

E-Court**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 231 of 2022**Monday, this the 19th day of September, 2022**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 14439687P Ex. Hav. Munesh Kumar Son of Shri Ram Gopal,
Resident of Village- Nagla Anni, Post –Nagla Anni, District –Etah
-207302 (U.P).

..... Applicant

Ld. Counsel for : **Shri R.Chandra**, Advocate.
the applicant

Versus

1. Union of India through, the Secretary, Ministry of Defence, Government of India, New Delhi-110011.
2. Chief of the Army Staff, IHQ of Ministry of Defence (Army) DHQ Post Office New Delhi-110011.
3. The Officer In charge Artillery Records, Pin -908802, C/o 56 APO.
4. The PCDA (Pension), Draupadi Ghat, Allahabad-14 (U.P)

.....Respondents

Ld. Counsel for the: **Ms. Kavita Mishra**, Advocate
Respondents. Central Govt Counsel.

ORDER

1. The present Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007. The applicant has sought the following reliefs:-

- (I) *The Hon'ble tribunal may be pleased to set aside the rejection order dated 20.09.2021 (Annexure No. A 1).*
- (II) *The Hon'ble Tribunal may be pleased to direct the respondents to grant Disability Element with effect from 01.03.2021 (Next date of discharge) along with its arrears and interest thereon at the rate of 18% per annum.*
- (III) *Hon'ble Tribunal may be pleased further to grant benefit of rounding of disability pension @50% in terms of Ram Avatar's Case.*
- (IV) *Any other appropriate order or direction which the Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case.*

2. The brief facts of the case are that the applicant was enrolled in the Regiment of Artillery of Indian Army on 02.07.2001 and discharged from service on 28.02.2021(A/N) in Low Medical Category under Rule 13 (3) Item III (iii) (a) (i) of the Army Rules, 1954. At the time of discharge, Release Medical Board (RMB) held at 155 Base Hospital C/o 99 APO on 30.01.2021 assessed his disability '**NON ALCHOLIC FATTY LIVER DISEASE (K-75.81)**' @ 10% for life and the disability has been opined as neither attributable to nor aggravated (NANA) by military service. Applicant's claim for grant of disability element of disability pension was rejected vide letter dated 20.09.2021. The applicant preferred representation dated 04.10.2021 but of no avail. It is in this perspective that the applicant has preferred the present Original Application.

3. Ld. Counsel for the applicant pleaded that that at the time of enrolment, the 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 in Army. The disease of the applicant was contracted during the service, hence it is attributable to and aggravated by Military Service. Ld. Counsel for the applicant has relied upon the Hon'ble Apex Court judgment in the case of **Sukhwinder Singh vs Union of India & Ors**, reported in (2014) STPL (WEB) 468 SC and contended that since applicant's services were cut short and he was discharged from service prior to completion of terms of engagement, therefore his discharge from service should be a deemed invalidation as held in the case of **Sukhwinder Singh** (supra) and applicant deserves to be granted disability element of disability pension.

4. On the other hand, Ld. Counsel for the respondents submitted that the applicant's disability has been assessed @10% for life i.e. below 20% as NANA, the applicant is not entitled to disability element of pension in terms of Regulation 81 of Pension Regulations for the Army, 2008 (Part-I) and Regulation 173 of Pension Regulations for the Army, 1961 (Part - I) and his claim was rightly denied by the respondents being disability below 20% as NANA, he is not entitled for grant of disability element of disability pension. He pleaded for dismissal of the Original Application.

5. We have heard learned counsel for the parties and perused the material placed on record.

6. For adjudication of the controversy involved in the instant case, we need to address only two issues; firstly, is the discharge of applicant a case of normal discharge or invalidation? and secondly is applicant is entitled to disability element of pension being disability below 20% as NANA by military service.

7. For the purpose of first question as to whether the discharge of the applicant by Release Medical Board is a case of discharge or invalidation. In this context, it is clear that the applicant was discharged from service before completion of his terms of engagement in low medical category. In this regard, Rule 4 of the Entitlement Rules for Casualty Pensionary Awards, 1982 defines invalidation as follows:

“Invaliding from service is a necessary condition for grant of a disability pension. An individual, who, at the time of his release under the Release Regulations, is in a lower medical category than that in which he was recruited will be treated as invalided from service. JCOs/ORs and equivalent in other services who are placed permanently in a medical category other than 'A' and are discharged because no alternative employment suitable to their low medical category can be provided, as well as those who having been retained in alternative employment but are discharged before the completion of their engagement will be deemed to have been invalided out of service.”

8. Thus, in light of above definition, it is clear that the applicant was in low medical category as compared the one when he was enrolled and hence his discharge is to be deemed as invalidation out of service.

9. The law on this point is very clear as reported in (2014) STPL (WEB) 468, **Sukhwinder Singh vs Union of India & Ors.**

Para 9 of the aforesaid judgment being relevant is reproduced 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 percent and seems to us to be logically so. Fourthly, whenever 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. From the above mentioned Rule on disability pension and ratio of law emerging out of above Hon'ble Apex Court's judgment, it is clear that once a person has been recruited in a fit medical category, the benefit of doubt will lean in his favour unless cogent reasons are given by the Medical Board as to why the disease could not be detected at the time of enrolment. In this case, we find that the applicant was enrolled in Indian Army on 02.07.2001 and the disability has started after more than 16 years of Army service i.e. in June, 2017. We are therefore of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant in view of ***Sukhwinder Singh vs Union of India & Ors.*** (supra), and the disability of the applicant should be considered as aggravated by military service. The aforesaid law also makes clear that in case

of invalidation the disability percentage is presumed to above 20% irrespective of the disability percentage assessed by RMB.

11. In view of the above, we are of the considered opinion that applicant's discharge vide Release Medical Board held on 30.01.2021 is to be treated as invalidation in terms of Rule 4 of the Entitlement Rules (supra).

12. Additionally, consequent upon the issue of Government of India, Ministry of Defence letter No. 17(01)/2017(01)/D(Pen/Policy) dated 23.01.2018, Principal Controller of Defence Accounts (Pensions), Prayagraj has issued Circular No. 596 dated 09.02.2018 wherein it is provided that the cases where Armed Forces Pensioners who were retired/discharged voluntary or otherwise with disability and they were in receipt of Disability/War Injury Element as on 31.12.2015, their extent of disability/War Injury Element shall be re-computed in the manner given in the said Circular which is applicable with effect from 01.01.2016.

13. As such, in view of the decision of Hon'ble Supreme Court in the case of ***Sukhwinder Singh vs Union of India & Ors.*** (supra) as well as Government of India, Ministry of Defence letter No. 17(01)/2017(01)/D(Pen/Policy) dated 23.01.2018, we are of the considered view that benefit of rounding off of disability pension @ 20% for life to be rounded off to 50% for life may be extended to the applicant from next date of discharge.

14. In view of the above, the **Original Application No. 231 of 2022** deserves to be allowed, hence allowed. The impugned orders, rejecting the applicant's claim for grant of disability element of disability pension, are set aside. The disability of the applicant is held above @20% for life as aggravated by military service. The applicant is entitled to get disability element @20% for life which would be rounded off to 50% for life w.e.f. next date of discharge. The respondents are directed to grant disability element to the applicant @20% for life which would stand rounded off to 50% for life w.e.f. next date of discharge. The respondents are further 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 @ 8% per annum till the actual payment

15. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 19 September 2022
AKD/-