medical Board held on 25.06.2018 is to be treated as invalidation in terms of Rule 4 of the Entitlement Rules (supra).

12. As a result of foregoing discussion, the O.A. is **allowed**.

13. In view of the above, we are of the view that the applicant is held entitled to 50% disability element of pension for life in view of **Sukhwinder Singh** (supra) w.e.f. his date of discharge i.e. 01.09.2018. The respondents are directed to pay disability element of pension to applicant along with arrears within a period of four months from today. Default will invite interest @ 8% p.a.

14. No order as to costs.

15. Pending miscellaneous applications, if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 28.09.2021
rathore