

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 457of 2022**Thursday, this the 23<sup>rd</sup> day of March,2023**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”****“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

Kishore Kumar (No. 15370141 X Ex. Sepoy), S/o Abhay Kant Yadav,  
R/o House No. 6B/130, Vrindavan Colony, Raibareli Road, Lucknow -  
226029.

**..... Applicant**

Ld. Counsel for the : **Shri R. Chandra**, Advocate.  
Applicant Holding Brief of  
**Shri Yashpal Singh**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi.
2. Officer –in-charge, Defence Security Corps Records, Mill Road, Burnacherry, Post – Kannur, Kerala -670013.
3. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Prayagraj.

**.....Respondents**

Ld. Counsel for the : **Shri R.C. Shukla**, 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) *Issue/pass an order setting aside rejection of the claim of the applicant for disability pension for the disability 'Primary Hypertension' as communicated by the order /letter dated 17.04.2020 (Annexure No.1 to the Original Application) after summoning the relevant original records.*
- (b) *Issue/pass an order directing the respondents to consider case of the applicant for grant of disability pension and provide the same from due date including arrears thereof with interest, and also the benefit of rounding off and other consequential benefits of ex-serviceman.*
- (c) *Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.*
- (d) *Allow this Application with cost.*

2. Briefly stated, applicant was enrolled in the Corps of Signals of Indian Army on 10.03.1989 and discharged on 31.03.2015 (AN) after rendering 26 years and 04 days of service. Thereafter, the applicant re-enrolled in the Defence Security Corps (DSC) on 10.06.2015 and discharged on 30.11.2019 (AN) in Low Medical Category after rendering 04 years, 05 months and 21 days of service i.e. before completion of terms of engagement under Rule 13 (3) Item III (iii) (a) (i) of the Army Rules, 1954. At the time of discharge from DSC service, the Release Medical Board (RMB) held at Base Hospital, Barrackpore in Nov 2019 assessed his disability '**PRIMARY HYPERTENSION (I-10)**' for life and opined the disability to be

neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected vide letter dated 17.04.2020. 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 in Army/DSC, 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/DSC. The disease of the applicant was contracted during the Army/DSC service, hence it is attributable to and aggravated by Military/DSC 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 DSC 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 as the RMB has assessed Nil percentage of disability qualifying for disability pension i.e. below 20%, he is not entitled to disability element of pension in terms of Regulation 81 of Pension Regulations for the Army, 2008 (Part-I) and Regulation 173 of Pension Regulations for the Army, 1961 (Part - I) and his claim was rightly denied by the respondents being disability Nil. 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 from DSC? and secondly is applicant is entitled to disability element of pension being disability below 20% attributable to 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 DSC 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 from DSC service 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 and disease contracted in DSC service, 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 in November, 2019 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. As such, in view of the decision of Hon'ble Supreme Court in the case of ***Sukhwinder Singh vs Union of India & Ors.*** (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 pension @ 20% for life to be rounded off to 50% for life may be extended to the applicant from the next date of discharge from DSC service.

14. In view of the above, the **Original Application No. 457 of 2022** deserves to be allowed, hence allowed. The impugned order, rejecting the applicant's claim for grant of disability element of disability pension, is set aside. The disability of the

applicant is held as aggravated by Army/DSC Service. The applicant is entitled to get disability element @30% for life which would be rounded off to 50% for life from the next date of his discharge. The respondents are directed to grant disability element to the applicant @30% for life which would stand rounded off to 50% for life from the next date of his discharge. 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

15. No order as to costs.

**(Vice Admiral Atul Kumar Jain)**  
**Member (A)**

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

Dated : 23 March, 2023

AKD/Ashok/-