RESERVED

COURT No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 95 of 2016

Thursday, this the 04th day of January, 2018

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

No. 3178863L Ex Sepoy Anil Kumar son of Late Shri Khacheru Singh resident of House No. 241/17B, Street No. 03, Shaikhpura Road, Multan Nagar, Baghpat Road, Meerut, Uttar Pradesh .....**.....Applicant**

Ld. Counsel for the Applicant : **Col (Retd) Rakesh Johri, Advocate** (Counsel for the applicant)

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi – 110001

2. Chief of the Army Staff, Integrated Headquarters of the Min of Def, South Block, New Delhi – 110001.

3. Adjutant General, Integrated Headquarters of the Min of Def, South Block, New Delhi – 110001.

4. Officer-in-Charge Records, Records the Jat Regiment PIN – 900496, C/o 56 APO

5. Principal Controller General Defence Accounts Pensions, Draupadi Ghat, Allahabad – 211014

..... **.....Respondents**

Ld. Counsel for the Respondents. : **Shri Sunil Sharma, Advocate** Sr. Central Govt Standing Counsel

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 primarily seeking relief of rounding off of disability pension to 50%. The other related reliefs prayed for in the relief columns have not been pressed into service in the course of arguments.

2. The facts in a nutshell are that the Applicant was enrolled in the Indian Army on 20.11.1984 and was ultimately discharged from service on 21.08.1990 in low medical category under rule 13 (3) (iii) (v) of the Army Rules 1954 read with Item 2 (A) to rule 13. Prior to discharge, the applicant was brought before Release Medical Board wherein his disability was assessed as 20% for two years and at the same time was opined to be attributable to military service. The Applicant was sanctioned disability pension consisting of service element and disability element. The Applicant was again brought for medical examination, this time, before the Resurvey Medical Board held on 15.02.1993 and this time, the disability of the applicant was assessed as 20% for five years. In view of Medical Report, the disability pension including

Service element and disability element was continued. The Resurvey Medical Board was again held on 22.09.1998 wherein the disability of the applicant was assessed as 20% for five years. This time, the matter was processed for grant of disability pension to the PCDA (P) Allahabad which altered and assessed it as 11-14% for five years. It is alleged that since PCDA (P) Allahabad assessed the disability as less than 20%, the disability pension was discontinued vide communication dated 15.01.1998. The aforesaid decision of the PCDA (P) was communicated to the Applicant with the advice to prefer appeal. No appeal was preferred by the Applicant. On subsequent request of applicant, the Resurvey Medical Board (RSMB) was again held on 06.08.2002. The RSMB this time assessed the disability as 11-14% for life. The claim for disability pension was processed and forwarded to the PCDA (P) which rejected it on the ground of being less than 20%. The decision of the PCDA (P) was communicated vide communication dated 14.07.2003, but no appeal was filed. It would appear that in between 2003 to 2014, the Applicant remained tight-lipped and woke up from hibernation on 20.01.2014 by sending a letter under RTI Act seeking certain details which were furnished to him vide letter dated 10.02.2014. After 12 years, the Applicant preferred the appeal on 02.06.2014. The appeal does not seem to have been

entertained as being time barred. It is in this backdrop that the present O.A was filed.

3. We have heard learned counsel for the Applicant as also learned counsel for the respondents. We have also gone through the material facts on record.

4. The delay between 2003 to 2014 was condoned after hearing the parties vide order dated 17.3.2016. Thus, the argument that the claim of the Applicant was barred by time, is not tenable.

5. Learned counsel for the Applicant canvassed that RSMB held on 22.09.1998 assessed as the disability as 20% for five years and the same was opined to be attributable to by military service but the PCDA (P) on the opinion of the Medical Advisor attached to PCDA (P) reduced the same to 11-14% for five years and discontinued the disability pension taking into account the primary condition of Rule 173 of Pension Regulations which they could not do in view of various decisions of the Apex Court on the point. It is further canvassed that the RSMB held on 06.08.2002 held the

disability as 11-14% for life and despite catena of decision on the point, the PCDA (P) denied the disability pension on grounds of Rule 173 of the Pension Regulations.

6. Learned counsel for the respondents pressed into service the threadbare plea that considering the primary condition as envisaged in Rule 173 of the Pension Regulations, the Applicant was rightly denied the disability pension, it being less than 20%.

7. There is no denying of the fact that the Applicant suffered injury in his finger during operation Pawan while in operation in Sri Lanka on 05.02.1988. It is admitted on all hands that the injury sustained by the Applicant was not treated as battle injury but was considered as attributable to military service. The Applicant in O.A claimed to have been discharged on medical compassionate grounds but in the counter affidavit, it is clearly averred that the Applicant was discharged on account of being in low medical category. To rephrase it, the applicant should have been invalidated out from service on medical ground and not released. The disability suffered by the Applicant was stated to be "GSW RIGHT HAND MIDDLE

FINGER WITH COMPOUND FRACTURE PROXIMAL PHALANX". This fact has not been denied by the respondents in the counter affidavit.

