

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 347 of 2021**Wednesday, this the 23<sup>rd</sup> day of March, 2022**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 2984252 Rank Ex. Hav/WM Mukesh Son of Shri Munna Lal  
R/o House No. 1/68, Gwal Toli, Fatehgarh, District Farrukhabad,  
UP, PIN-209601.

**..... Applicant**

Ld. Counsel for : **Shri Virendra Kumar Gupta**, Advocate  
the applicant

**Versus**

1. Union of India through Secretary, Ministry of Defence, Government of India, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters, Ministry of Defence, South Block III, New Delhi.
3. The Officer-in-Charge, Records The Rajput Regimental Centre, Fatehgarh, UP, PIN-900427, C/o 56 APO.
4. Principal Controller of Defence Accounts (Pension), Draupadighat, Allahabad-211014.

**.....Respondents**

Ld. Counsel for the: **Shri Manu Kumar Srivastava**, 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:-

- (a) *To quash/set aside the impugned order dated 16 Jan 2008 (Annexure No. A-1) whereby claim of Disability Pension of the applicant has been rejected and impugned orders dated 09 June 2009 and 28 April, 2010 (Annexure No. 2 and 3) by which appeals against rejection of disability claim have been rejected.*
- (b) *To issue suitable orders or directions to the respondents for grant of disability pension and rounding off it from the date of discharge in pursuance of judgments passed by Hon'ble Apex Court in the matter of Dharamvir Singh & others Versus Union of India & Othes and Union of India & Others Versus Ram Avtar & Others.*
- (c) *To pay the arrears of disability pension from the date of discharge along with interest @12% p.a.*
- (d) *Any other relief which this Hon'ble Tribunal deem fit, just and proper in the facts and circumstances, may be allowed with cost of this application.*

2. The brief facts of the case are that the applicant was enrolled in the Rajput Regiment of Indian Army on 25.04.1984 and was discharged/invalided out from service on 31.12.2007 in Low Medical Category, before completion of terms of engagement as Havildar, under Rule 13 (3) Item III (V) of the Army Rules, 1954. At the time of discharge, Release Medical Board (RMB) held assessed his disability '**PRIMARY HYPOTHYROIDISM**' @15-19% for life neither attributable to nor aggravated by military service (NANA). Applicant's claim for grant of disability element of disability pension was rejected vide letter dated 16.01.2008. The applicant preferred Appeal which too was

rejected vide letter dated 09.06.2009 which was communicated to the applicant vide letter dated 10.07.2009. The applicant also preferred Second Appeal which too was rejected vide letter dated 28.04.2010 which was communicated to the applicant vide letter dated 25.05.2010. 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, the applicant 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 in Army. The disease of the applicant was contracted during the service, hence it is attributable to and aggravated by 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 since applicant's services were cut short and he was discharged from service prior to completion of terms of engagement as Havildar, 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 with its rounding off to 50%.

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% and has been regarded as NANA by the RMB, 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% and NANA. 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 whether the disability of the applicant is attributable to or aggravated by Military Service and thirdly is applicant is entitled to disability element of pension being disability below 20%?.

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 before completion of his terms of engagement as Havildar 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 invalidated 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 invalidated 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 '**PRIMARY HYPOTHYROIDISM**' and contracted in service, although the RMB has declared his disability as NANA but we are of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant, and the disability of the applicant should be considered as aggravated by 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. 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."*

14. As such, in view of the decision of Hon'ble Supreme Court in the case of **Sukhwinder Singh vs Union of India & Ors.** (supra) and **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 pension @ 20% for life to be rounded off

to 50% for life may be extended to the applicant three preceding years from the date of filing of the Original Application.

15. In view of the above, the **Original Application No. 347 of 2021** 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 as aggravated by military service. The disability of the applicant is held above @20% for life. The applicant is entitled to get disability element of disability pension @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 07.07.2021. Respondents are further directed to give effect to the order within four months from the date of receipt of a certified copy of this order failing which the respondents shall have to pay interest @ 8% per annum till the date of actual payment.

16. No order as to costs.

**(Vice Admiral Abhay Raghunath Karve)**  
**Member (A)**

**(Justice Umesh Chandra Srivastava)**  
**Member (J)**

Dated: 23 March 2022  
AKD/-