

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
CIRCUIT BENCH AT NAINITAL****ORIGINAL APPLICATION No. 286 of 2017**Friday, this the 1st day of June, 2018**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal BBP Sinha, Member (A)”**Sita Devi, mother of Ex RFN-408727H Vinod Kumar, wife of Thakur Singh,
resident of village and Post Bhikawala, Tehsil Dhampur, District Bijnor (U.P.)

..... Applicant

Ld. Counsel for the Applicant : **Shri S.C.Bhatt, Advocate**

Versus

1. Union of India, through Secretary, Ministry of Defence, Central Civil Secretariat, New Delhi.
2. The Officer-in-Charge Records, Garhwal Rifles, Lansdowne, Pauri Garhwal.
3. SO AG/PS-4 (IMP-II) Adjutant General’s Branch, Integrated HQ of MoD (Army), DHQ PO, New Delhi.
4. Director, Addl. Dte General Personnel Services Adjutant, General’s Branch IHQ of MoD (Army), Room No. 11, Plot No. 108 (West) Brassey Avenue, Church Road, New Delhi.
5. The P.C.D.A. (P), Allahabad.

.....Respondents

Ld. Counsel for the Respondents : **Shri R.C. Shukla,**
Addl. 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) Set aside/quash the impugned order dated 12.05.2008 passed by respondent no.2 (Annexure No.1), order dated 18.07.2011 passed by respondent no. 3 (Annexure No.2) and order dated 01.09.2014 (Annexure No.3) passed by respondent no. 4.

(j) Issue a direction to the respondents to pay the disability pension to the petitioner along with consequential benefits since 2009 with interest.

(ii) Issue any other or further direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

(iii) To award the cost of the petition in favour of the petitioner.

2. Shorn of unnecessary details, the facts of the case are that the present applicant is the mother of deceased soldier (Ex Rfn-408727H Vinod Kumar) and her husband is alive. The son of the applicant, Ex Rfn-408727H Vinod Kumar, hereinafter referred to as 'individual', was enrolled in the Indian Army on 05.07.2003. On completion of five years and nine months Military service, while serving with 8 Garhwal Rifles, the individual was admitted in Military Hospital, Roorkee as a case of Poisoning Psychiatry (Inv) and was granted sick leave. He was thereafter downgraded to low medical category S3 (T-24) with effect from 14.10.2008 for six months having been diagnosed as a case of OBSSEIVE COMPULSIVE DISORDER (F-42). He again reported to Military Hospital, Meerut for medical review on 28.03.2009 and the graded specialist (Psychiatrist) declared the individual to be suffering from OBSSEIVE COMPULSIVE DISORDER and recommended him to be invalided out of service in low medical category S3 (T). The Invaliding Medical Board held on 30.04.2009 assessed the degree of his disability as NIL and declared it as 'neither attributable to nor

aggravated' by military service, which was approved by the competent authority. The applicant was invalided out from service on 03.06.2009. The claim of the individual for disability pension was rejected by the competent authority. He then preferred first appeal. From the pleadings on record, it is revealed that he died on 20.08.2010. It appears that the first appeal preferred by him was rejected on 18.07.2011. The applicant after rejection of first appeal had also preferred a second appeal pursuing the said cause, which too was rejected by order dated 01.09.2014.

3. **Per contra**, the respondents in their counter affidavit have denied the claim of the applicant on the ground that since the disability of the individual was assessed as neither attributable to nor aggravated by military service, he was not entitled to disability pension.

4. We have heard learned counsel for the applicant as also learned counsel for the respondents. We have also perused the material on record.

5. This is a case wherein indisputably at the time of entry in service, the individual was found to be medically fit. He served for more than five years and was discharged on the ground that the disability which he incurred during service was neither attributable to nor aggravated by military service. There is no dispute that during the tenure of his service, he was being treated in Military Hospital for the ailment he was suffering. In such circumstances, the disease for which the individual was being treated being the cause of his discharge, cannot be said to be not attributable to or aggravated by military service. There is no reasoned statement or rationale given by the Invaliding Medical Board held on

30.04.2009 to justify the opinion that the individual was suffering from the said disease before his entry in the service. It is extremely surprising that the individual was invalided out with disability percentage as NIL. It defies logic and rationality as to where was the need to snatch the right of livelihood of a person and invalid him out of service with a NIL disability percentage. Thus, considering that the applicant's son has served for about five years and that the Invaliding Medical Board has given no reason as to why the disease could not be detected at the time of enrolment, we consider this disease as attributable to Military Service.

6. The proposition of law with regard to disability percentage in case of invalidment has been well settled by the Hon'ble Supreme Court and is no more a *res integra*. Hon'ble the Apex Court in the case of **Sukhvinder Singh vs. Union of India**, reported in (2014) 14 SCC 364 has held that even if the percentage of disability is decided by Invaliding Medical Board to be less than 20%, even then in invalidment cases the disability will be assumed to be 20% or above. In this context, it would be relevant to quote relevant portion of the observations made by the Hon'ble Apex Court in the case **Sukhvinder Singh (supra)**, which is 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 authorizing the discharge or invaliding out of service where the disability is below twenty percent 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 percent. Fifthly, as per the extant

Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty percent disability pension.”
(Emphasis supplied by us.)

7. In view of the above-mentioned well settled law in the matter, the individual will be deemed to be having a disability percentage of 20% for life, which shall stand rounded off to 50% for life.

8. In view of the discussion held above, this OA deserves to be partly allowed and is hereby **partly allowed**. The respondents are directed to grant disability pension at the rate of 50% from the date of discharge of the individual i.e. 03.06.2009 till the date of his death i.e. 20.08.2010. The arrears shall be paid to the applicant, the mother & NoK of the deceased soldier, as per rules. This exercise shall be completed within a period of four months from today, failing which the respondents shall have to pay interest at the rate of 9% per annum on the total amount, from the date it has become due till the date of actual payment.

The Registry is directed to provide a copy of this order to the respondents for its onwards transmission and compliance.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice S.V.S. Rathore)
Member (J)

Dated: June 01 , 2018
LN/-