

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 184 of 2023

Thursday this the 20th day of April, 2023

"Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
"Hon'ble Vice Admiral Atul Kumar Jain, Member (A)"

No. 709960-K, Ex. Sgt. Suresh Chandra Yadav, S/o Shri Shobh Nath Yadav, Resident of House No. 109C/2D/3, Lane -12, Vishnapuri Colony, Post Office –Busgit, Tehsil – Handia, District – Allahabad (U.P) -221508.

..... **Applicant**

Ld. Counsel for : **Shri Manoj Kumar Awasthi**, Advocate.
the applicant

Versus

1. Union of India through the Secretary, Ministry of Defence, (Air Force), New Delhi -110011.
2. The Chief of Air Staff, Air Headquarter, Vayu Bhawan, New Delhi -110011.
3. Director, Dte of Air Veteran, Subroto Park, New Delhi - 110010.
4. Office of Joint CDA (Air Force), New Delhi C/o Air Force Central Accounts Office, Subrot Park, New Delhi -110010.

.....**Respondents**

Ld. Counsel for the: **Shri Ram Saran Awasthi**, Advocate
Respondents. Central Govt Counsel.

ORDER

1. The present Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007. The applicant has sought the following reliefs:-

- (a) *To issue and pass an order or directions to the respondents to grant of Disability Element of Disability Pension Element @20% with effect from date of discharged i.e. 31.01.2010 in light of Hon'ble Apex Court Judgments.*
- (b) *To issue and pass and order or direction to the respondent No. 3 to decide the representation/ first appeal dated 30.09.2021 within a stipulated time.*
- (c) *to issue pass an order or directions to respondents to grant benefit of Rounding off Disability Element of disability Pension @20% to 50% for life to the applicant and pay due arrears including consequential benefits with interest @12% p.a. till final payment is made in light of Hon'ble Court Judgments and letter dated 31.01.2001.*
- (d) *Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case is also granted along with cost of the Original application.*

2. The brief facts of the case are that the applicant was enrolled in the Indian Air Force on 01.02.1990 and was discharged from service on 31.01.2010 in Low Medical Category after rendering 20 years of regular service. At the time of discharge, Release Medical Board (RMB) held at Air Force Station, Bamrauli on 07.07.2009 assessed his disability '**DIABETES MELLITUS TYPE-II (OLD) Z09.0**' @15-19% for life and opined the disability to be neither attributable to nor aggravated by service (NANA). Applicant's claim for grant of disability element of disability pension was

rejected vide letter dated 31.08.2009. The applicant preferred First Appeal dated 30.09.2021 but of no avail. It is in this perspective that the applicant has preferred the present Original Application.

3. Ld. Counsel for the applicant pleaded that the applicant was fully fit at the time of enrolment and the said disability i.e. '**DIABETES MELLITUS TYPE-II (OLD) Z09.0**' was assessed by the RMB as NANA. Ld. Counsel for the applicant has relied upon the Hon'ble Apex Court judgment in the case of **Sukhwinder Singh vs Union of India & Ors**, reported in (2014) STPL (WEB) 468 SC and contended that since applicant's services were cut short and he was discharged from service prior to completion of terms of engagement in the rank of Sgt, therefore his discharge from service should be a deemed invalidation as held in the case of **Sukhwinder Singh** (supra) and applicant deserves to be granted disability element of disability pension.

4. On the other hand, Ld. Counsel for the respondents submitted that as the disability of applicant has been assessed @15-19% for life i.e. below 20% as NANA, he is not entitled to disability element of pension in terms of para Regulation 153 of Pension Regulations for the Indian Air Force, 1961 (Part – I) and his claim was rightly denied by the respondents being disability

below 20% as NANA. He pleaded for dismissal of the Original Application.

5. We have heard learned counsel for the parties and perused the material placed on record.

6. For adjudication of the controversy involved in the instant case, we need to address only two issues; firstly, is the discharge of applicant a case of normal discharge or invalidation? and secondly is applicant is entitled to disability element of pension being disability below 20% as attributable to or aggravated by Air Force service.

