

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 446 of 2021

Thursday, this the 4th day of August, 2022

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No.1056755A Ex. Lance Dafedar Vir Pal Singh R/o Vill:
Choharpur, PO: Wair, Dist: Bulandshahar (U.P).

..... **Applicant**

Ld. Counsel for : **Shri K.K. Misra**, Advocate.
the applicant

Versus

1. Union of India, through its Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Army Head Quarters, New Delhi.
3. Officer-in-Charge, Armoured Corps, Records, Ahmad Nagar-414002.
4. PCDA (P), Allahabad.

.....**Respondents**

Ld. Counsel for the: **Shri Somesh Singh**, 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) *To quash CDA (P) Allahabad letter No. G-3 /31/343/11-94 dt. 03 may 1995 (Annexure A-3 to O.A)*
- (ii) *To direct the respondents to grant 20% disability pension to the applicant duly rounded of to 50 % as per the policy of the subject from the date of his discharge from service with arrears and interest as applicable.*
- (iii) *Any other relief which the Hon'ble Tribunal may consider appropriate may be granted in favour of the applicant.*

2. The brief facts of the case are that the applicant was enrolled in the Armoured Corps of Indian Army on 01.12.1975 and was discharged from service on 31.07.1994 (A/N) in under Rule 13 (3) Item (iv) of the Army Rules, 1954 being placed in medical category lower than AYE and not upto the prescribed military physical standard. At the time of **discharge**, Release Medical Board (RMB) held at 167 Military Hospital, on 22.06.1994 assessed his disabilities '**(i) CORAEAL OPACITY RT EYE**' @Nil% as neither attributable to nor aggravated by military service and (ii) '**IRIDOCYCLITIS & HYPERMETROPIC AMBLYOPIA LT EYE**' @11-14% for two years as **attributable to military service**. Applicant's claim for grant of disability element of disability pension was rejected vide letter dated 05.05.1995 which was communicated to the applicant vide letter dated 17.05.1995. The applicant preferred Petition dated 21.09.2020 which was replied by the respondents vide letter dated 29.10.2020. It is in this perspective that the applicant has preferred the present Original Application.

3. Ld. Counsel for the applicant pleaded that the applicant was fully fit at the time of enrolment and the second disability i.e. **'IRIDOCYCLITIS & HYPERMETROPIC AMBLYOPIA LT EYE'** was assessed by the RMB as attributable to military service @11-14% for life. 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 as the second disability of applicant has been assessed @ 14-19% for life i.e. below 20%, he is not entitled to disability element of pension in terms of para 173 of Pension Regulations for the Army, 1961 (Part-I) and his claim was rightly denied by the respondents being disability below 20%. 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% attributable to 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 being medical category lower than AYE and not upto the prescribed military physical standard. 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 placed in low medical category due to his second disability '**IRIDOCYCLITIS & HYPERMETROPIC AMBLYOPIA LT EYE**' and infection contracted in service, therefore, the RMB has declared his disability as attributable to 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 22.06.1994 is to be treated as invalidation in terms of Rule 4 of the Entitlement Rules (supra).

12. As for as the benefit of Broad Banding is concerned, since benefit of broad banding has been extended w.e.f. 01.01.1996, hence, prima facie the applicant is not entitled to broad banding for period in question i.e. two years from 31.07.1994.

13. Since the applicant's RMB was valid for two years w.e.f. 31.07.1994, hence, the respondents will now have to conduct a fresh RSMB for him to decide his future eligibility to disability pension.

14. In view of the above, the **Original Application No. 446 of 2021** deserves to be allowed, hence allowed. The impugned order, rejecting the applicant's claim for grant of disability element of disability pension, is set aside. The disability of the applicant is held above @20% for two years. The applicant is entitled to get disability element @20% for two years. The respondents are directed to grant disability element to the applicant @20% for two years. The respondents are further directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement of disability pension. 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: 04 August 2022
AKD/-