Court No.1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

TRANSFERRED APPLICATION No. 69 of 2012

Monday, this the 13th day of November, 2017

"Hon'ble Mr. Justice D.P. Singh, Member (J)
"Hon'ble Air Marshal BBP, Sinha, Member (A)"

Diwan Singh son of Shri Bhim Singh Dafauti residentof village Baisali Post Office Chamarthal District Bageshwar. **…….. Petitioner**

Ld. Counsel for the Petitioner : **Shri P.N. Chaturvedi, Advocate** (Counsel for the petitioner)

Versus

1. Union of India through Secretary, Ministry of Defence, Government of India, New Delhi.

2. Defence Ministries Appellate Committee on Pension, Ministry of Defence, Government of India, New Delhi.

3. Chief of the Army Staff through OIC Legal Cell (Army) M.H.Compound, Allahabad.

3. Controller General, Defence Accounts West Block, S.R.K. Puram, New Delhi.

4. G.O.C.-in-C Central Command, through Commandant-cum-C.R.O EME Centre & Records/OIC (Pension Cell) Sub Area, Allahabad.

6. Chief Controller of Defence Accounts (Pension) Draupadi Ghat, Allahabad. **.….Respondents**

Ld. Counsel for the Respondents. : **Shri Amit Jaiswal, Advocate,** Central Govt Standing Counsel.

Assisted by : **Maj Salen Xaxa**, OIC Legal Cell.

ORDER (ORAL)

1. The aforesaid T.A has been filed under section 34 of the Armed Forces Tribunal Act 2007. Before being transferred to this Tribunal and renumbered as T.A., a writ petition was filed in the High Court of Uttranchal at Nainital which was numbered as Writ Petition No 1604 (S/B) of 2002. The aforesaid writ petition in the course of time stood transferred and received by this Tribunal and it was renumbered as T.A No 69 of 2012.

2. Shorn of unnecessary details, the facts of the case are that the Petitioner was enrolled in the Indian Army on 26.01.1985 and was discharged from the service under Rule 13 (3) of the Army Rules 1954 on 31.12.1992 on account of being in low medical category under provisions of Army Order46/80 . He was discharged through Release Medical Board (RMB) and not Invalidating Medical Board (IMB). The disability which the petitioner was suffering from was cited as "SCHIZOPHRENIA" by the Release Medical Board which opined the same to be neither attributable to nor aggravated by Military service. The RMB also decided the disability percentage to be 40% for two years. The claim for disability pension was preferred which was rejected by the PCDA (P)

Allahabad by order as contained in the letter dated 09.12.1994. Thereafter, the petitioner filed First Appeal which also came to be rejected vide order as contained in letter dated 03.07.1997. Thereafter a statutory petition was filed on 25.01.2000 addressed to Army Headquarters. In the meanwhile, the petitioner filed a writ petition being Writ Petition no 23408 of 2000 in the High Court of Judicature at Allahabad which was disposed of with the direction to the respondents to decide the statutory petition and in pursuance of the direction of the High Court, the said statutory petition also culminated in being rejected vide communication dated 25.09.2000. Thereafter, in the year 2002, the petitioner filed the writ petition aforesaid which came to be transferred to this Tribunal and renumbered as T.A. No 69 of 2012.

3. We have heard learned counsel for the Petitioner as also learned counsel for the respondents and have also been taken through the material facts on record.

4. In the instant case, the petitioner was discharged from service through RMB after rendering more than seven years of service against an engagement period of 15 years though he was found medically unfit for further service. The main brunt of submission of learned counsel for the petitioner is that since the disability occurred after seven years of service,

it has erroneously been opined to be neither attributable to nor aggravated by Military service.

5. Per contra, learned counsel for the respondents vehemently urged that since Release Medical Board held the disability as neither attributable to nor aggravated by military service, the disability pension was rightly denied to the petitioner.

6. In the instant case, the questions involved for consideration are two-fold; firstly on the method of pre mature discharge through RMB and secondly on the attributability of disability. In both these cases the law is well settled by the Apex Court vide **Union of India & Ors vs Rajpal Singh (07 November 2008)**, and Dharamvir **Singh Vs. Union of India and Ors** reported in **(2013) 7 SCC 316,** rendered on 02.07.2013. As far as the first issue of discharge through RMB vs IMB is concerned, the law is well settled by the Apex Court judgement on **Rajpal Singh (Supra)** the relevant para of which is excerpted below:-

> *18. The afore-extracted Rule 13 (1) clearly enumerates the authorities competent to discharge from service, the specified person; the grounds of discharge and the manner of discharge. It is manifest that when in terms of this Rule an army personnel is discharged on completion of service or tenure or at the request of the person concerned, no specific manner of discharge is prescribed. Naturally, the Regulations or Army Orders will take care of the field not covered by the Rules. However, for discharge on other grounds, specified in Column (2) of the Table, appended to the Rule, the manner of discharge is clearly laid out.* ***It is plain that a discharge on the ground of having been found "medically unfit for further service" is specifically dealt***

