

RESERVED
Court No. 1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

ORIGINAL APPLICATION No. 678 of 2017

Friday, this the 19th day of January, 2018

Hon'ble Mr. Justice D.P. Singh, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

Ganesh Pandey, No 14606822F, Ex. Hav son of Shri Sheo Shankar Pandey Resident of : House No :27B, Nina Thapa Road, Near Maurya Factory, Maniknagar, Dargahiya, P.O. – Kunaraghat, P/S:- Shahpur, District: Gorakhpur,(U.P.)- 273008

.....**Applicant**

Ld. Counsel for the : **Shri V.K.Pandey, Advocate.**
Applicant

Verses

1. The Union of India through Secretary, Ministry of Defence, South Block R.K.Puram, New Delhi 110011.
2. Dir PS-4 AG's Branch, Integrated HQ of MoD (Army) DHQ PO New Delhi-11.
3. OIC EME Records, Secunderabad-500021.
4. The P.C.D.A. (P) Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the : **Shri Amit Jaiswal, Central Govt Counsel for Union of India**

Respondents. assisted by Maj Salen Xaxa, OIC
Legal Cell.

ORDER

"Per Hon'ble Air Marshal BBP Sinha, Member (A)"

1. Present O.A has been preferred under section 14 of the Armed Forces Tribunal Act, 2007 for the relief of grant of disability pension with effect from 31.08.2008.

2. The facts in nutshell are that the Applicant was enrolled in the Indian Army on 22.06.1987 and was discharged in low medical category on 31.08.2008 under Army Rule 13 (3) read with Army Rule 13 (2A). Before discharge, he was placed before Release Medical Board which termed the disability as "NIDDM (E 11)" and opined it to be neither attributable to nor aggravated by military service. The disability was assessed as below 20% (6-10%) for life. The claim for disability pension was rejected by the competent authority vide communication dated 30.09.2008. No appeal was preferred against the rejection of the claim for disability pension.

3. The mere ground for rejection of claim for disability pension as stated in counter affidavit was that the

disability of the applicant was opined to be neither attributable to nor aggravated by military service.

4. In the instant case, the applicant was discharged after completion of qualifying service of more than 15 years. Since the applicant was discharged in low medical category, it is settled position in law that he would be deemed to have been invalidated out from service.

5. The next ground urged is that the disability was assessed as less than 20%. In this case, it would suffice to refer to the decision of the Apex Court in **Sukhvinder Singh Vs. Union of India and Ors** reported in **2014 STPL(Web) 468 SC**, in Para 9 of the judgment, the observation made by Hon'ble The Apex Court 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 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."

The crux of the aforesaid decision is that whenever a member of the Armed Forces is invalidated out of service, it perforce has to be assumed that his disability was found to be above twenty per cent.

6. Thus in the facts and circumstances of the case, the O.A deserves to be allowed and the disability of the Applicant is assessed as 20% for life which on being rounded off would come to 50% for life. The respondents shall grant disability pension to the Applicant from the date of discharge. The arrears 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%.

7. In the result, the O.A is allowed and the disability of the Applicant is assessed as 20% for life which on being

rounded off would come to 50% for life. The respondents shall grant disability pension to the Applicant from the date of discharge. The arrears 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%.

(Air Marshal BBP Sinha)
Member (A)

Dated: January, 2018

MH/-

(Justice Devi Prasad Singh)
Member (J)