7. For the purpose of first question as to whether the discharge of the applicant by Release Medical Board is a case of discharge or invalidation. In this context, it is clear that the applicant was discharged from service before completion of his terms of engagement in the rank of Sgt in low medical category. In this regard, Rule 4 of the Entitlement Rules for Casualty Pensionary Awards, 1982 defines invalidation as follows:

“Invaliding from service is a necessary condition for grant of a disability pension. An individual, who, at the time of his release under the Release Regulations, is in a lower medical category than that in which he was recruited will be treated as invalided from service. JCOs/ORs and equivalent in other services who are placed permanently in a medical category other than ‘A’ and are discharged because no alternative employment suitable to their low medical category can be provided, as well as those who having been retained in alternative employment but are discharged before the completion of their engagement will be deemed to have been invalided out of service.”

8. Thus, in light of above definition, it is clear that the applicant was in low medical category as compared the one when he was enrolled and hence his discharge is to be deemed as invalidation out of service.

9. The law on this point is very clear as reported in (2014) STPL (WEB) 468, **Sukhwinder Singh vs Union of India & Ors.** Para 9 of the aforesaid judgment being relevant is reproduced 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 percent and seems to us to be logically so. Fourthly, 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 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."

10. From the above mentioned Rule on disability pension and ratio of law emerging out of above Hon'ble Apex Court's judgment, it is clear that once a person has been recruited in a fit medical category, the benefit of doubt will lean in his favour unless cogent reasons are given by the Medical Board as to why the disease could not be detected at the time of enrolment. In

this case, we find that the applicant was placed in low medical category due to his disability '**DIABETES MELLITUS TYPE-II (OLD) Z09.0**' and infection contracted in service, therefore, we are of the opinion that his disability should be considered as aggravated by Air Force service. The aforesaid law also makes clear that in case of invalidation the disability percentage is presumed to above 20% irrespective of the disability percentage assessed by RMB/IMB.

11. In view of the above, we are of the considered opinion that applicant's discharge vide Release Medical Board held on 10.08.2018 is to be treated as invalidation in terms of Rule 4 of the Entitlement Rules (supra).

12. Additionally, consequent upon the issue of Government of India, Ministry of Defence letter No. 17(01)/2017(01)/D(Pen/Policy) dated 23.01.2018, Principal Controller of Defence Accounts (Pensions), Prayagraj has issued Circular No. 596 dated 09.02.2018 wherein it is provided that the cases where Armed Forces Pensioners who were retired/discharged voluntary or otherwise with disability and they were in receipt of Disability/War Injury Element as on 31.12.2015, their extent of disability/War Injury Element shall be re-computed in the manner given in the said Circular which is applicable with effect from 01.01.2016.

13. It is also observed that claim for pension is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. In the case of **Shiv Dass vs. Union of India**, reported in 2007 (3) SLR 445, Hon'ble Apex Court has observed:

"In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone."

14. As such, in view of the decision of Hon'ble Supreme Court in the case of **Shiv Dass** (supra) as well as Government of India, Ministry of Defence letter No. 17(01)/2017(01)/D(Pen/Policy) dated 23.01.2018, we are of the considered view that benefit of rounding off of disability element of disability pension @ 20% for life to be rounded off to 50% for life may be extended to the applicant from three preceding years from the date of filing of the Original Application.

15. In view of the above, the **Original Application No. 184 of 2023** deserves to be allowed, hence allowed. The impugned order, rejecting the applicant's claim for grant of disability element

of disability pension, is set aside. The disability of the applicant is held above @20% for life as aggravated by Air Force Service. The applicant is entitled to get disability element @20% for life which would be rounded off to 50% for life w.e.f. three years preceding the date of filing of Original Application. The respondents are directed to grant disability element to the applicant @20% for life which would stand rounded off to 50% for life w.e.f. three years preceding the date of filing of Original Application. The date of filing of Original Application is 13.02.2023. 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. Default will invite interest @ 8% per annum till the actual payment

16. No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 20 April, 2023

AKD/Ashok/-