

RESERVED
Court No. 1

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

ORIGINAL APPLICATION NO 655 of 2017

Thursday, this the 18th day of January, 2018

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

Smt. Ganeshi Devi widow of Late Gaje Singh Negi Ex Rfn No.
40447847 R/O- House No -B - Block , Indra Nagar Lucknow.

.....Applicant

Ld. Counsel for the : **Shri Parijaat Belaura, Advocate.**
Applicant

Verses

1. Union of India, through, the Secretary, Ministry of Defence, Government of India, New Delhi.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), DHQ, Post Office New Delhi.
3. The Officer-in-Charge Records The Kumaon Regiment, PIN-900473, C/o 56 APO.
4. The Chief Controller Defence Accounts, Draupadi Ghat, Allahabad (UP).

.....Respondents

Ld. Counsel for the : **Shri Amit Jaiswal, Advocate**
Respondents.

Assisted by : Maj Salen Xaxa, OIC Legal
Cell

ORDER

“Per Hon’ble Air Marshal BBP Sinha, Member (A)”

1. The Present Application under section 14 of the Armed Forces Tribunal Act, 2007 has been preferred by wife of the deceased Army personal, primarily for following relief:

- (a) To grant disability pension to her late husband from date of discharge i.e.31-08-1973 till his death i.e. 07-01-2014.
- (b) To round off the disability pension from 30% to 50%.
- (c) To grant enhanced family pension from the date of death of her husband.

2. Perusal of records from both sides indicates the following undisputed facts:

(a) That the husband of the applicant was enrolled in the Indian Army (The Garhwal Rifles) on 27.11.1965 in a medically fit condition (S1H1A1P1E1) for an initial terms of engagement and after completion of more than 08 years of service he was prematurely discharged from service on 31.08.1973 on medical grounds, under Army Rule 13 (3) III (V) of Army Rule 1954. After a series of representation and Court case in Hon’ble High Court Allahabad, he died on 06.01.2014.

(b) The husband of the applicant suffered with **‘AMBLYOPIA BOTH EYE WITH MYOPIA’** The applicant was brought before duly constituted Release Medical Board on 22.09.1973 which as per respondents,

recommended him to be discharged from service in low medical category and assessed his degree of disability @ 30% for life and declared it to be constitutional in nature neither attributable to nor aggravated by military service.

(c) The applicant had been consistently representing his case after discharge through representations, appeals writ petition in court of law since 1973. His appeal and representations for disability pension did not go in his favour. His Writ Petition no 6866 of 1988 before Hon'ble High Court of Judicature, Allahabad seeking disability pension was dismissed on technical grounds of not challenging the opinion of medical board. After his death the widow had filed the present O.A. at this Tribunal.

3. Heard Shri Parijaat Belaura, Ld. Counsel for the applicant and Shri Amit Jaiswal, Ld. Counsel for the respondents, assisted by Maj Salen Xaxa, OIC Legal Cell and perused the records submitted. Primarily the tribunal has to answer two basic questions in this case i. e.:

(a) Is the discharge of the applicant through Release Medical Board (RMB),pre maturely, before completion of his engagement period, a valid discharge or should he have been discharged through an Invaliding Medical Board (IMB).

(b) Is his disability constitutional in nature or attributable to or Aggravated by military service?

4. The law on premature discharge from Military on medical grounds, has been well settled by the Hon'orable supreme court in the case reported in (2009) 1 SCC 216, **Union of India and ors vs. Rajpal Singh**. Relevant extract of the judgement is as follows:-

