

**Court No. 2**

**Reserved Judgment**

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

**Transferred Application No. 79 of 2016**

**Wednesday, this the 10<sup>th</sup> day of January 2018**

**Hon'ble Mr. Justice S.V.S. Rathore, Member (J)**

**Hon'ble Lt. Gen. Gyan Bhushan, Member (A)**

1/1. Smt Kanti Devi, Wife of Late Shri Suresh Singh  
Resident of Arya Nagar, Bela Road, Bidhuna,  
District-Auraiya (Uttar Pradesh).

1/2. Ranveer Singh, Son of Late Shri Suresh Singh  
Resident of Arya Nagar, Bela Road, Bidhuna,  
District-Auraiya (Uttar Pradesh).

1/3. Pooja Devi, Wife of Rajiv Yadav (Married  
daughter of (Late) Hav Suresh Singh,  
Village – Rohila, Post Office - Mohammdabad,  
District -Farrukhabad (Uttar Pradesh).

1/4. Varun Kumar, Son of Late Shri Suresh Singh  
Resident of Arya Nagar, Bela Road, Bidhuna,  
District-Auraiya (Uttar Pradesh).

1/5. Kumari Soni, daughter of Late Shri Suresh Singh  
Resident of Arya Nagar, Bela Road, Bidhuna,  
District-Auraiya (Uttar Pradesh).

1/6. Kumari Arti, daughter of Late Shri Suresh Singh  
Resident of Arya Nagar, Bela Road, Bidhuna,  
District-Auraiya (Uttar Pradesh).

1/7. Arun Kumar, Son of Late Shri Suresh Singh  
Resident of Arya Nagar, Bela Road, Bidhuna,  
District-Auraiya (Uttar Pradesh).

.....petitioners

Ld. Counsel for : **Shri Yashpal Singh, Advocate**  
the Petitioners

Versus

1. Union of India, through Secretary, Ministry of Defence,  
New Delhi.
2. Commanding Officer, 114 Infantry Bn. Territorial Army,  
JAT.

.....Respondents

Ld. Counsel for the : **Shri Anurag Mishra,**  
Respondents **Ld. Counsel for Central Government.**

**ORDER****“Per Hon’ble Lt Gen Gyan Bhushan, Member (A)”**

1. Initially, the petitioner had filed writ petition No 15420 of 2001 before Hon’ble High Court of judicature at Allahabad. He died on 27.08.2007 during pendency of the writ petition in the High Court at Judicature at Allahabad. The substitution Application was not moved till the aforesaid petition came to be transferred to this Tribunal. The aforesaid case was received by transfer on 30.08.2016 and upon receipt of record, it was renumbered as T.A. No. 79 of 2016. The substitution Application was allowed by order dated 24.08.2017 and it was thereafter that the heirs of the petitioner came to be substituted in the petition. The reliefs sought in the T.A are as under:-

(a) issue a writ of mandamus order or direction in the nature of mandamus directing the respondent to pay pension/disability pension to the petitioner in accordance with law.

(b) issue a writ of mandamus order or direction in the nature of mandamus directing the respondent to give arrears of pension to the petitioner alongwith other benefits for which the petitioner is entitled.

(c) issue any other writ order or direction which this Hon'ble court may feel fit and proper under the circumstances of the present case.

2. The undisputed facts, as averred by the learned counsel for both the parties are that (Late) Hav Suresh Singh was enrolled in the Territorial Army on 31.12.1981 and was downgraded to low medical category BEE (Permanent) with effect from 16 Jul 2000 by the competent Medical Authorities as a case of 'OBESITY WITH HYPER CHOLESTROLAEMIA AND NIDDM' and was discharged from service with effect from 15.11.2000 (Afternoon) in low medical category. Medical Board held before discharge, assessed the composite disability of the applicant as 15-19% for one year and considered the disability as neither attributable to nor aggravated by military service. (Late) Hav Suresh Singh filed an application for pension/disability pension but of no avail. Aggrieved, (Late) Hav Suresh Singh had filed writ petition No 15420 of 2001 before Hon'ble High Court of judicature at Allahabad. He died during pendency of the writ petition in the High Court on 27.08.2007, which has been transferred to this Bench of the Tribunal and registered as T.A. No. 79 of 2016.

