

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 257 of 2018**Monday, this the 25th day of October, 2021**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Rama Shankar (No 14223726 Ex Sep/Cook), Son of Shri Ram Nath, Resident of Village and Post Office – Padri Kalan, District, Unnao (Uttar Pradesh)

1/1 Smt Mahalakshmi Tiwari, Wife of Late Rama Shankar, Village & Post Office – Padri Kalan, District, Unnao (Uttar Pradesh)

1/2 Radha Krishna, Son of Late Rama Shankar, Village & Post Office – Padri Kalan, District, Unnao (Uttar Pradesh)

1/3 Smt Rekha Mishra, Wife of Shri Ashwani Mishra, Resident of Village – Pansariya, Post Office- Bighapur, District – Unnao (Uttar Pradesh).

1/4 Smt Rita Trivedi, Wife of Sri Ashok Trivedi, Resident of Village & Post Office- Newarna, District- Unnao (Uttar Pradesh).

1/5 Smt Rajani Shukla, Wife of Sri Vimal Shukla, Resident of Village & Post Office – Padari Khurd, District – Unnao (Uttar Pradesh).

..... Applicants

Ld. Counsel for the : **Shri Yashpal Singh, Advocate**
Applicants

Versus

1. Union of India, through Secretary, Ministry of Defence (Army), South Block, New Delhi.
2. Director General of Infantry/Inf 9 (Pers), General Staff Branch, IHQ of MOD (Army), PIN- 900256, C/o 56 APO.

3. Officer Incharge Records, Rajput Regiment, PIN- 900427, C/o 56 APO.
4. Principal Controller of Defence Accounts (Pension) Draupadi Ghat, Allahabad – 211014.
5. Branch Manager, Bank of India, Mangat Khera Branch, Unnao (U.P.)

.....Respondents

Ld. Counsel for the Respondents.

**: Shri Amit Jaiswal,
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). *Issue/pass an order or direction setting aside the recommendations of the Release Medical Board dated 20.07.1984 insofar as the same held the disability not attributable to military service and assessed it below 20% and letter/ order dated 29.04.1985 issued by the Chief Controller of Defence Accounts (Pension), Allahabad rejecting the claim of the applicant for disability pension, after summoning the relevant original records, and direct the respondents to grant disability element with effect*

from due date by extending the benefit of rounding off including arrears with interest.

- (b). Issue/ pass an order directing the respondents to provide the applicant Discharge Book/ Discharge Certificate as an ex-serviceman, medical and canteen facilities along with other facilities available to such category of Army personnel.*
- (c) Issue/ pass an order directing the respondents to refund to the applicant with interest a sum of Rs 1,38,166/- deducted as income tax (TDS) from the arrears of pension of the applicant.*
- (d) Issue/ pass an order directing the respondents to pay the amount of 25% of back wages and allowances and compensatory cost of Rs. 50,000/- along with interest at the rate of 10% on the outstanding dues.*
- (e) Issue/ pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the caswe.*
- (f) To allow this original application with costs.*

2. Rejoinder affidavit, filed by the applicant is taken on record.

3. During pendency of Original Application applicant died on...

hence his legal representatives have been substituted as applicant

No 1/1 to 1/5.

4. Briefly stated facts of the case are that applicant was enrolled in the Indian Army on 13.12.1974 and was invalided out of service on 29.04.1985 (AN) before completion of his terms of engagement in Low Medical Category. At the time of discharge, Release Medical Board (RMB) held at Military Hospital, Alwar on

20.07.1984 assessed his disability “**Neurosis**” @ less than 20% for one year and opined the disability as neither attributable to nor aggravated by military service. The applicant approached the respondents for grant of disability pension but the same was rejected vide letter dated 29.04.1985 as the disability was assessed less than 20%. It is in this perspective that the applicant has preferred the present Original Application.

