

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 773 of 2021**Friday, this the 25th day of March, 2022**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 1088738N Ex. LD/Safaiwala Mohan Lal, S/o Late Shri Bhure Lal, Village – Tapariyan (Behind Military Hospital), Post – Babina Cantt., District Jhansi, Uttar Pradesh, PIN-284401.

..... Applicant

Ld. Counsel for : **Shri R. Chandra**, Advocate holding brief of
the applicant **Shri Rohitash Kumar Sharma**, Advocate

Versus

1. Union of India through the Secretary, Ministry of Defence, DHQ PO, New Delhi-110011.
2. The Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), DHQ PO, New Delhi-110011.
3. Additional Director General Personnel Services (PS-4), Integrated Headquarters of Ministry of Defence (Army), DHQ PO, New Dlehi-110011.
4. Armd Corps Records, PIN-900476, C/o 56 APO.
5. Principal Controller of Defence Accounts (Pensions), Draupadi Ghat, Allahabad-211014.

.....Respondents

Ld. Counsel for the: **Shri Jai Narayan 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) *Call for the records including the Medical Board proceedings as well as the findings and opinion as approved by the competent authority based on which the Respondents in most illegal manner rejected the claim of the applicant in respect of disability of Thalassaemia Minor and has also rejected the Appeal filed against denial of disability vide order dated 30.04.2015, 25.05.2015 and 05.11.2018 thereafter quash all such orders.*
- (b) *Direct the Respondents to process the claim of the applicant in respect of disability of Thalassaemia Minor w.e.f. 01 Feb 2007 along with arrears with an interest @18% as expeditiously as possible.*
- (c) *Further, direct the Respondents to extend the benefit of broad banding in respect of applicant's disability assessed at 15 to 19% to make it 20% and further round off to 50% along with the arrears of the disability pension with interest @12% per annum to be compounded quarterly with exemplary cost from the date of retirement till date of payment.*
- (d) *Issue such other order/direction as may be deemed appropriate in the facts and circumstances of the case.*

2. The brief facts of the case are that the applicant was enrolled in the Armoured Corps of Indian Army on 14.04.1988 and was discharged from service on 31.01.2007 in Low Medical Category lower than AYE and not upto the prescribed military physical standard, under Rule 13 (3) Item III (v) of the Army Rules, 1954, after rendering 18 years, 09 months and 17 days of service, as no sheltered appointment in commensuration with his disability was available in the regiment. At the time of discharge/invalidation, Release Medical Board (RMB) held at 166

Military Hospital on 12.10.2006 assessed his disability '**THALASSAEMIA MINOR D 56.9**' @15-19% for life and opined the disability to be neither attributable to nor aggravated (NANA) by service. Applicant's claim for grant of disability element of disability pension was rejected vide letter dated 22.01.2008. The applicant preferred First Appeal which too was rejected vide letter dated 30.04.2015 which was communicated to the applicant vide letter dated 25.05.2015. The applicant also preferred Second Appeal which too was rejected vide letter dated 15.09.2016 which was communicated to the applicant vide letter dated 30.09.2016. The applicant also preferred several petitions which too were rejected by the respondents. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded 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 as Lance Dafadar/Safaiwala, 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 with its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents submitted that as the disability of applicant has been assessed @15-19% for life i.e. below 20% and has been regarded as NANA, he is not entitled to disability element of disability 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% and NANA. His further submission is that applicant 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 three issues; firstly, is the discharge of applicant a case of normal discharge or invalidation?, secondly, whether the disability of the applicant is attributable to or aggravated by military service and thirdly, is applicant is entitled to disability element of pension being disability below 20% for life.

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 as Lance Dafadar/Safaiwala 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 disability '**THALASSAEMIA MINOR D 56.9**' and contracted in service, we are of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant, 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/IMB.

11. In view of the above, we are of the considered opinion that applicant's discharge vide Release Medical Board held on 12.10.2006 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. 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.”

14. 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 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.

15. In view of the above, the **Original Application No. 773 of 2021** 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 applicant's discharged is held as invalidation. The disability of the applicant is held as aggravated by military service and 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 25.11.2021. 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 Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 25 March 2022

AKD/-