

**Court No. 1**  
**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**ORIGINAL APPLICATION No. 850 of 2022**

Saturday, this the 18<sup>th</sup> day of March, 2023

**"Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**"Hon'ble Vice Admiral Atul Kumar Jain, Member (A)"**

No. 14676564K, Hav. Chhotelal Yadav, (Retd.), S/o Shri Jhinak Yadav, R/o -House No. 463, Tola Yadav, Near Shiv Mandir, Post -Geeta Press Gorakhpur, Uttar Pradesh -273013.

..... **Applicant**

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

**Versus**

1. Union of India through the Secretary, Govt. of India, Ministry of Defence, (Army), South Block, New Delhi - 110011.
2. Chief of the Army Staff, Integrated headquarters of MoD (Army), Post-DHQ, New Delhi -110011.
3. O IC Records, EME Records, PIN-900453, C/o 56 APO.
4. O/o the PCDA (P), Draupadi Ghat, Allahabad (U.P)-211014.

.....**Respondents**

Ld. Counsel for the: **Shri Rajesh Shukla**, 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 and set aside the Respondents letter dated 06 Nov 2000 and 15 Nov 2021 wherein applicant's claim for grant of disability element has been denied /rejected.*
- B. *To held applicant entitle for grant of disability element of disability pension considering his disablement as attributable to military service with as assessment as 20% for the period of two years from discharge in invaliding Medical Board proceedings. Respondents be directed to pay the disability element to the applicant @20% for two years to be round off to 50% to two years wef. The next date of discharge i.e. 01.06.2000 along with arrears with suitable rate of interest as deemed fit and proper by this Hon'ble Tribunal to meet the end of justice.*
- C. *To direct respondents to conduct Resurvey Medical Board of the applicant to assess his further entitlement of disability element accordingly.*
- D. *Any other relief as considered deemed fit and proper in the circumstances by this Hon'ble Tribunal be awarded in favour of the applicant.*
2. The brief facts of the case are that the applicant was enrolled in the EME Corps of Indian Army on 30.03.1979 and was discharged from service on 31.05.2000 (AN) in Low Medical Category under Rule 13 (3) Item III (v) of the Army Rules, 1954. At the time of discharge, Release Medical Board (RMB) held at 174 Military Hospital, on 21.07.1998 assessed his disability '**NIDDM 250 V.67'** @ 15-19% for two years as **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 06.11.2000 which was communicated to the applicant vide letter dated 30.11.2000. The applicant submitted a CPGRAMS dated 09.11.2021 which too was rejected vide letter dated 15.11.2021. 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, 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.

4. On the other hand, Ld. Counsel for the respondents submitted that as the disability of applicant has been assessed @15-19% for two years i.e. below 20% as NANA, he is not entitled to disability element of pension in terms of Regulation 173 of Pension Regulations for the Army, 1961(Part-I) and his claim was rightly denied by the respondents being disability below 20% as well as NANA. As such the applicant is not entitled for grant of disability element of disability pension. 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 on his own request on compassionate grounds 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. 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 '**NIDDM 250 V.67**' and infection contracted in service, therefore, we are of the opinion that

applicant's disability 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 which would be rounded off to 50% for two years.

11. In view of the above, we are of the considered opinion that applicant's discharge vide Release Medical Board held on 10.08.2018 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. Since the applicant's IMB was valid for two years w.e.f. 31.05.2000, hence, the respondents will now have to conduct a fresh RSMB for him to decide his future eligibility to disability pension

14. In view of the above, the **Original Application No. 850 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 disability of the applicant is held above @20% for two years as aggravated by military service. The applicant is entitled to get disability element @20% for two years which would be rounded off to 50% for two years from the next of his discharge. The respondents are directed to grant disability element to the applicant @20% for two years which would stand rounded off to 50% for two years from the next date of his discharge. The respondents are further directed to conduct a Re-Survey Medical Board for the applicant to assess his 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. 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: 18 March, 2023

AKD/Ashok/-