

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Circuit Bench at Jabalpur.**Transferred Application No. 931 of 2010**Tuesday the 12th day of May, 2015

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

Sitaram, aged about 44 years S/o Shri Sukhram Johre, R/o Village-
BHANDARIYA BASTI (Ward No. 17), Post Office-Chandameta, Tehsil-
Parasia, District – Chhindwara (M.P.)

..... Applicant.

By Shri R.B. Singh, counsel for the applicant.

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi – 110 011.
2. Chief of Army Staff, Army Headquarters, DHQ, Post Office – New Delhi-11.
3. Director General of Electrical Mechanical Engineer, Army Headquarters, DHQ P.O. New Delhi-11.
4. General Officer Commanding, Madhya Bharat Area, Jabalpur, District Jabalpur (M.P.).
5. OFFICER-IN-CHARGE, E.M.E. Records, SECUNDERABAD – 500 021.
6. CONTROLLER OF DEFENCE ACCOUNTS (Pension), ALLAHABAD (U.P.)
7. OFFICER COMMANDING, 244, Field Workshop Coy EME, C/O 56 A.P.O.

..... Respondents.

By Shri D.K. Pandey, along with Capt. Manisha Yadav, Departmental Representative.

ORDER

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

“(i) That, the Respondent a may kindly be directed by this Hon’ble court to produce all the relevant documents specially Invalidating Medical Board proceedings, pertaining to the petitioner.

(ii) That, the impugned orders dated 11.09.2002 (P-10), 31.01.2006 (R-5), 02.08.2006 (R-6), 06.03.2002 (R-1) and dated 06.10.2001 (R-8) may kindly be quashed by this Hon’ble Court.”

(iii) That, the Respondents may kindly be directed to grant and pay disability pension with effect from the date of his discharge.

(iv) That, this Hon’ble Court may be pleased to award cost of proceeding and sufferings and agony suffered by the petitioner.

(v) Any other relief/order or directions which this Hon’ble Court may deems fit and proper also be passed in favour of the petitioner, in the interest of justice.”

2. The factual matrix of the case is that the petitioner was enrolled in the Indian Army on 29.1.1985 and was serving in 33 Armored DOU in March/April, 1998. He complained of pain in his right knee, for which he was treated in the Base Hospital, Delhi and the disease was diagnosed as “Pigmented Villonodular Synovitis (RT) Knee”. He was, therefore, placed in Medical Category ‘C’ permanently with effect from 8.11.2000 and consequently was discharged from service being not upto the prescribed Military Physical Standards under the provisions of Army Rule 13(3)(V). The Release Medical Board assessed his disability as 20% and he was

discharged on 30.4.2002. The claim for disability pension was rejected since he did not meet the primary condition for grant of disability pension as laid down in para 173 of the Pension Regulations, according to which disability should be attributable to service or aggravated by service and should be above 20%. He filed an appeal in 2005 which was returned since it was belated. He is, however, receiving service pension and has already received all other dues.

3. The petitioner, while stating the facts, submits that after discharge from the Army he had been operated upon at Sushrut Hospital, Nagpur, twice in 2004 and his disability has further aggravated. Consequently, he was admitted in the Command Hospital, Western Command, who diagnosed his disability as "Giant Cell Tumor Distal Femur OPTD." Since no effective treatment was available in the Command Hospital, he was transferred to TATA Memorial Hospital, Mumbai for further management, from where he was discharged on 1.9.2005. The petitioner states that his disability be assessed and requested that disability pension be granted and paid to him.

4. The respondents admitted the facts of date of enrollment and discharge from service out of the provisions of Army Rule 13(3)(V) due to the disease, mentioned above and all dues have been paid to the petitioner. Since the petitioner did not meet the primary condition as laid down in Para 173 of the Pension Regulations for the Army, 1961, his claim for disability pension was rejected. His appeal was returned since it was highly belated.

5. Heard both the sides and examined the documents.

6. The Release Medical Board mentions that the disability is 20% for life and is not attributable to nor aggravated by the service.

7. Without going further, we turned 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 :

“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.”

8. Consequently, the disability of the petitioner will be considered to be above 20% and he will be entitled to disability pension. Further in accordance with para 7.2 of Government of India, Ministry of Defence, letter No. 1 (2) / 97 / 1 / D (Pen – C) dated 31.1.2001 the disability of less than 50% is to be rounded off to 50%. Accordingly, the petitioner is entitled to 50% disability pension.

9. Accordingly, this Transferred Application is allowed. The respondents are directed to pay disability pension to the petitioner at the rate of 50% for life with effect from 30.4.2002. The arrears will be calculated and paid to the petitioner

within three months from the date of service of a certified copy of this order.

There will be no order as to costs.

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

(Justice Abdul Mateen)
Member (J)

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