

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****COURT NO. 1****O.A. No. 174 of 2016****Tuesday, this the 25th day of July, 2017****“Hon’ble Mr. Justice D.P.Singh, Judicial Member
Hon’ble Air Marshal Anil Chopra, Administrative
Member”**

Kailash Kumar Ex. Sepoy A. M.C. Army No. 13915540, 117
Chak Niratul Allahabad (U.P.) Pin Code – 211016

---Applicant**Ld. Counsel appeared for the Applicant - Applicant in person**

Versus

1. Secretary, Ministry of Defence Union of India New Delhi.
2. Chief of Army Staff South Block New Delhi
3. Principal Controller of Defence Account (Pension)
Draupadi Ghat Allahabad
4. Officer I/C Record Army Medical Core Centre Lucknow (U.P.)

-- Respondents**Ld. Counsel appeared For the Respondents -Dr. Shailendra Sharma Atal,
-Sr. Central Govt Counsel****OIC Legal Cell - Maj Salen Xaxa.**

ORDER**“Per Hon’ble Air Marshal Anil Chopra, Member ‘A’”**

1. Present Application under section 14 of the Armed Forces Tribunal Act 2007 has been preferred assailing the orders declining grant of disability pension.
2. We have heard learned counsel for the Applicant as also learned counsel for the respondents assisted by the OIC Legal Cell.
3. Shorn of unnecessary details, the facts of the case are that the Applicant was enrolled in the Indian Army in Medical Corps on 30.01.1969 and was discharged after five years 10 months and 29 days of service under Army Rule 13 (3) Item III (V) on account of being in low medical category w.e.f 29.12.1974.
4. It may be pointed out that before discharge, he was subjected to medical examination by Release medical Board for his disability which was described as “FEMORAL VEIN THROMBOSIS (RT). The said R.M.B was held at Military Hospital Kirkee on 15.11.1974. The aforesaid Release Medical Board assessed the disability as not attributable to but aggravated by military service. The disability of the Applicant was pegged at 11-14% for two years.

5. It is canvassed that disability pension's claim was processed and transmitted to PCDA (P) Allahabad vide letter dated 15.01.1975 but the same was discountenanced on the ground that it was less than 20% for two years. Aggrieved by rejection, the Applicant preferred an appeal which also culminated in rejection on the ground that it was less than 20% for two years. It is pointed out that despite Applicant being asked to appear for Re-Survey Medical Board vide letter dated 25.09.1976, the Applicant was conspicuous by his absence and thereafter, he remained incommunicado for at least 38 years. It was after a gap of 38 years that the Applicant approached the Director General Armed Forces medical Services New Delhi for grant of all consequential benefits out of disability during service by means of Application which is annexed as R-8. The aforesaid Application came to be rejected observing that RSMB was arranged at MH Agra vide letter dated 25.09.2016, but the Applicant again was conspicuous by his absence and did not turn up.

6. We have heard learned counsel for the parties and perused the record.

7. It is conceded by the learned counsel for the respondents that the disability which the Applicant was affected with though not attributable to but aggravated by

Military service and further that the claim did not find favour with the authorities or for that with the PCDA (P) Allahabad as the Applicant's disability was less than 20%. The learned counsel for the respondents pressed into service though feebly, the contention that the Applicant has approached the Court after inordinate delay of 38 years. It would suffice to say that this Court while considering the respective submission on the Application for condonation of delay, looked into the inordinate delay and passed the appropriate order condoning the delay. Hence this plea at this stage, does not hold ground.

8. With regard to only submission that survives for consideration that the claim for disability pension of the Applicant was rejected on the ground that it was less than 20%, we feel called to refer to the decision of the Apex Court in **Sukhvinder Singh Vs. Union of India**, reported in **(2014) STPL (WEF) 468**, the 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.....”.

9. Dwelling on disability less than 20%, Hon’ble The Apex Court in the above case in para 9 of the judgment held that “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”. Hon’ble The Apex Court further held that “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 percent.” In the same vein, Hon’ble The Apex Court finally held that as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty percent disability pension.

10. In the instant case, the disability of the Applicant was assessed at less than 20% for two years and it was opined by the Release Medical Board that it was aggravated by Military Service. In view of the decisions referred to above, the disability of the Applicant is pegged at 20% for two years which may be rounded off to 50% and he is thus entitled to disability pension.

11. In view of the facts, circumstances and the law laid down by Hon’ble The Apex Court in the case of

Sukhvinder Singh (supra), we are of the considered view that the impugned orders contained in the letters dated 09.03.1975, 01.12.1975, 25.09.1976 and 18.12.2015 passed by the Respondents were not only unjust, illegal but were also not in conformity with rules, regulations and law. The applicant is entitled to disability pension @20% for two years which shall stand rounded off to 50% in the light of the decision of Hon'ble Apex Court in Sukhvinder Singh's case (supra).

Order

12. Thus in the result, the Original Application succeeds and is allowed. The impugned orders contained in the letters dated 09.03.1975, 01.12.1975, 25.09.1976 and 18.12.2015 passed by the Respondents are set aside. The applicant is entitled for disability pension @ 20% for two years which shall stand rounded off to 50% in terms of the decision of the Apex Court in Sukhvinder Singh (supra) from the date of discharge. The Respondents are also directed to refer the case to Re-Survey Medical Board for re-assessing the medical condition of the applicant for further entitlement of disability pension, if any. The Respondents are directed to give effect to the order within three months from the date of receipt of a certified copy of this order. In case payment of arrears is not made within the stipulated period, the Applicant would be

entitled to interest at the rate of 10% per annum of the arrears of disability pension till the date of payment.

13. No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

(Justice D.P. Singh)
Member (J)

Dated : July 2017

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