4. Learned counsel for the applicant pleaded that at the time of enrolment 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. He submitted that the applicant was neither informed the reason for discharge nor any document relating to discharge or medical board proceedings were made available to the applicant. In the year 1997 applicant received some documents and filed petition in Hon’ble High Court of Judicator at Allahabad which was transferred to this Tribunal and re-numbered as T.A. No 174 of 2009. The T.A. was allowed vide order dated 06.11.2015 and while setting aside the discharge order of the applicant and notionally reinstating him in service from the date of discharge, the Hon’ble Tribunal directed the respondents to deem the applicant in service till the date of normal retirement in the rank he held and pay 25% of back wages and allowances for the intervening period. Hon’ble Tribunal also imposed cost of Rs. 75,000/-. Applicant filed Execution Application

No 86 of 2016 which was disposed of with the direction to comply the order before 20.07.2016 otherwise, the applicant shall be entitled to compensatory cost of Rs. 50,000/- along with interest at the rate of 10% on the outstanding dues in addition to whatever the cost and interest granted by the Tribunal in the original order. Outstanding dues was not paid to the applicant upto 20.07.2016 as per directions given in Execution Application. However, on 21.09.2016, PPO dated 16.09.2016 was issued to Bank. A Demand Draft dated 20.02.2017 of Rs. 38,805/- valid for three months was issued vide letter dated 04.05.2017. Applicant deposited the same in Bank on 15.05.2017 but the same was not credited in his account with the remark out dated. Fresh cheque has not been issued till date. Applicant was paid arrears of pension but a sum of Rs. 1,38,166/- has been deducted as TDS. Applicant represented his case for grant of discharge book/ discharge certificate, as an ex-serviceman, medical and canteen facilities but nothing has been done till date. The applicant made representation dated 15.05.2017 for grant of disability pension which was denied by the respondents. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension as well as arrears thereof and its rounding off to 50%. He also relied upon the judgment of the Hon'ble Apex Court in the case of ***Sukhvinder Singh vs Union of India & Ors***, Civil Appeal No.

5604 of 2010, decided on 25.06.2014 and pleaded that he is entitled to grant of disability pension and its rounding off.

5. Rebutting arguments of the applicant, Ld. Counsel for the respondents submitted that applicant was placed in low medical category BEE (Permanent) wef 22.03.1984 due to disability "NUEROSIS" and his disability was assessed less than 20% and found neither attributable to nor aggravated by military service. The applicant was discharged from army under Rule 13 3) III (v) after rendering 09 years 08 months and 25 days of service. He further submitted that the disability pension claim of the applicant was rightly rejected because Release Medical Board has assessed the degree of disablement less than 20%, therefore, the disability pension is inadmissible to the applicant.

6. We have heard learned counsel for the parties and perused the record. The question which needs to be answered is whether the applicant is entitled to disability element despite disability being less than 20%?

7. Since the applicant was discharged from service before completion of terms of engagement in low medical category, his discharge from service should be considered as invalidation from service as has been held by the Hon'ble Apex Court judgment in the case of **Sukhwinder Singh vs Union of India & Ors** reported in (2014) STPL (WEB) 468 SC.

8. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Versus Union of India & Others***, reported in (2013) 7 Supreme Court Cases 316. In this case the Apex Court took note of the provisions of the Pensions 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).

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)].

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).

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]

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)].

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)."

9. As a result of foregoing discussion, the O.A. is **partly allowed**. The impugned order passed by the respondents rejecting the claim of disability element is quashed. Disability of the applicant assessed less than 20% deemed to be 20% and the applicant is held entitled to disability element @ 20% for one year from the date of discharge. Applicant was discharged from service in the year 1985 and rounding off is applicable from 1996, hence his disability element cannot be rounded off to 50%. Since the applicant has expired, hence no re-survey medical board can be held. It is a matter of great concern that respondents have not complied the order of this Tribunal dated 06.11.2015 passed in T.A. No 174 of 2009 till date. Respondents are further directed to issue Discharge Book/ Discharge Certificate as an ex-serviceman to husband of the applicant and provide Medical and Canteen facilities to the applicant. Respondents are also directed to pay

compensatory cost of Rs. 50,000/- and issue a fresh demand draft of Rs. 38,805/- against cancelled demand draft dated 20.02.2017. The applicant shall claim the amount of TDS from Income Tax Department. The respondents are 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 @ 9% per annum.

10. Pending applications, if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated : 25 October, 2021

UKT/-