18. *The afore-extracted Rule 13 (1) clearly enumerates the authorities competent to discharge from service, the specified person; the grounds of discharge and the manner of discharge. It is manifest that when in terms of this Rule an army personnel is discharged on completion of service or tenure or at the request of the person concerned, no specific manner of discharge is prescribed. Naturally, the Regulations or Army Orders will take care of the field not covered by the Rules. However, for discharge on other grounds, specified in Column (2) of the Table, appended to the Rule, the manner of discharge is clearly laid out. **It is plain that a discharge on the ground of having been found "medically unfit for further service" is specifically dealt with in Column (I) (ii) of the Table, which stipulates that discharge in such a case is to be carried out only on the recommendation of the Invalidating Board.** It is a cardinal principle of interpretation of a Statute that only those cases or situations can be covered under a residual head, which are not covered under a specific head. It is, therefore, clear that only those cases of discharge would fall within the ambit of the residual head, viz. I (iii) which are not covered under the preceding specific heads. In other words, if a JCO is to be discharged from the service on the ground of "medically unfit for further service", irrespective of the fact whether he is or was in a low medical category, his order of discharge can be made only on the recommendation of an Invalidating Board. The said rule being clear and unambiguous is capable of only this interpretation and no other.*

19. *Having reached the said conclusion, we feel that the appellants were bound to follow Rule 13 (3) (I) (ii), more so having placed the respondent in low medical category (permanent) for a period of two years from October, 2001 he was discharged from service on 31st August, 2002, relying on the recommendation of the Re-categorisation Board held on 24th October, 2001. As noted in the show cause notice, extracted above, the said Board had placed the respondent in "permanent low medical category". Be*

that as it may, the main ground of discharge being medical unfitness for further service, the appellants were bound to follow the prescribed rule.

20. It is well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. This rule was enunciated by Justice Frankfurter in Viteralli Vs. Saton⁷, where the learned Judge said:

359 U.S. 535 : Law Ed (Second series) 1012 "An executive agency must be rigorously held to the standards by which it professes its action to be judged... Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed...This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with that sword."

5. Thus in light of above judgement it is clear that discharge of applicant's husband through RMB was ab initio wrong and void. He should have been discharged through IMB. Thus his discharge is to be deemed as INVALIDATION out of service.

6. Coming to the second issue of attributability, we have found that though copy of RMB proceedings are not attached with OA or counter, however enough credible evidence of disability being not attributable or aggravated by RMB (Release Medical Board) is available in the letters of Record Office, in the Court proceedings and in the counter affidavit. Based on this available evidence a decision on attributability can be taken. The law on attributability of disability is well settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh vs. Union of India & Ors.*** The relevant part of judgement is as follows:

"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)."

7. In view of the well settled law on attributability, the disability of applicant's husband is considered as ATTRIBUTABLE to military service.

8. In light of above considerations the applicants husband's discharge is to be treated as INVALIDATION out of service and

his disability is to be treated as an ATTRIBUTABLE to military service. Thus in view of above the applicant's husband is eligible for Disability pension with disability as well as service element.

9. As far as rounding off is concerned, the law on rounding off of disability pension on invalidation has been well settled vide Hon'ble Supreme Court in **Sukhvinder Singh vs. Union of India & Ors**, reported in 2014 STPL (Web) 468 SC and (2013) 7 SCC 316 in which the Apex Court held that 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 and further as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension. Relevant portion of the judgment of Hon'ble Supreme Court in the case of **Sukhvinder Singh** (*supra*) is reproduced as under:-

“19. 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 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.

20. In view of our analysis, the Appellant would be entitled to the Disability Pension. The Appeal is, accordingly, accepted in the above terms. The pension along with the arrears be disbursed to the Appellant within three months from today.”

10. In view of above the disability of applicant's husband of 30% for life is rounded off to 50% for life.

11. In view of the above mentioned legal position, the OA is partly allowed. Respondents are directed to sanction disability pension @50% to applicant's husband three years prior to his date of death i.e. 06.01.2014. Thereafter with effect from the date of death of the applicant's husband, the applicant shall be entitled as legally wedded wife, to ordinary family pension and all associated benefits. Accordingly respondents are directed to pay the entire arrears to the applicant within four months from the date of receipt of a copy of this order, failing which the unpaid amount will carry a simple interest at the rate of 9% per annum to be paid by the respondents to the applicant.

12. There will be no order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice Devi Prasad Singh)
Member (J)

Dated: 18 January, 2018

BLY/-

