

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Circuit Bench at Jabalpur.**Original Application No. 286 of 2013**Thursday the 14th day of May, 2015

“Hon’ble Mr. Justice Abdul Mateen, Member (J)
Hon’ble Lt. Gen. A.M. Verma, Member (A)”

Service No. 2988169X Rank LNK/ Ck Mess Nand Lal Shukla, aged about 44 years son of Diwakar Prasad Shukla resident of village- Leduwa, Post Office - Podijadawari, District - Sidhi (M.P.)

..... Applicant.

By Shri S.K. Singh & V.P. Pandey, counsel for the applicant.

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Integrated Head Quarter of Ministry of Defence South Block New Delhi 110001.
3. Officer In Charge Records Rajpoot Regiment PIN 900427, C/O 56 APO.
4. Commanding Office 9 RAJPOOT Regiment, C/O 99 APO
5. Principal Controller Defence Accounts (Pension) Draupdi Ghat, Allahabad.

..... Respondents.

By Shri Bhanu Pratap Singh Chauhan, along with Capt. Manisha Yadav, Departmental Representative.

ORDER

1. This Original Application has been filed by the applicant seeking the following reliefs:-

“(i) to issue an order or direction to the Respondents to quash the rejection order 20 May, 2004 as regards to claim of disability pension as contained in Annexure A-1(c).

(i)(a) to issue an order or direction to the respondents to quash/set aside the rejection order of first appeal dated 16-2-2009 annexed as Annexure A-10 this O.A.

(ii) to issue an order or direction to the Respondents to pay the disability pension to the applicant since the discharged from service i.e. 30 Nov. 2003.

(iii) Any other relief as considered proper by this Hon’ble Tribunal be awarded in favour of the applicant.

(iv) Cost of the application be awarded to the applicant.”

2. The factual matrix of the case is that the petitioner was enrolled in the Indian Army on 01.12.1987. He was on 10 days Casual Leave from 04.04.2000 to 13.04.2000. On 07.04.2000, while on leave he was travelling in Jeep and met with an accident. Thereafter he was treated and remained in low medical category. He was discharged from service on 13.11.2003 under Army Rules 13(3)(III)(v) read in conjunction with Army Rules 13(2)(A) before fulfilling the service condition at enrolment. The Release Medical Board assessed his disabilities “FRACTURE PELVIS(RT) S 32 V 47 and STRUCTURE URETHRA (POST TRAUMATIC) OPTD N 32 to be 20% for life. The claim for disability pension was rejected by the PCDA, Allahabad on the ground that the disabilities were not attributable to or aggravated by service. The petitioner filed Appeals against the rejection and the appeals were rejected. He received the PPO from PCDA,

Allahabad vide PPO No-031555 of 2011 in which disability has been shown as Nil. Aggrieved by this decision of respondents he filed this Original Application.

3. The petitioner states that since he was a Cook of the rank of Lance Naik, he is entitled to serve upto 2007 that is 19 years of service. However he was discharged from service on medical grounds at 16 years of service. He requests that disability pension be granted to him.

4. On the other hand, respondents state that the claim for disability pension was rejected by the PCDA, Allahabad on the grounds that the injury occurred to him while he was on leave and not on military duty and therefore the disabilities are consider not attributable to or aggravated by service. Accordingly the claim was rejected.

5. Heard both the sides and examined the documents.

6. Release Medical Boards annexed as Annexure-2 to the Counter Affidavit was held on 06.11.2003. We find that in Part V of the said Medical Board, opinion of the Medical Board has been endorsed according to which both disabilities are considered to be attributable to the service that entitles the petitioner to disability pension. However, it is surprising that the PCDA on its own decided that the said disabilities are not attributable to or aggravated by service and denied the disability pension to the petitioner. We also turn to the judgment and order passed by the Hon'ble Supreme Court in the case of **Sukhvinder Singh v. Union of India & others** reported in *2014 Legal Eagle (SC) 546*. The relevant paragraph from the aforementioned judgment of the Hon'ble Supreme Court is quoted hereunder :

"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, here 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 percent. 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.”

7. On both grounds that the opinion of the Medical Board and order by the Supreme Court it clearly emerges that the petitioner is entitled to disability pension. Accordingly this Original Application is allowed. The respondents are directed to grant disability pension to the petitioner with effect from his date of discharge i.e. 30.11.2003 and the arrears will be paid to the petitioner within three months from the date of service of a certified copy of this order.

8. No order as to costs.

(Lt. Gen. A.M. Verma)
Member (A)

(Justice Abdul Mateen)
Member (J)

rpm.