

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 836 of 2021**Wednesday, this the 23<sup>rd</sup> day of March, 2022**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Dev Bahadur Chhetri, Ex. Hav. No. 5843122N, S/o Ex. Hav. Dil Bahadur Chhetri, R/o : Vijaypur Hathibarkala, Nayagaon, Garhi Cantt., Dehradun (U.K.)-248003. Ordinary address C/o Shri Deepak Kumar Kushwaha, Mohalla : Vijay Nagar, Near Mahakali Inter College, Neelmatha, Lucknow (U.P.)-226002.

..... **Applicant**

Ld. Counsel for : **Shri Vijay Kumar Pandey**, Advocate and  
the applicant **Shri Girish Tiwari**, Advocate

**Versus**

1. Union of India through Secretary to the Government of India, Ministry of Defence, South Block, R.K. Puram, New Delhi-110011.
2. OIC Records, Records 39 GTC, Varanasi Cantt-221002. .
3. PCDA (P), Draupadighat, Prayagraj/Allahabad (UP).

.....**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:-

- (i) *That this Hon'ble Tribunal may kindly be pleased to quash the impugned rejection orders of disability pension dated 06.11.1998 & 09.10.1998, contained as annexure no. 1 & 2 to the original application, passed by opposite party no. 2 & 3, and grant the disability pension @50% to the applicant for life w.e.f 07.04.1998 to actual date of payment and also onwards, and provide the interest on the aforesaid delayed amount of disability pension with 18% p.a. since due date to actual date of payment in the interest of justice.*
- (ii) *That this Hon'ble Tribunal may kindly be pleased to award the cost of Rs.20,20,000/- (Rs. Twenty Lac and Twenty Thousand Only) to the applicant against opposite parties and allow the same.*
- (iii) *That this Hon'ble Tribunal may be pleased to pass any other order or direction which this Hon'ble Court may deem just and proper be passed in favour of the applicant.*

2. The brief facts of the case are that the applicant was enrolled in the Gorkha Rifles of Indian Army on 27.03.1976 and was discharged/invalided out from service on 06.04.1998 in Low Medical Category, after rendering 22 years and 05 days of service, before completion of terms of engagement as Havildar under Rule 13 (3) Item III (i) of the Army Rules, 1954. At the time of discharge, Release Medical Board (RMB) held at Command Hospital, Eastern Command, Kolkata on 03.02.1998 assessed his disability '**EALES DISEASE WITH VITROEOUS HAEMORRHAGE (LT) EYE (OPTD) (379)**' @ 15-19% for two years 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 09.10.1998 which was communicated to the applicant vide letter dated 06.11.1998. The applicant preferred Appeal which too was

rejected vide letter dated 22.03.2001. The applicant also preferred application dated 10.11.2021 but of no avail. 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 Havildar, 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 @ 14-19% for two years i.e. below 20% and has been regarded as NANA by the RMB, 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% and NANA. 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%?.

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 Havildar 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 invalidated 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 '**EALES DISEASE WITH VITROEOUS HAEMORRHAGE (LT) EYE (OPTD) (379)**' and contracted in service, although the RMB has declared his disability as NANA but 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 03.02.1998 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. As such, in view of the decision of Hon'ble Supreme Court in the case of ***Sukhwinder Singh vs Union of India & Ors.*** (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 two years to be rounded off to 50% for two years may be extended to the applicant from the next date of his discharge.

14. Since the applicant's RMB was valid for two years from the date of discharge of the applicant, hence, the respondents will now have to conduct a fresh RSMB for him to decide his future eligibility to disability pension.

15. In view of the above, the **Original Application No. 836 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 disability of the applicant is held as aggravated by military service. The applicant is entitled to get disability element of disability pension @20% for two years which would be rounded off to 50% for two years from the next date of his discharge. The respondents are directed to grant disability element to the applicant @20% for two years which would stand rounded off to 50% for two years

from the next date of his discharge. The respondents are further directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement of disability element of disability pension. Respondents are further directed to give effect to the order within four months from the date of receipt of a certified copy of this order failing which the respondents shall have to pay interest @ 8% per annum till the date of actual payment.

16. No order as to costs.

**(Vice Admiral Abhay Raghunath Karve)**  
**Member (A)**

**(Justice Umesh Chandra Srivastava)**  
**Member (J)**

Dated: 23 March 2022

AKD/-