

E-Court

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BENCH AT NAINITAL)**

ORIGINAL APPLICATION No. 132 of 2022

Monday, this the 05th day of December, 2022

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 14456700K Ex. Hav. Pratap Singh S/o Sri Madan Singh
R/o Village Damde, P O- Chaunala, Tehsil-Gangolihat,
District-Pithoragarh, (Uttarkhand).

..... **Applicant**

Ld. Counsel for : **Shri Dheeraj Joshi**, Advocate.
the applicant holding brief of **Shri C.S. Rawat**, Advocate

Versus

1. Union of India through Secretary, Ministry of Defence, Central Civil Secretariat, New Delhi.
2. Chief of the Army Staff, Integrated Headquarters, Ministry of Defence, (Army), New Delhi.
3. Director Pension /Policy, Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare, New Delhi.
4. Record Officer, Artillery Record, Nasik Road Camp Maharashtra.
5. P.C.D.A. (Pension), Allahabad.

.....**Respondents**

Ld. Counsel for the: **Shri Rajesh Sharma**, 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:-

Humble petitioner/applicant seeks prayer to summon the entire service records along with medical records including the file of PCDA (P), Allahabad and thereafter this Hon'ble Tribunal set aside /quash the impugned order dated 20.06.1997.

Humbly the petitioner/applicant further seeks prayer to direct the respondents to grant disability pension from 02.06.1997 with arrear.

2. The brief facts of the case are that the applicant was enrolled in the Indian Army on 07.09.1978 and was discharged from service on 31.07.1996 before fulfilling the terms of engagement on the rank of Havildar in Low Medical Category under Rule 13 (3) Item III (v) of the Army Rules, 1954. At the time of discharge, Release Medical Board (RMB) held at 180 Military Hospital, on 30.07.1996 assessed his disability '**CSOM (LT) (OPTD) 382"**@ 15-19% for five years **attributable to military service**. The applicant preferred First Appeal dated 19.08.1997 which too was rejected vide letter dated 15.04.1999. After expiry of five years, Re-Survey Medical

Board (RSMB) held at Military Hospital, Bareilly on 05.03.2001 assessed his disability at **Nil for permanent**. The claim for grant of disability element of disability pension was rejected vide letter dated 20.06.1997. Accordingly, the claim for the grant of disability element of disability pension was rejected vide letter dated 20.07.2001. 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. '**CSOM (LT) (OPTD) 382**' was assessed by the RMB as attributable to military service. 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 applicant was discharged from service prior to completion of terms of engagement, 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 five years i.e. below 20%, he is not entitled to disability element of pension in terms of para 173 of Pension Regulations for the Army, 1961, (Part-I) and his claim was rightly denied by the respondents being disability below 20%. He further submitted that Re-Survey Medical Board held on 05.03.2001 assessed applicant's disability at **Nil for permanent** as such he is not entitled for the disability element of disability pension in terms of Regulation 186(2) of the Pension Regulations for the Army, 1961 (Part - I). 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% attributable to military 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 on his own request on compassionate grounds before completion of his terms of engagement 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 '**CSOM (LT) (OPTD) 382'** and infection contracted in service, therefore,

the RMB has declared his disability as attributable to military 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 at the time of discharge 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. As such, in view of the decision of Hon'ble Supreme Court in the case of ***Sukhwinder Singh vs Union of India & Ors.*** (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 pension @ 20% for five years to be rounded off to 50% for five years may be extended to the applicant from the next date of his discharge.

14. Since Re-Survey Medical Board held at Military Hospital, Bareilly on 05.03.2001 assessed the applicant's disability at **Nil Permanent**, hence, applicant is not entitled for the grant of disability element of disability pension after the expiry of five years as per Regulation 186 (2) of Pension Regulations for the Army, 1961 (Part - I), which provide that an individual who was initially granted disability pension but whose disability is re-assessed at below 20% subsequently shall cease to draw disability element of disability pension from the date it falls below 20 per cent. He shall however continue to draw the service element of disability pension.

15. In view of the above, the **Original Application No. 132 of 2022** deserves to be allowed, hence allowed. The impugned orders, rejecting the applicant's claim for grant of disability element of disability pension, are set aside. The disability of the applicant is held above @20% for five years. The applicant is entitled to get disability element @20% for five years which would be rounded off to 50% for five years from the next date of his discharge. The respondents are directed to grant disability element to the applicant @20% for five years which would stand rounded off to 50% for five years from the next date of his discharge. 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 Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 05, December' 2022
AKD/-