

Court No. 1(E- Court)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 383 of 2022

Wednesday, this the 14th day of December, 2022

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

No. 776585-A, Ex. SGT Santosh Kumar S/o Shri Kailash Prasad Mandal, at present residing at 38A, Preet Vihar Colony, Chhapraula, Gautam Buddha Nagar, Uttar Pradesh. -201009.

..... Applicant

Ld. Counsel for the Applicant : **Shri R.Chandra**, Advocate.

Versus

1. Union of India, through, the Secretary, Ministry of Defence, Govt. of India, New Delhi-110011.
2. The Chief of the Air Staff, Air Headquarters, New Delhi -110011.
3. Directorate of Air Veterans, Air Headquarters, SMC Building, 1st Floor, Subroto Park, New Delhi – 110010.
4. Joint CDA (Air Force), Subroto Park, New Delhi – 110010.

.....Respondents

Ld. Counsel for the Respondents. : **Shri J.N. Mishra**, Advocate
Central Govt. Counsel

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

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

- (I) *The Hon’ble tribunal may be pleased to set aside the order dated 12.06.2018 (Annexure No.A-1).*
- (II) *The Hon’ble Tribunal may be pleased to direct the respondents to grant disability element with effect from 11.07.2017 (next date of discharge) along with its arrears and interest thereon at the rate of 18% per annum.*
- (III) *Hon’ble Tribunal may be pleased further to grant benefit of rounding of disability pension @50% in terms of Ram Avatr’s Case.*
- (IV) *Any other appropriate order or direction which the Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case.*

2. Briefly stated, applicant was enrolled in the Indian Air Force on 17.11.1997 and discharged on 10.07.2017 at his own request after rendering 19 years 07 months and 24 days of regular service. At the time of discharge from service, the Release Medical Board (RMB) held at 2 Wing, Air Force on 06.07.2017 assessed his disability ‘**BENIGN BILLIARY STRICTURE IIIA (OPTD) K 83 Z09.0**’ @ 15-19% for life and

opined the disability to be attributable to service. The applicant's claim for grant of disability pension was rejected vide letter dated 31.01.2018 which was communicated to the applicant vide letter dated 12.06.2018. 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. '**BENIGN BILLIARY STRICTURE IIIA (OPTD) K 83 Z09.0**' was assessed by the RMB as attributable to Air Force 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 although on his own request on compassionate grounds but since applicant's services were cut short and he 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 life i.e. below 20%, he is not entitled to disability element of pension in terms of 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%. His further submission is that since the applicant was discharged on his own request on compassionate grounds, he is not entitled for grant of disability element of disability pension. 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 three issues; firstly, is the discharge of applicant a case of normal discharge or invalidation? secondly is applicant is entitled to disability element of pension being disability below 20% attributable to military service? and thirdly whether the applicant is entitled to disability element of disability pension being a case of discharge on his own request?

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 '**BENIGN BILLIARY STRICTURE IIIA (OPTD) K 83 Z09.0**' and disability contracted in service, therefore, the disability of the applicant has been regarded as attributable to service by the RMB. 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.

11. In view of the above, we are of the considered opinion that applicant's discharge vide Release Medical Board held on 06.07.2017 is to be treated as invalidation in terms of Rule 4 of the Entitlement Rules (supra).

12. Government of India, Ministry of Defence letter No. 16(5)/2008/D(Pen/Policy) dated 29.09.2009 stipulates that "*In pursuance of Government decision on the recommendations of the Sixth Central Pay Commission vide Para 5.1.69 of their Report, President is pleased to decide that Armed Forces personnel who are*

retained in service despite disability, which is accepted as attributable to or aggravated by Military Service and have foregone lump-sum compensation in lieu of that disability, may be given disability element/war injury element at the time of their retirement/discharge whether voluntarily or otherwise in addition to Retiring/Service Pension or Retiring/Service Gratuity.” In view of aforesaid letter, the applicant is entitled for grant of disability element of disability pension even if he has been discharged on his own request on compassionate grounds.

13. 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.

14. 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.”

15. 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.

16. In view of the above, the **Original Application No. 383 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 life. 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 06.05.2022. 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

17. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 14 December 2022
AKD/-