

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 934 of 2022**Thursday, this the 18th day of May, 2023**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”****“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

Ex. CPO LOG (F&A) Dheeraj Kumar (No. 213138-F), S/o Shri Nirottam Singh, Street –Gandhi Ashiya, Sonkh, City-Mathura, Uttar Pradesh - 281123.

..... Applicant

Ld. Counsel for the Applicant : **Shri Vinay Pandey**, Advocate.

Versus

1. Union of India, through, Secretary, Ministry of Defence, South Block, New Delhi.
2. Chief of Naval Staff, Integrated HQ of MoD (Navy), through PDPA, New Delhi -110011.
3. Naval Pension Officer, C/o INS Tanaji Sion Trombay Road, Mankhurd, Mumbai -400088.
4. PCDA (N), No 1 Co-Operge Road, Colaba, Mumbai -400001.

.....Respondents

Ld. Counsel for the Respondents. : **Shri Rajiv Pandey**, Advocate
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 Impugned Order No. PEN/600/D/LRDOI: 08/2021/21318F dated 20.09.2021.

- (b) Direct respondents to grant Disability Element of Pension duly rounded off to 50% to the applicant w.e.f. his date of discharge i.e.01.09.2021.
- (c) Direct respondents to pay the due arrears of disability element of pension with interest @12% p.a. from the date of retirement with all the consequential benefits.
- (d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost of the application in favour of the applicant and against the respondents.

2. Briefly stated, applicant was enrolled in the Indian Navy on 03.08.2005 and discharged on 31.08.2021 in Low Medical Category after completion of 16 years and 29 days of service. At the time of discharge from service, the Release Medical Board (RMB) held at Mumbai on 15.04.2021 assessed his disability '**CERVICALGIA ICD No. M 54.2**' @10% for life and opined the disability to be **aggravated by Naval service**. Applicant's claim for grant of disability element of disability pension was rejected vide letter dated 20.09.2021. The applicant served Legal Notice-cum-Representation/First Appeal dated 09.09.2021 through his Counsel which was returned by the respondents to his Counsel vide letter dated 25.05.2022 as the First Appeal has not been signed by the applicant himself. It is in this perspective that the applicant has preferred the present Original Application.

3. Ld. Counsel for the applicant submitted that the applicant was fully fit at the time of enrolment and the said disability i.e. '**CERVICALGIA ICD No. M 54.2**' was assessed by the RMB as

aggravated by Naval service but @10% 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 on the rank of CPO LOG (F&A), 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 @10% for life i.e. below 20% as aggravated by Naval service, he is not entitled to disability element of pension in terms of Regulation 105-B of Navy Pension Regulations, 1964 wherein it is specified that the disability should be either attributable to or aggravated by Naval Service and minimum assessment for the disability is mandatorily required to be 20% or more. His claim was rightly denied 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 is entitled to disability element of pension being disability below 20% aggravated by Naval 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 the rank of CPO LOG (F&A) 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 '**CERVICALGIA ICD No. M 54.2**' and disease contracted in service, therefore, the RMB has declared his disability as aggravated by Naval 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.

11. 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.

12. As such, in view of the decision of Hon'ble Supreme Court in the case of ***Union of India and Ors vs Ram Avtar & ors*** 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 the next date of his discharge.

13. In view of the above, the **Original Application No. 934 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 @20% for life. The applicant is entitled to get

disability element @20% 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 @20% 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

14. No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated :18 May 2023

AKD/Ashok/-