3. We have heard Shri Yashpal Singh, Ld. Counsel for the petitioner and Shri Anurag Mishra, Ld. Counsel for the respondents and perused the record.

4. Learned Counsel for the petitioner submitted that at the time of joining Territorial Army on 31.12.1981, the petitioner was found in mentally and physically fit condition to join the Territorial Army and there is no note in the service documents that he was suffering from any disease at the time of entry into service. His disease "OBESITY WITH HYPER CHOLESTROLAEMIA and NIDDM" developed due to stress and strain of service. Learned counsel for the petitioner further submitted that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the disability pension be granted. He made an oral submission, though not contained in the pleadings, that as per Government Order dated 31.01.2001 the disability pension be rounded off to 50%.

5. **Per Contra**, while filing counter affidavit, the respondents have not disputed that (Late) Hav Suresh Singh suffered composite disability to the extent of 15-19% for one year. Medical Board at the time of discharge assessed his composite disability for "OBESITY WITH HYPER CHOLESTROLAEMIA and NIDDM" was assessed as 15-19% for one year and considered it as neither attributable to nor aggravated by army service. (Late) Hav Suresh Singh had served for more than 09 years in the Territorial Army. He has been denied disability pension, in terms of Para 173 of Pension Regulations, which clearly states that disability pension may be granted to an individual who is invalided from

service on account of disability, which is attributable to or aggravated by military service and percentage of disablement is assessed as 20% or above. Since his disability was considered as neither attributable to nor aggravated by military service it has been correctly denied to him. However, subsequently Ld. Counsel for the respondents conceded that in consonance with various judgments of Hon'ble The Supreme Court and Armed Forces Tribunals, the applicant is entitled to disability pension.

6. Since (Late) Hav Suresh Singh was enrolled in a medically fit condition and was discharged from service after more than 09 years of service in low medical category and respondents have not produced any documents on record to prove that the disability/disease existed at the time of enrolment, the disability has to be considered as attributable to and aggravated by military service in terms of judgment of ***Dharamvir Singh vs. Union of India and others***, reported in (2013)7 SCC 316, ***Union of India and others vs. Angad Singh Titaria***, reported in (2015) 12 SCC 257 and ***Union of India and others vs. Rajbir Singh***, reported in (2015) 12 SCC 264 and the petitioner is considered entitled for grant of disability pension.

7. In another case of similar nature with regard to grant of disability pension, we would also like to recall the judgment passed in the case of ***Sukhvinder Singh Vs. Union of India***,

reported in (2014) STPL (WEB) 468 SC, in para 9 of the judgment Hon'ble The 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.....”.*

8. On the issue of rounding off of disability pension, we are of the opinion that the case is squarely covered by the decision of ***Union of India vs. Ram Avtar & Others***, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014.

9. Since (Late) Hav Suresh Singh had served for approximately 09 years and 55 days service, as per Pension Regulation for the Army 1961, he is not entitled to service pension. It is sad that (Late) Hav Suresh Singh has died on 27.08.2007, as such his case can not be referred to Re-Survey Medical Board for further entitlement of disability pension, if any.

10. In view of the above, the Transferred Application deserves to be allowed.

11. Accordingly, the T.A. is **allowed**. The respondents are directed to grant disability pension after extending the benefit of

rounded off at the rate of 50% for one year to the legal heirs of (Late) Hav Suresh Singh. The respondents are further directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. In case, the respondents fail to give effect to this order within the stipulated time, they will have to pay interest @ 9% on the amount accrued from due date till the date of actual payment.

No order as to costs.

**(Lt. Gen. Gyan Bhushan)**

**Member (A)**

**(Justice S.V.S. Rathore)**

**Member (J)**

Dated: December, 2017

RS/-