

**RESERVED  
Court No. 1**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**ORIGINAL APPLICATION No. 380 of 2017**

Thursday, this the 26<sup>th</sup> day of July, 2018

**Hon'ble Mr. Justice S.V.S. Rathore, Member (J)**

**Hon'ble Air Marshal B.B.P. Sinha, Member (A)**

**No. 13930572** Ex Sep Rajendra Singh S/o Shri Raghubir Singh R/o Village Alawalpur P.O. Khimsepur Tehsil Sadar Distt Farrukhabad (U.P.).

..... Applicant

Ld. Counsel for the: **Shri Bachchan Singh**, Advocate  
Applicant

Versus

1. Union of India, through Secretary to Govt of India, Ministry of Defence South Block, New Delhi-110011.
2. The Chief of the Army Staff Integrated HQ of MOD (Army) Sena Bhawa, New Delhi.
3. Commandant, AMC Centre and School, Lucknow PIN-226002.
4. Office-in-Charge AMC Records PIN 900450 C/o 56 APO.
5. PCDA (Pension) Draupadi Ghat, Allahabad-211014.

.....Respondents

Ld. Counsel for the: **Shri Virendra Singh**, Advocate  
Respondents. Central Govt. Standing Counsel

**ORDER**

**(Per Hon'ble Air Marshal BBP Sinha, Member "A" )**

1. This O.A. has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant for grant of disability pension and the benefit of rounding off by setting aside the letters/orders by which disability pension has been denied to the

applicant. The delay in filing the O.A. has been condoned vide order 01.09.2017.

2. By means of this petition the applicant prays for the following reliefs:-

“8.1 That this Hon’ble Tribunal may kindly and graciously be pleased to quash the impugned order (letter) dated 04 Jan 1975 and order dated 15 Oct 2015 Annexure Nos A-1 & A-5 by the respondent No 4 made on the basis of order of respondent No. 5 by which the claim of applicant for grant of disability pension was refused.

8.2 That this Hon’ble Tribunal may kindly be pleased to direct the respondents to pay to the applicant the disability pension @ 20% with rounding off the disability pension @ 50% for life from the date of discharge from service along with interest @ 18% p.a from the due date to the actual date of payment.

8.3 That this Hon’ble Tribunal may be pleased to pass any other order or direction which the Hon’ble Tribunal may deem just, fit and proper in favour of the applicant.

8.4 That the Hon’ble Tribunal may please award the cost of this application to the tune of Rs 10,000/-”

3. Brief facts of the case are that the applicant was enrolled in Army Medical Corps as Sepoy Nursing Assistant on 11.12.1965 and was discharged from service in low medical category for the disability “ HYPERMETROPIA (BOTH EYES) (Permanent) on 13.08.1972 under Army Rule 13 (3) item III (v) of the Army Rules, 1954 after rendering 06 years , 08 months and 02 days of service. Prior to his discharge from service, the applicant was brought before Release Medical Board (RMB) held at Military Hospital Kirkee on 06.05.1972. RMB considered his disability “HYPERMETROPIA (BOTH EYES)” as neither attributable to nor

aggravated by Military service for the reason that it is unconnected with service, assessing his disability at 20% for life. The applicant's claim for grant of disability pension was processed to PCDA (P) Allahabad vide letter dated 06.07.1972 and the same was rejected vide letter dated 09.08.1972. The applicant preferred his first appeal which was rejected vide letter dated 04.01.1975 from respondents holding that the disability was considered as neither attributable to nor aggravated by Military service.

4. The learned counsel of applicant pleaded that the applicant was enrolled in the Army in a fit state and if he has developed an eye problem after 06 years of service in Army, it has to be considered as attributable to Military service.

5. Per contra the learned counsel for the respondents has stated that the applicant is prima facie not eligible for disability pension because his disability is neither attributable to nor aggravated by Military service as per RMB.

6. We have considered the rival submissions of the learned counsel for the parties and perused the material placed on record. We find that we need to answer two issues i.e. Firstly was the discharge of applicant through RMB the right decision or should it have been a case of invalidating out through Invalid Medical Board and Secondly is the disability of the applicant attributable to or aggravated by Military service.

7. Coming to the issue of whether the applicant should have been discharged through RMB or invalidated out through IMB, we find that since the applicant's services were cut short and he was

removed prematurely on medical grounds by RMB, his discharge will be deemed to be a case of invalidation out in terms of Regulation 173-A of Pension Regulations for the Army, 1961 which reads as under:-

*“173-A. Individuals who are placed in a lower medical category (other than ‘E’) permanently and who are discharged because no alternative employment in their own trade/category suitable to their low medical category could be provided or who are unwilling to accept the alternative employment or who having retained in alternative appointment are discharged before completion of their engagement, shall be deemed to have been invalidated from service for the purpose of the entitlement rules laid down in Appendix II to these Regulations.*

**Note.** *The above provision shall also apply to individuals who are placed in a low medical category while on extended service and are discharged on that account before the completion of the period of their extension”.*

8. Coming to the second issue of attributability of disability the law on attributability of a disability is no more res integra in view of well settled decision of Hon’ble Supreme Court in the case of **Dharamvir Singh Vs. Union of India and Ors** reported in **(2013) 7 Supreme Court Cases 316**. In this case Hon’ble Supreme 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 invalidated 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. In view of the well settled law on the matter by the Hon'ble Apex Court and the fact that the only justification given in Medical Board to deny attributability is a cryptic line 'unconnected with service'. We are of the considered opinion that this one liner statement 'unconnected with service' does not justify denial of attributability to Military service. Therefore the benefit of doubt goes

to the applicant in this matter. Hence the disability of the applicant “HYPERMETROPIA (BOTH EYES)” is considered as attributable to Military service.

10. Since it is a deemed case of invalidation, his disability of 20% will be rounded off to 50% in terms of Hon’ble Apex Court Judgment on rounding off of disability pension rendered in the case of **Sukhwinder Singh vs Union of India & Ors** reported in (2014) STPL (WEB) 468 SC and this case is squarely covered by the aforesaid decision of the Hon’ble Apex Court. In our view, the case is fully covered by the aforesaid decision of Hon’ble Apex Court in which the substance of what has been held is that even if an individual is assessed to be less than 20%, the “*disability leading to invaliding out of service would attract the grant of fifty per cent disability pension.*” Para 9 of the judgment aforesaid, being relevant is quoted below.

*“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 authorizing 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.**”*

11. Accordingly, O.A. is **allowed**. The impugned orders dated 04.01.1975 and 15.10.2015 as contained in Annexures No. A-1 and A-5 respectively to the petition are set aside. The respondents are directed to grant disability pension to the applicant @ 20% for life, which shall stand rounded off to 50% for life with effect from preceding three years of filing of the petition. The date of filing of the petition is 05.01.2016. The entire exercise shall be completed by the respondents within a period of four months from the date of production of a certified copy of this order, failing which the respondents shall be liable to pay interest at the rate of 9% to the applicant on the amount accrued till the date of actual payment.

No order as to cost.

**(Air Marshal BBP Sinha)**  
**Member (A)**

Dated: July 26, 2018  
JPT

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