

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

CIRCUIT BENCH, NAINITAL

Original Application No. 378 of 2011

Wednesday, this the 1st day of Nov 2017

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Lt Gen Gyan Bhushan, Member (A)

No. 4061896F, Ex Rfn Mohan Singh Bisht, s/o Late Madan Singh Bisht, belonging to 16th Battalion the Garhwal Rifles, Lansdowne, R/O Vill & PO : Sari via Gauchar, Dist : Rudraprayag, Uttarakhand, Pin : 246429

.....Applicant

Ld. Counsel for : **Shri M.S. Chauhan, Advocate**
the Applicant

Versus

1. Union of India, through its Secretary of Defence Ministry, New Delhi-11000.
2. Chief of the Army Staff, Integrated HQ of MoD (Army) South Block, New Delhi-110011
3. The Chief Controller of Defence Accounts, Allahabad (UP).
4. The Record Officer, The Garhwal Rifles, Lansdowne, C/O 56 APO.
5. The Commanding Officer, 16th Battalion, The Garhwal Rifles, C/O 99 APO.

.....Respondents

Ld. Counsel for the : **Shri A.K. Sahu,**
Respondents **Ld. Counsel for the Respondents.**

ORDER

“Per Hon’ble Lt Gen Gyan Bhushan, Member (A)”

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has claimed following reliefs :-

(i) To quash/set aside the impugned voluntary letter as contained in Annexure No. A-1 (i) of the O.A. which was written by the applicant under pressure of the then Commanding Officer of the Battalion/Unit and the Commanding Officer accepted the same on 31.01.1986 with biased and prejudiced manner.

(ii) To quash the impugned letter dt 21.03.1986, the Annexure No. A-1 (iii) of the O.A. by which the medical board recommended for release/discharge, the remark of the Officiating Commanding Officer of the 16th Battalion, The Garhwal Rifles for discharging the applicant from service, the impugned process and discharge order dated 03.05.1986 the Annexure No. A-1 (iii) of the Original Application and impugned letter/order dated 19.05.2007, the Annexure No. A-1(iv) of the O.A. by which the Record Officer, The Garhwal Rifles, Regimental Centre, Lansdowne debarred the applicant by any type of pensionary benefits.

(iii) To declare that the applicant is fully entitled for getting disability pension, minimum pensionable service tenure pension and pay and allowancesx wef 7th Septembewr, 1986 upto the minimum pensionable service tenure.

(iv) To pass an order or direction to the respondents for making payment of arrears ofg disability pension, retirement pension of m,inimum pensionable service tenure and pay plus allowances pensionable service tenure and pay plus allowances w.e.f. 07.09.1986 upto minimum pensionable service tenure with interest as per market rate to the applicant.

(v) To pass any such appropriate order or direction which this Hon’ble Tribunal deemed just and proper in the circumstances of the case.

2. At the very outset, Learned Counsel for the applicant submitted that he restricts the prayer only to the grant of disability pension, thus we need not delve into the other prayers in the Original Application and confine to the prayer for grant of disability pension only.

3. The undisputed facts, as averred by the learned counsel for both the parties, are that the applicant was enrolled in the Army on 22.04.1980 in medically fit condition and was discharged from service on extreme compassionate grounds at his own request on 07.09.1986 under Rule 13 (3) III (iv) of the Army Rule, 1954. Applicant had served in the army six years, four months and 17 days only. The medical board held before discharge considered the disability due to 'VIRAL HEPATITIS (EFFECTS 070, V67)' as 15-19% (less than 20 percent) for two years and disability was considered as attributable to military service. The case for disability pension was rejected and communicated to the applicant by Records The Garhwal Rifles vide their letter dated 19.05.2007.

4. We have heard Shri M.S. Chauhan, Ld. Counsel for the applicant and Shri A.K. Sahu, Ld. Counsel for the respondents and perused the record.

5. Learned counsel for the applicant submitted that the applicant was enrolled in medically fit condition and discharged from service in Low Medical Category on 07.09.1986; hence he should be granted disability pension as per Para 173 of Pension Regulations for the Army, 1961. He further submitted that various Benches of Armed Forces Tribunals in similar cases have granted disability pension, as such, he be also entitled for grant of disability pension.