8. As far as reducing the disability percentage as decided by RSMB from 20% to 11-14% by PCDA (P) Allahabad is concerned, we may refer to the decision of Hon'ble The Apex Court in **Ex. Sapper Mohinder Singh vs Union of India in Civil Appeal No 104 of 1993 decided on 14.01.1993** nodded with approval **in Babu Singh Vs Union of India and others CWP No 3296 of 2003 decided on 26.4.2006.** The observation made in the decision of **Ex. Sapper Mohinder Singh (supra)** being relevant is quoted below.

> *"From the above narrated facts and the stand taken by the parties before us, the controversy that falls for determination by us is in a very narrow compass viz. whether the Chief Controller of Defence Accounts (Pension) has any jurisdiction to sit over the opinion of the experts (Medical Board) while dealing with the case of grant of disability pension, in regard to the percentage of the disability pension, or not. In the present case, it is nowhere stated that the petitioner was subjected to any higher medical Board before the Chief Controller of Defence Accounts (Pension) decided to decline the disability pension to the petitioner. We are unable to see as to how the accounts branch dealing with the pension can sit over the judgment of the experts in the medical line without making any reference to a detailed or higher Medical Board which can be constituted under the relevant instructions and rules by the Director General of Army Medical Core."*

9. In the aforesaid decision, the Apex Court has basically surmised that PCDA (P) Allahabad can't adjudicate the disability percentage, without making any reference to a detailed or higher Medical Board. Thus it can safely be said that intervention by the PCDA (P) with the opinion of the medical board was not valid legally. Thus we are of the view that the Applicant was erroneously denied disability pension w.e.f 22.09.1998, in utter disregard of the opinion of the RSMB which assessed the disability of the Applicant as 20% for five years.

10. In the subsequent RSMB which was held on 06.08.2002, the disability of the Applicant was assessed as 11-14% for life. Thus the disability pension was denied to the Applicant on account of disability being less than 20% as per Rule 173 of the Pension Regulations.

11. The legal issue which arises here is about the nature of discharge of the applicant. As per counter the applicant was discharged on 21-08-1990 on medical grounds through Release Medical Board (RMB) thereby meaning that his engagement period was cut short. Any discharge on medical grounds through Release Medical Board is ab initio wrong and

invalid. Release on medical grounds before completion of period of engagement has to be mandatorily through Invalid Medical Board (IMB) only. The Apex court has amply clarified this in its order of order of **Union of India & Ors vs Rajpal Singh on 7 November, 2008**. Relevant extracts of this order are 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'."*

12. Thus the applicant should have been released through Invalidating Medical Board (IMB). Had he been originally released through IMB on 21.08.1990, he would have automatically got the benefit of rounding off.

13. Not withstanding the above, the rule on disability percentage in cases of invalidation is well settled by a catena of decisions. It has been held that even if the disability is assessed less than 20% the same shall be presumed to be 20% in cases of invalidation and on being rounded off it would come to 50%. In this connection, we may refer to the decision of the Apex Court in Sukhvinder Singh Vs Union of India reported in (2014) STPL (WEF) 468 SC 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.

14. Additionally in the same judgement as mentioned above discharges which can be treated as invalidation has also been mentioned in following terms:

> "*Individuals who are placed in a lower medical category (other than 'E') permanently and who are discharged because no alternative employment in their own trade/category suitable to their low medical category could be provided or who are unwilling to accept the alternative employment or who having retained in alternative employment are discharged before completion of their engagement, shall be deemed to have been invalided from service for the purpose of the entitlement rules laid down in Appendix II to these Regulations*".

15. Thus in the facts and circumstances and regard being had to the rival contentions advanced across the bar, and the well settled law on the matter, we are of the view that the Applicant will be deemed to have been invalidated out of service. He shall be entitled to disability pension from the year 22.09.1998 till five years i.e. 21.09.2003 @ 20% for life which on being rounded off would come to 50% for life. Thereafter he shall continue to get Disability pension as per his RSMB disability of 11-14% rounded off to 50% on grounds of deemed Invalidation out.

16. As a result of foregoing discussions, the O.A. is allowed and the impugned orders are set aside. The Respondents are also directed to pay arrears of aforesaid disability pension from the date it was discontinued in the year 1998 till the date of actual payment. The Respondents are further directed to give effect to the order within six months from the date of receipt of a certified copy of this order failing which the Applicant shall be entitled to interest at the rate of 10 per annum.

17. No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

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

Dated: January, 2018
MH/-