

**E-Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 558 of 2019**

Wednesday, this the 28<sup>th</sup> day of July, 2021

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

No. 4191976H L/Nk Pramod Singh Yadav Inf/GD (Retd), S/o Shri (Late) Purushottam Singh Yadav, R/o Vill – Mathia Ward No 14, Post – Mohammadabad, Dist- Ghazipur (U.P.)- 233227.

..... Applicant

Ld. Counsel for the : **Shri Shailendra Kumar Singh,**  
Applicant **Advocate**

Versus

1. Union of India, through the Secretary, Ministry of Defence (Army), New Delhi-110011.
2. The Chief of the Army Staff, IHQ MOD (Army), South Block, New Delhi- 110011.
3. Addl Dte Gen of Personnel Services, Adjutant General’s Branch, IHQ of MoD (Army), A Wing, Room No- 435, 4<sup>th</sup> Floor, Sena Bhawan, DHQ PO New Delhi-110011.
4. Chief Record Officer, The Records, Kumaon Regiment, PIN- 900473.
5. Principal Controller of Defence Accounts (Pension) Draupadi Ghat, Allahabad – 211014.

.....**Respondents**

Ld. Counsel for the : **Shri DK Pandey,**  
Respondents. **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.

- (A). *To quash and set aside the Respondent No 4 letter No 4191976/DP dated 30 Mar 2018 (Annexure A-1 of instant OA & Impugned order).*
- (B). *To quash the disability assessment of 14% made by Review Medical Board dated 12 Jul 2017 held at Army Hospital (R&R) New Delhi Cantt as illegal and to consider the applicant’s disablement as 20% (15%+5%) in terms of Guidelines for evaluation of various disabilities and procedure for certification issued by Govt of India dated 01 Jun 2001 as the same parameters were adopted in first three medical boards where applicant’s disability was assessed to the tune of 20%.*
- (C) *to issue/pass an order or directions of appropriate nature to the respondents to grant disability element @ 20% for life which should stand rounded off to 50% for life in terms of Govt of India letter dated 31 Jan 2001 to the applicant from the date of his discharge from service (01.05.2015) and to pay the arrears accrued thereupon along with suitable rate of interest as deem fit by this Hon’ble Tribunal.*
- (D) *Any other relief as considered proper by the Hon’ble Tribunal be awarded in favour of the applicants.*

2. The delay in filing Original Application is condoned being pensionary matter and M.A. No 858 of 2019 is disposed off accordingly.

3. Briefly stated facts of the case are that applicant was enrolled in the Indian Army on 24.04.1998 and was discharged on 30.04.2015 (AN) after rendering 17 years of service in Low Medical Category under the provisions of Rule 13 (3) III (i) of Army Rules 1954. At the time of discharge, Release Medical Board (RMB) held on 06.09.2016 assessed his disability "**AMPUTATION (RT) INDEX FINGER THROUGH MKP JOINT**" as nil for life and opined the disability as attributable to military service. Applicant was granted service pension from the date of retirement. The applicant approached the respondents for grant of disability pension but the same was rejected vide letter dated 16.05.2015 as the disability was assessed less than 20%. The applicant preferred first appeal against the rejection of disability pension claim but he was advised to appear before Review Medical Board to be held at Army Hospital (R&R), Delhi Cantt. Applicant appeared before Review Medical Board on 29.06.2017 wherein his disability was assessed @ 14% for life and found as attributable to military service. His claim for grant of disability pension was again rejected by the respondents vide letter dated 30.03.2018. It is in this perspective that the applicant has preferred the present Original Application.

4. Learned counsel for the applicant pleaded that at the time of enrolment, he was found mentally and physically fit for service in the army and there is no note in the service documents that he was suffering from any disease at the time of enrolment. He submitted that Release Medical Board has conceded the disability as aggravated by service. He further submitted that claim for the grant of disability pension was wrongly rejected on the ground of disability percentage being less than 20%. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension as well as arrears thereof and its rounding off to 50%. He also relied upon the judgment of the Hon'ble Apex Court in the case of **Sukhvinder Singh vs Union of India & Ors**, Civil Appeal No. 5604 of 2010, decided on 25.06.2014 and pleaded that he is entitled to grant of disability pension and its rounding off.

5. Rebutting arguments of the applicant, learned counsel for the respondents submitted that applicant is getting service element of pension for his 17 years of service in army. He further submitted that the disability pension claim of the applicant was rightly rejected because Release Medical Board has assessed the degree of disablement Nil % for life and Review Medical Board has assessed the disability @ 14% for life which is less than the minimum requirement of 20% for the grant of disability pension, therefore, the disability pension is inadmissible to the applicant.