6. **Per Contra**, Learned Counsel for the respondents submitted that the disability due to the disease 'VIRAL HEPATITIS (EFFECTS 070, V67)' has been assessed as 15-19% for two years. The applicant was in Low Medical Category CEE (Permanent) and discharged from service at his own request prior to completion of his terms of engagement, i.e, 15 years and as per Para 173 of Pension Regulations for the Army, 1961, disability pension is granted to those persons whose disability is assessed by medical authority to be more

than 20% and is considered as attributable and aggravated by Military Service. Since his disability was considered as 15-19% by the Medical Board, he was not granted disability pension. However, Learned Counsel for the respondents could not dispute that in view of various judgments of Hon'ble Supreme Court and Armed Forces Tribunals, the applicant is entitled to grant of disability pension.

7. Admittedly, the applicant was enrolled in a medically fit condition and was discharged from service in Low Medical Category at his own request and respondents have not placed any document on record to prove that the disease suffered by the applicant existed at the time of enrolment. In fact, Medical Board in their opinion on page 3 against column 1, i.e, '**Did the disability exist before entering service**' has mentioned '**NO**'.

8. Since the applicant was enrolled in fit medical condition and discharged in low Medical Category, we are of the view that his case is squarely covered by the judgement of ***Dharamvir Singh vs. Union of India and others***, reported in (2013) 7 SCC 316, ***Sukhvinder Singh vs. Union of India***, reported in (2014) 14 SCC 364, ***Union of India and others vs. Angad Singh Titaria***, reported in (2015) 12 SCC 257 and ***Union of India and others vs. Rajbir Singh***, reported in (2015) 12 SCC 264.

9. The Medical Board held before discharge though assessed the disability of the applicant as 15-19% (below 20%) for two years but considered the same as attributable to military service and as per Para 173 of Pension Regulations for the Army, 1961, disability pension is granted to those persons whose disability is assessed by medical authority to be more than 20% and is considered as attributable and aggravated by Military Service, as such, the applicant is considered entitled for grant of disability pension. In ***Sukhvinder Singh Vs. Union of***

India, reported in (2014) STPL (WEB) 468 SC. the Hon'ble Apex Court has held 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 authorizing the discharge or invaliding out of service where the disability is below twenty percent and seems to us to be logically so. Fourthly, wherever 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 percent. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty percent disability pension.”

10. We also recall the following judgments wherein the disability pension has been granted to the persons who proceeded on premature retirement on own accord :-

(a) Hon'ble The Apex Court Judgement in the case of A.N. Sachdeva vs. M.D.U. Rohtak in Civil Appeal Nos 626 & 627 of 2008.

(b) Judgment of Principal Bench, Armed Forces Tribunal, New Delhi which has been followed by Armed Forces Tribunal, Chandigarh Regional Bench in its judgment passed in **O.A. No. 1019 of 2013, Wg Cdr GBS Kang vs. Union of India & others.**

(c) Armed Forces Tribunal, Regional Bench, Lucknow judgement in O.A. No 326 of 2013 decided on 05.11.2015.

11. Since the Medical Board has assessed the disability as 15-19% for two years, as such keeping in view observations made in the judgment of **Veer Pal Singh vs Ministry of Defence**, reported in (2013) 8 SCC 83, we feel that the case of the applicant should be referred for Re-survey Medical Board to reassess further entitlement of disability pension, if any.

12. On the issue of rounding off of disability pension, we are of the opinion that the case is squarely covered by the decision of **Union of India vs. Ram Avtar & Others** in Civil Appeal No. 418 of 2012 decided on 10 December, 2014.

13. In view of the above the Original Application deserves to be allowed.

14. Accordingly the Original Application No. 378 of 2011 is **allowed**. The impugned order passed by the respondents is set aside. The respondents are directed to grant disability pension to the applicant after rounding off @ 50% for two years. The respondents are further directed to refer the applicant's case to Re-survey Medical Board for further entitlement of disability pension. Respondents shall give effect to this order within a period of four months from the date of receipt of a certified copy of this order failing which the applicant shall be entitled to interest @ 9% per annum on the amount accrued from due date till the date of actual payment.

15. No order as to costs.

(Lt Gen Gyan Bhushan)
Member (A)

(Justice S.V.S Rathore)
Member (J)

Dated: Nov, 2017
dds/*