

By Circulation
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Review Application No. 59 of 2018

(Inre O.A. No. 612 of 2017)

Monday, the 15th day of October, 2018

Hon'ble Mr. Justice S.V.S.Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

No 14332230W Ex Gnr (OFC) CK Srivastava, Unit 204 Div Loc Bty,
Care of 56 Army Post Office, S/O Shri Brij Lal Shrivastava, Resident
Of House No 631/550 Ismileganj Faizabad Road, Lucknow,
Pin – 226025.

..... Applicant

By Legal Practitioner – **Shri Thakur Balram Ji Srivastava,**
Learned counsel for the Applicant

Versus

Union of India, Through Secretary,
Ministry of Defence, New Delhi-110011.

ORDER

1. The applicant has filed this Review Application under Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008. By means of this Review Application, the applicant has made following prayer:-

“A. That the rate of the disability pension treated and directed be amended and be fixed at least to 60% for service and disability elements instated of 20% of disability for the duration of the life of the applicant.

B. That the direction for convening of Re-Survey Medical Board after a period of 2 years from 12.02.1981, to examine the applicant for ascertaining his present medical condition to fix the disability pension entitlement for future duration, be cancelled in its totality.”

2. The matter came up before us by way of Circulation as per provisions of Rule 18 (3) of the Armed Forces Tribunal (Procedure)

Rules, 2008, whereby the applicant has prayed for review the order dated 28.08.2018 passed in O.A No. 612 of 2017. In the aforesaid O.A., following order was passed:-

*“10. In view of the discussion held above, this O.A. deserves to be allowed and is hereby **allowed**. The impugned orders are set aside. Since the invaliding Medical Board had assessed the disability @ 15-19%, in the circumstances of the case and the settled legal position on the matter, we treat it to be @ 20%. The respondents are directed to grant disability element of disability pension to the applicant at the rate of 20% for two years after his discharge i.e. w.e.f. 12.02.1981. The respondents are also directed to conduct Re-Survey Medical Board for re-assessing the present medical condition of the applicant. Future entitlement of disability element of disability pension shall be subject to the outcome of Re-Survey medical Board. The applicant will be entitled to service element of disability pension w.e.f. his date of discharge. However the arrears of service element of disability pension will be restricted to three years before filing this O.A. The date of filing of this O.A. is 28.09.2017. The respondents shall comply with the order within four months from the date of receipt of a certified copy of this order, failing which the respondents shall be liable to pay interest at the rate of 9% per annum to the applicant on the amount accrued till the date of actual payment.”*

3. In this case, the applicant was discharged from service w.e.f. 12.02.1981 and his disability was held 15% -19%. Accordingly, he was granted disability pension from the date of discharge for a period of two years and for further entitlement of disability element of disability pension, it was directed that it shall be subject to the outcome of Re-Survey Medical Board.

4. This Review Application has been filed on the ground that the applicant is entitled to the benefit of para 9 of the judgment in the case of **Sukhwinder Singh vs Union of India & Ors** pronounced by Hon'ble the Apex Court. In the case of **Sukhwinder Singh** (supra), It has been held that the ratio of law as pronounced in said case shall be binding on Civil Courts and Tribunals. By the order under

review, the applicant was given benefits of judgment in the case of **Sukhwinder Singh** (supra) and disability was held to be attributable to military service. Accordingly, disability pension was sanctioned. The main ground mentioned in the Review Application is based on para 9 of judgment in the case of **Sukhwinder Singh** (supra) which reads 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 per cent 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 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. In view of our analysis, the appellant would be entitled to the Disability Pension. The Appeal is, accordingly, accepted in the above terms. The pension along with the arrears be disbursed to the appellant within three months from today.”

5. In the review application, it has been mentioned that the disability of the applicant should have been assessed as 60% as held in the case of **Sukhwinder Singh** (supra).

6. The review applicant in this Review Application has placed reliance on para 9 of the **Sukhwinder Singh’s** case quoted above.

7. Applicant was not entitled to the benefit of rounding off because policy of broad banding came into force w.e.f 01.01.1996 while the applicant was discharged from service on 12.02.1981.

8. Para 9 of the aforesaid judgment does not support the claim of the applicant for grant of disability pension @ 60%. It transpires from the copy of the judgment filed alongwith review application that in the head note of the said judgment, the words 65% disability pension have been used but no such words have been used in the text of the judgment. The editorial notes does not form part of the judgment and have no binding affect.

9. In view of above, the review application is devoid of merit and is **dismissed**.

(Air Marshal BBP Sinha)
Member (A)

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

Dated : October, 2018
ukt/-