> ***with in Column (I) (ii) of the Table, which stipulates that discharge in such a case is to be carried out only on the recommendation of the Invalidating Board.*** *It is a cardinal principle of interpretation of a Statute that only those cases or situations can be covered under a residual head, which are not covered under a specific head. It is, therefore, clear that only those cases of discharge would fall within the ambit of the residual head, viz. I (iii) which are not covered under the preceding specific heads. In other words, if a JCO is to be discharged from the service on the ground of "medically unfit for further service", irrespective of the fact whether he is or was in a low medical category, his order of discharge can be made only on the recommendation of an Invalidating Board. The said rule being clear and unambiguous is capable of only this interpretation and no other.*
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> *19. Having reached the said conclusion, we feel that the appellants were bound to follow Rule 13 (3) (I) (ii), more so having placed the respondent in low medical category (permanent) for a period of two years from October, 2001 he was discharged from service on 31st August, 2002, relying on the recommendation of the Re-categorisation Board held on 24th October, 2001. As noted in the show cause notice, extracted above, the said Board had placed the respondent in "permanent low medical category". Be that as it may, the main ground of discharge being medical unfitness for further service, the appellants were bound to follow the prescribed rule.*
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> *20. It is well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. This rule was enunciated by Justice Frankfurter in Viteralli Vs. Saton7, where the learned Judge said:*
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> *359 U.S. 535 : Law Ed (Second series) 1012 "An executive agency must be rigorously held to the standards by which it professes its action to be judged... Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed...This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with that sword."*

It would thus transpire that the authorities erred in discharging the Applicant through R.M.B while they ought to have proceeded in the matter in terms of ***Column (I) (ii) of the***

Table, which stipulates that discharge in such a case is to be carried out only on the recommendation of the Invalidating Board.

7. On the second issue of attributability of disability, the Hon'ble Apex Court in the case of **Dharamvir Singh Vs. Union of India and Ors** took note of the provisions of the Pension Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words.

> "29.1. Disability pension to be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).
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> 29.2. A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service [Rule 5 read with Rule 14(b)].
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> 29.3. The onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).
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> 29.4. If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service [Rule 14(c)]. [pic]
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> 29.5. If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service [Rule 14(b)].
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> 29.6. If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons [Rule 14(b)]; and 29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical

> Officers (Military Pensions), 2002 - "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."

8. The above judgment on disability has been constantly followed and further explored by the Supreme Court in **Union of India and others v. Rajbir Singh** (CA No. 2904 of 2011 decided on 13.2.2015); **Union of India and others v. Manjit Singh** (CA No. 4357-58 of 2015 (arising out of SLP (C) No. 13732-33 of 2015) decided on 12.5.2015; **Union of India v. Angad Singh** (CA No. 2208 of 2011 decided on 24.2.2015); **KJS Butter v. Union of India** (CA No. 5591 of 2006 decided on 31.3.2011; **Ex. Hav Mani Ram Bharia v. Union of India and others,** Civil Appeal No. 4409 of 2011 decided on 11.2.2016; **Satwinder Singh v. Union of India** OA 621 of 2014 **Bharat Kumar Vs UOI & Ors**.; OA 1235 of 2014 **Hoshiar Singh Vs UOI & Ors**. and 480 of 2015 **Jasbir Singh Vs UOI & Ors. 18 and others** Civil Appeal No. 1695 of 2016 (arising out of SLP (c) No. 22765 of 2011) and decided on 11.2.2016.

9. Thus considering all issues and evidence on record we are of the opinion that the discharge of the applicant through RMB was wrong. He should have been invalidated out through IMB because his engagement period was being cut short due to medical reasons.

10. On the disability and its attributability aspect, we have traversed upon the relevant medical papers and from a punctilious reading of the medical papers and other allied papers, it would clearly transpire that no reasons have been assigned as to how the disability was found by the Board to be not attributable to or aggravated by the Military service.

11. The disability of the Petitioner was assessed by the Release Medical Board as 40% for two years. One of the grounds urged is that the Petitioner ought to have been reviewed by the Medical Board in terms of Army order 146 of 1977 which has not been done in the instant case. Since in view of the above decisions, it cannot be disputed that the disability of the petitioner was attributable to and aggravated by military service, hence in the light of the well settled law on this point, his disability is considered as attributable to military service. Now we come to grips with the next submission of rounding off of disability from 40% to 50% as prayed by the petitioner.

12. In the case of Sukhvinder Singh Vs Union of India reported in (2014) STPL (WEF) 468 SC, the Apex Court clearly held that 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 per cent and

further as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension. There is no denying of the fact that the Petitioner was prematurely discharged from service on the ground of being in low medical category. In the circumstances, regard being had to the decision of the Apex Court in **Sukhvinder Singh vs Union of India** (supra), we converge to the conclusion that evenif it be assumed that the assessment of disability by the Medical Board was nil, it would perforce be assumed to be 20% and above and once, it is assumed to be 20%, it has to be rounded off to 50% for two years.

ORDER

13. Thus as a result of foregoing discussion, the O.A is allowed and the impugned orders dated 09.12.1994, 03.07.1997, and 25.09.2000 are set aside. Thus considering all issues and evidence on record we are of the opinion that the discharge of the applicant through RMB was wrong. He should have been invalidated out through IMB because his engagement period was being cut short due to medical reasons. Be that as it may. The Petitioner is held entitled to disability pension to the extent of 40% for two years which is to be rounded off to 50% for two years from the date of

discharge. The Respondents are also directed to pay arrears of aforesaid disability pension from the date of discharge till the date of actual payment. Respondents are also directed to refer the case to Review Medical Board for reassessing the medical condition of the Petitioner for further entitlement of disability pension within four months from the date presentation of a certified copy of this order. The Respondents are further directed to give effect to the order within six months from the date of receipt of a certified copy of this order failing which the Petitioner shall be entitled to interest at the rate of 10% per annum.

14. No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice D.P. Singh)
Member (J)

Dated: 13 November, 2017
MH/-