

ORDER**(Passed in Court)**

1. Heard Shri N.C. Saxena, Ld. Counsel for the applicant and Shri Rajesh Kumar, Ld. Counsel for the Respondents assisted by Lt Col Subodh Verma, Departmental Representative for the Respondents.

2. The instant Original Application has been filed by the applicant being aggrieved by the impugned order dated 08.03.20.... passed by the respondents on the ground of medical invalidment which is 19%. The applicant was working as a sepoy (Special Cook) when he was discharged from service. Ld. Counsel for the applicant submits that since his disability is less than 20% he cannot be discharged from service. In support of his contention, he relied upon the judgment of Hon'ble Apex Court in Civil Appeal No 5605 of 2010 decided on 25.06.2014, Sukhvinder Singh Vs Union of India & Ors.

3. He also emphasized out attention on Paragraph 183 of Pension Regulations for the Army 1961, (Part-1) which stipulates as under:-

In case where an individual is invalidated before completion of his prescribed engagement/service limit on account of disability which is attributable to or aggravated by military service and is assessed below 20 percent, he will be granted an award equal to service element of disability pension determined in the manner given in Regulation 183 Pension Regulations for the Army Part – 1 (1961).

4. During the course of arguments, he insisted that he may be considered for payment of disability pension. He further submitted that he will claim disability pension.

5. Ld. Counsel for the Respondents submitted that the applicant was discharged from service on..... because of invalidated out of service in accordance with rules and regulations.

6. We have considered the arguments of Ld. Counsels for both the parties and perused the documents available on record. As per rule Respondents cannot discharge the applicant on disability of 19%. years have been passed. At this stage, even if we quash the discharge order after lapse of about years, it will not be possible to reinstate the applicant in service .

7. Keeping in view the above, we are not interfering the order passed by the respondents and permit the applicant to file a fresh application for grant of disability pension. In case he submits a fresh application for grant of disability pension within one month, then it shall be considered sympathetically by appropriate authority by granting disability pension with arrears expeditiously within three months in accordance with the rules.

8. Original Application is disposed of finally in terms of above.

9. No order as to cost.

(Air Marshal Anil Chopra)
Member (A)

ukt/-

(Justice D.P Singh)
Member (J)

1. We have heard Shri N.C. Saxena, Ld. Counsel for the Applicant