

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION No. 640 of 2021**

Wednesday, this the 9th day of February, 2022.

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No. 14406594A Rank Ex-Nk Jagpal Singh S/o Rameshwar Dayal R/o Village & Post-Kuchela, Tehsil & District-Mainpuri, UP-205001.

..... Applicant

Learned counsel for the: **Shri Virendra Kumar Gupta**, Advocate.
Applicant

Versus

1. Union of India through Secretary, Ministry of Defence, Govt. of India, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters, Ministry of Defence, South Block-III, New Delhi-110011.
3. Principal Controller of Defence Accounts (Pension) Draupadi Ghat , Allahabad-211014.
4. The Officer -in-Charge, Army Air Defence Records, PIN - 908803 C/o 56 APO.

.....Respondents

Learned counsel for the Respondents. : **Shri Ashish Kumar Singh**,
Central Govt. Counsel

ORDER

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

- (a) *To quash/set aside the impugned order/letter No. AAD/14406594A/DF-7084/Pen dated 20 April, 2010 (Annexure A-1 of instant O.A) whereby claim of disability pension of the applicant has been rejected and impugned order/letter No. AAD/14406594A/Appeal/DP/Pen GP dated 10 Aug 2011 by which time bared appeal has not been considered at this belated stage (Annexure A-2 of instant O.A).*
- (b) *To issue / pass an order or direction of appropriate nature to the respondents having an effect that disability is aggravated by military service.*
- (c) *To issue /pass an order or direction of appropriate nature to the respondents to grant disability element to the applicant @ 15-19% deemed to be 20% for life which would stand rounded off to 50% (in terms of Govt. of India letter dated 31 Jan 2001) for life from the date of discharge i.e 30.09.2007 and to pay the arrears alongwith suitable rate of interest as deemed fit and proper by this Hon'ble Tribunal.*
- (d) *To grant battle causality status and provide all benefits including monetary benefits attached thereto from due date.*
- (e) *Any other relief as considered proper by the Hon'ble Tribunal be awarded in favour of the applicant.*

2. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Indian Army on 28.12.1991 and he was discharged from service at his own request w.e.f. 30.09.2007 on compassionate grounds after rendering 15 years and 09 months service under Rule 13 (3)III(iii) (a) (i) of Army Rules, 1954. Prior to discharge from service since the applicant was placed in low medical category 'CEE (temp)', he was brought before Release Medical Board

(RMB) on 22.06.2007 which assessed the applicant to be suffering from '**Bilateral Sensory Neural Hearing loss (H-90.3, Z-09.0)**' @ 15-19% for life attributable to military service. Disability pension claim preferred by the applicant was rejected vide order dated 20.07.2021 being below 20%. Thereafter, first appeal against rejection of disability pension claim was preferred but it seems to be still pending, hence this O.A.

3. Learned counsel for the applicant submitted that the applicant was enrolled in the Army in medically and physically fit condition and there was no note in his service documents with regard to suffering from any disease prior to enrolment. He further submitted that since the applicant's disability has been regarded @ 15-19% for life attributable to military service, therefore, he is entitled to disability element of pension. Learned counsel for the applicant further submitted that disability pension claim of the applicant has been rejected on the ground of disability being below 20%. He further pleaded that since the disability has occurred to the applicant while in service, he is entitled to disability element of pension.

4. On the other hand, learned counsel for the respondents argued that since RMB has declared the applicant's disability @ below 20%, he is not entitled to disability element of pension. Learned counsel further submitted that the competent authority has rightly rejected the claim of the applicant's

disability element of pension on the ground of disability being below 20%. He pleaded for dismissal of O.A.

5. Heard the learned counsel for the parties and perused the material placed on record. We have also gone through the RMB and the rejection order of disability element of pension claim.

6. It is not disputed that applicant's disability '**Bilateral Sensory Neural Hearing loss (H-90.3, Z-09.0)**' has been assessed by the RMB @ 15-19% for life attributable to military service. For adjudication of the controversy involved in the instant case, we need to address only one issue; i.e. is the applicant entitled to disability element of pension even when he proceeded on discharge at own request?

7. It is a fact that in the year 1993, as per the rules existing at that time, pre-mature discharge at own request made a soldier ineligible for disability pension. However, with effect from 01.01.2006, as per recommendation of 6th Central Pay Commission, soldiers proceeding on pre-mature discharge were also made eligible for disability pension. We are also clear that pre 2006 defence retirees are also eligible for same benefit as has been established by the following judgments:-

- (a) Civil Appeal Nos 3101-3102 of 2015, **Ex Lt Col RK Rai vs Union of India & Ors** decided on 16.02.2018 (Decided by the Hon'ble Apex Court).
- (b) O.A. No 336 of 2011 **Maj (Retd) Rajesh Kumar Bhardwaj vs Union of India & Ors** decided on 19.05.2017 (Decided by the Hon'ble Principal Bench AFT, New Delhi).

8. Thus, considering the aforesaid pronouncements we are of the view that the applicant is eligible for disability element of pension even when he proceeded on discharge at own request.

9. The law on the point of entitlement of disability pension being disability below 20% 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 the Hon'ble Apex Court's judgment (supra), 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 H2 w.e.f. 20.08.2005 due to his disability '**Bilateral Sensory Neural Hearing loss (H-90.3,**

Z-09.0)'. Since his disability took place due to military service in operational area where the applicant slipped and fell down and sustained injury on his head and right ear, therefore, the RMB has declared his disability as attributable to military service in light of injury report dated 21.05.1997.

11. In view of the above, we are of the considered opinion that applicant is entitled to 15-19% disability element of pension to be rounded off to 50% disability element of pension from the date of discharge.

12. As a result of foregoing discussion, the O.A. is **allowed**.

13. In view of the above, we are of the view that the applicant is held entitled to 50% disability element of pension for life in view of **Sukhwinder Singh** (supra) w.e.f. his date of discharge i.e. 01.10.2007 but due to law of limitation he is entitled to arrears three years preceding to filing of the O.A. This O.A. was filed on 14.10.2021. The respondents are directed to pay disability element of pension to applicant along with arrears within a period of four months from today. Default will invite interest @ 8% p.a.

14. No order as to costs.

15. Pending miscellaneous applications, if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 9th February, 2022
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