

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 523 of 2022

Wednesday, this the 11th day of January, 2023

“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”
“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”

Ex. NK. Shiv Bahadur Singh (No. 2681958-H), S/o Ram Adhar Singh, R/o Village – Kotar, Post – Bardiha Kalan, Police Station Hallia, Tehsil – Lalganj, District – Mirzapur, Uttar Pradesh, Pin No.231211.

..... **Applicant**

Ld. Counsel for : **Shri Rang Nath Pandey**, Advocate and
the applicant **Shri Rahul Pandey**, Advocate.

Versus

1. Union of India through Secretary, Ministry of Defence, Govt. of India, New Delhi.
2. Chief of Army Staff, Head Quarter, South Block, New Delhi-110011.
3. Officer in Charge Records, The Grenadiers Records, Jabalpur, Madhya Pradesh, PIN 901124, C/o 56 APO.
4. Additional Directorate general Personnel Services AG’s Branch, Integrated HQ, MoD (Army), DHQ, PO New Delhi - 110011.
5. Under Secretary to Government of India, D (Pen/Appeal), Ministry of Defence, New Delhi.
6. Officer In charge PCDA (Pension), Draupadi Ghat, Allahabad, Uttar Pradesh -14.

.....**Respondents**

Ld. Counsel for the: **Shri Pushpendra 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:-

- (a) *To quash the impugned orders dated 20.08.2004, Rejection of Disability claim of the applicant, passed by Respondent No.3 vide letter no. 2681958/X/D Pen, Order dated 17.11.2006 passed by Respondent No.4 on first Appeal against Rejection of Disability pension claim of the applicant passed by first appellate committee vide letter No. B/40502/976/05/AG/PS-4(Imp -II) and order dated 3.6.2009 on Second Appeal against Rejection of first Appeal of the applicant passed by Respondent No.5 Second Appellate committee vide letter No. 1(378)2007 -D (pen/Appeal), by which the respondents concerned have rejected the Disability pension claim. First Appeal and Second Appeal of the applicant respectively. (Annexures No.A-1,A-2 &A-3 to Compilation No.I)*
- (b) *To direct the respondent concerned to consider the claim of the applicant for grant of disability pension in accordance with law.*
- (c) *To direct the respondent concerned to pay the dues of the disability pension which is applicable to the applicant in accordance with law.*
- (d) *To issue any suitable order or direction which this Hon'ble Tribunal may deem fit and proper under the present facts and circumstances of the case.*
- (e) *To award the cost of the proceeding to the applicant.*

2. The brief facts of the case are that the applicant was enrolled in the Grenadiers Regiment of Indian Army on 08.09.1987 and discharged from service on 31.03.2004 (A/N) in

Low Medical Category before completion of terms of engagement under Rule 13 (3) Item III (V) of the Army Rules, 1954. At the time of discharge, Release Medical Board (RMB) held at Military Hospital, Saugor (Madhya Pradesh) on 14.01.2004 assessed his disabilities '**HYPOPARATHYROIDISM**' @ 1-5% for two years and (ii) '**HYPOTHYROIDISM (E-20)**' @1-5% for two years, **composite disabilities @10% for life** and opined the disabilities to be neither attributable to nor aggravated by military service (NANA). Applicant's claim for grant of disability element of disability pension was rejected vide letter dated 31.07.2004 which was communicated to the applicant vide letter dated 20.08.2004. The applicant preferred First Appeal which too was rejected vide letter dated 17.11.2006 which was communicated to the applicant vide letter dated 19.03.2007. The Appeal Medical Board (AMB) held at Military Hospital, Saugor (Madhya Pradesh) in March, 2008 assessed applicant's composite disabilities @10% for life as NANA. The applicant preferred Second Appeal which was too rejected vide letter dated 03.06.2009 observing that Appeal Medical Board (AMB) held on 31.03.2008 has opined that there was no history of radiation, surgery or drug therapy before onset of the first disability, through second disability was detected after Hemithyroidectomy, such surgery could not be the cause of second disability or deterioration of first disability. The said facts were communicated

to the applicant vide letter dated 04.07.2009. 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 said disabilities. 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 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 composite disabilities 6-10% for two years i.e. below 20% as NANA and AMB has assessed the applicant's composite disabilities @10% for life, hence he is not entitled to disability element of pension in terms of para 53 of Pension Regulations for the Army, 2008 (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 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 placed in low medical category due to his disabilities '**HYPOPHRATHYROIDISM**' and '**HYPOTHYROIDISM (E-20)**' and infection contracted in service, but the RMB and AMB have declared his disabilities as NANA. 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/AMB.

11. In view of the above, we are of the considered opinion that applicant's discharge vide Release Medical Board held on 14.01.2004 and Appeal Medical Board held in March, 2008 are to be treated as invalidation in terms of Rule 4 of the Entitlement Rules (supra).

11. 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.

12. It is also observed that claim for pension is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. In the case of **Shiv Dass vs. Union of India**, reported in 2007 (3) SLR 445, Hon'ble Apex Court has observed:

“In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”

13. As such, in view of the decision of Hon'ble Supreme Court in the case of **Shiv Dass** (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 element of disability pension @ 20% for life to be rounded off to 50% for life may be extended to the applicant from three preceding years from the date of filing of the Original Application.

14. In view of the above, the **Original Application No. 523 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. Both the disabilities of the applicant are held above @20% for life. The applicant is entitled to get disability element @20% for life which would be rounded off to 50% for life w.e.f. three years preceding the date of filing of Original Application. 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. three years preceding the date of filing of Original Application. The date of filing of Original Application is 04.07.2022. 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

18. No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 11 January, 2023

AKD/Ashok/-