

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION No. 876 of 2022**Thursday, this the 16th day of March, 2023**"Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)"**
"Hon'ble Maj. Gen. Sanjay Singh, Member (A)"

No. 14226828P, Ex. Naik (TS), Bishram Singh, S/o Late Chandrika Singh, Resident of Village and Post – Bhikham Amahat, Tehsil – Mohammadabad, District – Ghazipur.

..... ApplicantLd. Counsel for the : **Shri Rohit Kumar**, Advocate.
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi -110011.
2. Chairperson, 1st Appellate Committee on Pensions, Additional Directorate General Personal Services (PS-4), Adjutant Generals Branch, Room No. 416, 4th Floor, Integrated Headquarter of Ministry of Defence (Army), Army Headquarters, DHQ PO, New Delhi - 110011/900256.
3. Commandant –cum-Chief Record Officer and Centre Signal Centre and Records, Post Bag No.5, Jabalpur.

.....RespondentsLd. Counsel for the : **Ms. Deepti Prasad Bajpai** , Advocate
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) *Quash the rejection order of the Record Signals bearing No. P/14226828/DP-2/NER dated 30 Oct 2021 rejecting the First Appeal of the applicant dated 31 may 2021 with all consequential benefits to the applicant.*
- (b) *To quash Signal Records letter bearing No. 14226828/RSMB/NER dated 10 Jan 2004 with all the consequential benefits to the applicant.*
- (c) *To direct the respondents to pay the disability pension to the applicant @20% with effect from the year 2004 when the disability pension was stopped for the reasons best known to the authorities despite the fact that the resurvey medical board held at Military Hospital Allahabad in on 03 Sept 2003 had opined that the percentage of disability was 205 and the condition of the applicant was static with all consequential benefits to the applicant.*
- (d) *To direct the respondents to pay the arrears of the disability pension with 10% interest compoundable quarterly as stoppage of the disability pension was in gross violation of the Principles of Natural Justice, Fair Play and Equity with all the consequential benefits to the applicant.*
- (e) *To direct the respondents to pay benefits of rounding off to the applicant as catered for in paragraph 72 of Army*

Headquarter policy letter No. Government of India, Ministry of Defence Policy letter No. 1(20/97/D(Pen)-C dated 31 jan 2001 with all the consequential benefits to the applicant.

- (f) To direct the respondents to decide the statutory final appeal of the applicant bearing No. D/SP/AAFN/D/19050 dated 15 Dec 2021 within a time frame to be fixed by this Hon'ble Tribunal preferably one month.*
- (g) To issue any other order or direction considered expedient and in the interest of Justice and equity.*
- (h) Award cost of the petition.*

2. Briefly stated, applicant was enrolled in the Indian Army on 23.04.1977 and discharged with effect from 01.05.1992 in Low Medical Category. At the time of discharge from service, the Invaliding Medical Board (IMB) held at 166 Military Hospital C/o 56 APO on 25.02.1992 assessed his disability '**IRRITABLE BOWEL SYNDROME V 67'** @20% for two years and opined the disability to be aggravated by service. Accordingly, the applicant was granted disability pension for two years. The Re-Survey Medical Board (RSMB) held at Military Hospital, Allahabad on 06.09.2003 assessed the applicant's disability @15-19% for life. Accordingly, applicant's disability pension has been stopped by the respondents. The applicant preferred First Appeal which too was rejected vide letter dated 31.05.2021 which was communicated to the applicant vide letter dated 30.10.2021. the applicant preferred Final Appeal dated

15.12.2021 but of no avail. 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. **'IRRITABLE BOWEL SYNDROME V 67'** was assessed by the RMB @20% for two years as aggravated by military service. The Re-Survey Medical Board held on 06.09.2003 wrongly assessed the applicant's disability @15-19% for life. 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, 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 applicant disability was assessed @20% for two years as aggravated by military service. Accordingly, he was granted disability element of pension for the period of two years. He further submitted that as the disability of applicant has been assessed @15-19% for life i.e. below 20% by the Re-

Survey Medical Board, he is not entitled to disability element of disability pension in terms of Regulation 173 of Pension Regulations for the Army, 1961 (Part - I) and his disability element of disability pension has been rightly stopped by the respondents being disability below 20%. 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 entitled to disability element of pension being disability below 20% aggravated by 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 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. In view of the above, we are of the considered opinion that applicant's discharge vide Invaliding Medical Board held on 25.02.1992 is to be treated as invalidation in terms of Rule 4 of the Entitlement Rules (supra).

11. 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 '**IRRITABLE BOWEL SYNDROME V 67'** and disease contracted in service, therefore, the IMB has declared his disability 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/RSMB.

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 **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.

15. In view of the above, the **Original Application No. 876 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 applicant is entitled to get disability element of pension @20% for life which would be rounded off to 50% for life from the next date of his discharge or w.e.f. three years preceding the date of filing of Original Application. The respondents are directed to grant disability element of pension 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 13.10.2022. 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

16. No order as to costs.

(Maj. Gen. Sanjay Singh)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 16 March, 2023

AKD/Ashok/-