

E-Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 702 of 2020**Tuesday, this the 20th day of July, 2021**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 13938082, Ex Sep Birendra Singh, Son of Late Sri Kamal Singh Rawat, Resident of Village – Sukai, Post – Baijro, District – Pauri Garhwal (Uttarakhand) PIN - 246275

..... Applicant

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

Versus

1. Union of India, through Secretary, Ministry of Defence (Army), South Block, New Delhi-110011.
2. The Chief of the Army Staff, Sena Bhawan, New Delhi-110011.
3. Senior Record Officer, Army Medical Corps, Lucknow, PIN- 226002.
4. Principal Controller of Defence Accounts (Pension) Draupadi Ghat, Allahabad – 211014.

.....**Respondents**Ld. Counsel for the : **Dr. Shailendra Sharma Atal,**
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.

- (I). *To pass an order or direction commanding the respondent to grant the disability pension to the applicant from the date of discharge i.e. 15.04.1981.*
- (II). *To pass an order or direction commanding the respondent to grant the benefits disability pension to the applicant from the date of discharge i.e. 15.04.1981 along with interest @ 18% per annum till the actual realization of aforesaid amount.*
- (III) *To pass an order or direction commanding the respondent to grant the benefits of rounding of the disability pension, in term of Govt of India letter dated 31.01.2001 and various Judgments of Apex Court as well as this Hon’ble Tribunal.*
- (IV) *Pass any order which this Hon’ble Tribunal deem fit and proper under the facts and circumstances of the case in favour of the petitioner, in the interest of justice.*
- (V) *To allow this original application with cost.*

2. Briefly stated facts of the case are that applicant was enrolled in the Indian Army on 03.08.1974 and was discharged on 16.04.1981 (FN) on account of disability **“IDIOPATHIC**

EPILEPSY” before completion of his terms of engagement in Low Medical Category under the provisions of Rule 13 (3) III (iii) of Army Rule 1954 after rendering more than 06 years of service. At the time of discharge, Invaliding Medical Board (IMB) held at Military Hospital, Golkonda on 07.02.1981 assessed his disability @ 15%-19% (less than 20%) for one year and opined the disability as neither attributable to nor aggravated (NANA) by military service due to disability was a idiopathic in origin and the cause was unknown. The applicant approached the respondents for grant of disability pension but the same was rejected vide letter dated 17.06.1981 as the disability was assessed less than 20% and considered as NANA. It is in this perspective that the applicant has preferred the present Original Application.

3. 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 further submitted that claim for the grant of disability pension was wrongly rejected on the ground of disability percentage being less than 20% and NANA. 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.

4. Rebutting arguments of the applicant, Ld. Counsel for the respondents submitted that applicant was granted a sum of Rs. 2275.85 on account of Invalid Gratuity and a sum of Rs 1258.55 on account of death cum retirement gratuity on discharge. He further submitted that disability pension claim of the applicant was rightly rejected because Invaliding Medical Board has considered the disability as NANA and degree of disablement was assessed as 15-19% which is less than the minimum requirement of 20% for the grant of disability pension, therefore, as per Rule 173 of Pension Regulation for the Army 1961 (Part-1) the disability pension is inadmissible to the applicant. He pleaded that O.A. has no merit and is liable to be dismissed.

5. We have heard learned counsel for the parties and perused the record. The questions which needs to be answered are of two folds:-

(a) Whether the applicant is entitled to disability pension despite disability being less than 20%?

(b) Whether the disability is attributable to and aggravated by military service?

6. In so far as disability which is shown to be assessed as less than 20% is concerned, various Tribunals and Courts have found that the assessment of disability to the tune of 15-19% itself is a doubtful assessment and cannot be final for the simple reason that there is no barometer which can assess the disability percentage to the extent of 1% and therefore, the percentage of disability which has been assessed as 15-19% may be 20% also and there may be variation of at least two percent plus also. In case of doubt as per the Pension Regulations, the benefit should always be given to the applicant. Probably because of this reason the Union of India must have issued the order dated 31.01.2001 to provide for giving the benefit of rounding off the disability pension to 50% to the persons who are having less than 50% of the disability.

7. The law is settled that even if disability percentage is less than 20%, it would stand rounded off to 50% (in cases after their superannuation). The case in point relied upon by the Applicant is **Sukhhvinder Singh Vs. Union of India**, reported in (2014) STPL (WEB) 468 SC. In para 9 of the judgment Hon'ble Apex Court has held 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.....”

8. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Versus Union of India & Others***, reported in (2013) 7 Supreme Court Cases 316. In this case the Apex Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words.

"29.1. Disability pension to be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).

29.2. A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service [Rule 5 read with Rule 14(b)].

29.3. The onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive

benefit of any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).

29.4. If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service [Rule 14(c)]. [pic]

29.5. If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service [Rule 14(b)].

29.6. If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons [Rule 14(b)]; and 29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 - "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."

9. After considering all issues we have noted that the only reason given by Invaliding Medical Board for denying attributability for disease is that it is not connected with military service. We find that when the applicant joined the Army, he was medically examined and found to be in Shape-I and the aforesaid disability was contracted after about 06 years of service which resulted in the downgrading of his medical category and his invalidation out of service. In absence of any evidence on record to show that the applicant was suffering from disability or any ailment at the time of

entering in service, it will be presumed that deterioration of his health has taken place due to service and the applicant is entitled to the relief as per the above judgments of the Hon'ble The Apex Court in the case of **Dharamvir Singh** (Supra). Therefore, we consider the disease of the applicant as aggravated by military service. We also converge to the view that, in view of law laid down by Hon'ble The Apex Court in the case of **Veer Pal Singh**, in the interest of justice, the case of the applicant be referred to Review Medical Board for reassessing the medical condition of the applicant for further entitlement of disability pension, if any.

10. On the issue of rounding off of disability pension, since benefit of broad banding has been extended w.e.f. 01.01.1996, hence, prima facie the applicant is not entitled to broad banding as he had retired from service on 15.04.1981.

11. In view of the above the Original Application deserves to be partly allowed.

12. Accordingly, O.A. is partly **allowed**. The impugned orders passed by the respondents rejecting the claim for the grant of disability pension are set aside. The respondents are directed to grant disability pension to the applicant @ 15% to 19% to be treated as 20% for one year from the date of discharge. The respondents are further directed to refer the applicant's case to Re-survey Medical Board for further entitlement of disability pension.

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. In case the respondents fail to give effect to this order within the stipulated time, they will have to pay interest @ 8% on the amount accrued from due date till the date of actual payment.

12. No order as to cost.

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

Dated : 20 July, 2021

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