6. We have heard learned counsel for the parties and perused the documents available on record. We have also gone through the Medical Board proceedings.

7. The core question for consideration in the case is that if an individual is discharged in low medical category after earning pensionable service but before completing his terms of engagement then whether discharge may be considered a case of invalidation and he may be awarded disability element for the disability suffered due to military service even if disability is below 20%?

8. The answer to this question lies in the case of ***Sukhwinder Singh vs Union of India & Ors*** reported in (2014) STPL (WEB) 468 SC. Since the applicant was discharged from service before completion of terms of engagement in low medical category, his discharge from service shall be considered as invalidation from service as has been held by the Hon'ble Apex Court judgment in the case of ***Sukhwinder Singh vs Union of India & Ors*** (supra). In our view, the case is fully covered by the aforesaid decision of Hon'ble the Apex Court in which the substance of what has been held is that even if an individual is assessed to be less than 20%, the *“disability leading to invaliding out of service would attract the grant of fifty per cent disability pension.”* Para 9 of the judgment, being relevant is quoted below.

*“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 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 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.**”*

9. The law on the point of rounding off of disability pension is no more RES INTEGRA in view of Hon'ble Supreme Court judgment in the case of **Union of India and Ors vs Ram Avtar & ors** (Civil appeal No 418 of 2012 decided on 10<sup>th</sup> December 2014). In this Judgment the Hon'ble Apex Court nodded in disapproval of the policy of the Government of India in granting the benefit of rounding off of disability pension only to the personnel who have been invalided out of service and denying the same to the personnel who have retired on attaining the age of superannuation or on completion of their tenure of engagement. The relevant portion of the decision is excerpted below:-

*“4. By the present set of appeals, the appellant (s) raise the question, whether or not, an individual, who has retired on attaining the age of superannuation or on completion of his tenure of engagement, if found to be suffering from some disability which is attributable to or aggravated by the military service, is entitled to be granted the benefit of rounding off of disability pension. The appellant(s) herein would contend that, on the basis of Circular No 1(2)/97/D (Pen-C) issued by the Ministry of*

*Defence, Government of India, dated 31.01.2001, the aforesaid benefit is made available only to an Armed Forces Personnel who is invalidated out of service, and not to any other category of Armed Forces Personnel mentioned hereinabove.*

5. *We have heard Learned Counsel for the parties to the lis.*

6. *We do not see any error in the impugned judgment (s) and order(s) and therefore, all the appeals which pertain to the concept of rounding off of the disability pension are dismissed, with no order as to costs.*

7. *The dismissal of these matters will be taken note of by the High Courts as well as by the Tribunals in granting appropriate relief to the pensioners before them, if any, who are getting or are entitled to the disability pension.*

8. *This Court grants six weeks' time from today to the appellant(s) to comply with the orders and directions passed by us."*

10. In the instant case, there is no dispute that the applicant's disability has been assessed as 14% for life and has been conceded as aggravated by military service. This fact has also been accepted by the respondents. Thus in view of the law settled by the Hon'ble Apex Court on this matter, we are of the considered opinion that the applicant is entitled for the benefit of rounding off in terms of Government letter dated 31.01.2001 and the disability element of the pension @ 14% for life deemed as 20% shall stand rounded off to 50% for life.

11. It is 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.”*

12. As such, in view of the decision of Hon'ble Supreme Court in the case of **Shiv Dass (supra)**, we are of the considered view that benefit of rounding off of disability pension from 14% to be deemed as 20% and rounded off to 50% for life which may be made applicable to the applicant from three preceding years from the date of filing of the O.A.

13. In the case in hand, since the individual was discharged from service in low medical category without completing the terms of engagement, hence his discharge shall be deemed a case of invalidation.

14. In view of the above, the **Original Application No 558 of 2019** deserves to be allowed, hence **allowed**. The impugned orders rejecting disability pension claim of the applicant are set aside. The respondents are directed to grant disability element of

the pension @ 14% deemed to be 20% for life, which shall stand rounded off to 50% for life. The arrears of disability element and benefits of rounding off to 50% shall be restricted w.e.f. three years prior to the date of filing of this Original Application. The date of filing of this Original Application is 11.10.2019. The respondents are 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 @ 9% per annum till actual payment.

15. No order as to costs.

**(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)**  
**Member (A) Member (J)**

Dated : 28 July, 2021

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