

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 93 of 2022**Thursday, this the 19<sup>th</sup> day of May, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**Ex Hav Sumeshwar Kumar, Service No. 4275492-N  
S/o Shiv Singh Yadav  
C/o Ritesh Kumar  
Vill : Madiyaon Gaon  
PO – Jankipuram Extn. Sita Vihar Colony, Phase-1  
Lucknow (UP) – 226021

..... Applicant

Ld. Counsel for the Applicant: **Shri V.K. Chahar**, Advocate

Versus

1. Union of India, through the Secretary, Govt. of India, Ministry of Defence, South Block, New Delhi-110011.
2. The Chief of the Army Staff, Integrated HQs of MoD (Army), Post – DHQ, New Delhi – 110011.
3. Office In-charge Records, The Bihar Regiment, PIN-908765, C/o 56 APO.
4. The PCDA (P), Draupadi Ghat, Allahabad-211014 (UP).

..... Respondents

Ld. Counsel for the Respondents : **Ms. Kavita Mishra**,  
Central Govt Counsel**ORDER**

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

- “(i) To issue/pass an order or direction to set aside/quash the rejection order dated 02 Jan 2018 and appellate order

dated 20 Jan 2021, which are attached as Annexure-A4 and A8 respectively.

- (ii) To issue/pass an order or direction to the respondents for grant of disability element of disability pension from next date of discharge i.e. 01 Oct 2017 (FN).
- (iii) To issue/pass an order or direction to the respondents for grant of disability element of disability pension of the applicant disability 6-10% to round off 50% vide Govt. of India letter dated 31 Jan 2001 and also Hon'ble Apex Court judgment Union of India vs. Ram Avtar.
- (iv) To issue/pass an order or direction to the respondents for reinstate in service and provide the all consequential benefits.
- (v) To issue/pass an order or direction as this Hon'ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.
- (vi) To allow this original application with costs."

2. The brief facts of the case are that the applicant was enrolled in the Indian Army on 08.11.1996. On 06.03.2015, when the applicant was posted with National Defence Academy, Pune slipped on the tiles and sustained injury which as per Court of Inquiry was attributable to military service. The applicant was placed in low medical category (Permanent) w.e.f. 31.08.2015. Due to non availability of sheltered appointment in the unit, his discharge was recommended by the Commanding Officer of the unit and applicant was discharged from service w.e.f. 30.09.2017 (AN) in terms of clause 13 (3) III (iii) (a) of Army Rules, 1954 in low medical category before completion of his terms of engagement. The Release Medical Board (RMB) assessed

his disability **“FRACTURE PROXIMAL PHALANX (RT) LITTLE FINGER (OPTD)”** @ 6-10% for life and opined the disability to be attributable to military service. Disability pension claim of the applicant was rejected vide order dated 27.12.2017. The applicant submitted an application dated 29.01.2018 for holding a Review Medical Board which was accepted by the competent authority and a Review Medical Board was carried out at Army Hospital (R&R), Delhi and his disability was re-assessed @ 10% for life vide medical board proceedings dated 05.03.2018. The disability pension of the applicant was submitted to PCDA (P) Allahabad which was rejected twice vide order dated 29.01.2019 and 02.03.2019 respectively. First appeal of the applicant was rejected by IHQ of MoD (Army) vide order dated 24.03.2020. The applicant submitted second appeal which was also rejected by the respondents vide order dated 20.01.2021 and it was communicated to the applicant vide Bihar Regiment Records letter dated 12.02.2021. Being aggrieved, the applicant has filed the present Original Application for grant of disability pension and to reinstate the applicant in service.

3. Learned Counsel for the applicant submitted that applicant was enrolled in the Indian Army on 08.11.1996 and was discharged from service w.e.f. 30.09.2017 (AN) in terms of clause 13 (3) III (iii) (a) of Army Rules, 1954 in low medical category A2 (Permanent) prior to completion of terms of engagement. The applicant rendered 20 years, 10 months and 23 days of qualifying service in the rank of Havildar. The Release Medical Board (RMB) assessed his disability

**“FRACTURE PROXIMAL PHALANX (RT) LITTLE FINGER (OPTD)”**

@ 6-10% for life and opined the disability to be attributable to military service. The disability pension claim of the applicant was rejected vide order 02.01.2018. First and second appeals of the applicant were rejected vide order dated 24.03.2020 and 20.10.2021 respectively.

4. Learned counsel for the applicant further submitted that applicant is in receipt of service pension but he has been denied disability element of disability pension arbitrarily with malafide intentions. Since the services of the applicant were cut short and he was discharged from service prior to completion of terms of engagement, therefore his discharge from service should be deemed invalidation as held by the Hon'ble Apex Court in the case of **Sukhwinder Singh vs. Union of India & ors** reported in (2014) STPL (WEB) 468 SC and accordingly, applicant should be paid disability element @ 20% duly rounded off to 50% from the date of discharge from service and he should also be reinstated into service.

5 On the other hand, Ld. Counsel for the respondents submitted that applicant when he was posted with National Defence Academy, Pune slipped on the tiles on 06.03.2015 and sustained injury which as per Court of Inquiry was attributable to military service. The applicant was placed in low medical category and due to non availability of sheltered appointment in the unit, his discharge was recommended and applicant was discharged from service w.e.f. 30.09.2017 (AN) in terms of Rule 13 (3) III (iii) (a) of Army Rules, 1954 in low medical category. The Release Medical Board (RMB) assessed his disability

**“FRACTURE PROXIMAL PHALANX (RT) LITTLE FINGER (OPTD)”**

@ 6-10% for life and opined the disability to be attributable to military service. Disability pension claim of the applicant was rejected vide order dated 27.12.2017. The applicant submitted an application dated 29.01.2018 for holding a Review Medical Board which was accepted by the competent authority and a Review Medical Board was carried out at Army Hospital (R&R), Delhi and his disability was re-assessed @ 10% for life vide medical board proceedings dated 05.03.2018. The disability pension of the applicant was re-submitted to PCDA (P) Allahabad which was rejected twice vide order dated 29.01.2019 and 02.03.2019 respectively. First and second appeals of the applicant were rejected by the competent authority vide order dated 20.01.2021. Hence, as per Rule 53 of Pension Regulations for the Army, 2008 (Part-1), applicant is not entitled for disability pension. She pleaded for dismissal of the O.A.

6. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the RMB and rejection orders of disability pension claim as well as appeal.

7. For adjudication of the controversy involved in the instant case, we need to address the issue whether discharge of the applicant is a case of discharge on completion of term of service or invalidation?

8. For the purpose of first question as to whether the discharge of the applicant by Release Medical Board is a case of discharge on completion of terms of engagement or invalidation, in this context, it is clear that the applicant was medically boarded out from service before

completion of his terms of engagement in low medical category and was, thus, discharged from service. 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.”*

9. 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.

10. Once the discharge of the applicant is deemed as invalidation then his disability percentage can't be less than 20% as per law settled on this issue by Hon'ble Apex Court in the case of **Sukhvinder Singh vs. Union of India & Ors.**, reported in (2014) STPL (WEB) 468 SC. Relevant extract of the judgment is as follows :

*“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 per cent and seems to us to be logically so. Fourthly, wherever 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*

*invalidating out of service would attract the grant of fifty per cent disability pension.”*

11. It is trite law that 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 consequences of military service. The benefit of doubt should rightly be extended in favour of the applicant. In the instant case since the disability of the applicant has been considered as attributable to military service by RMB and applicant's case of discharge is deemed invalidation, he is entitled to disability element @ 20% for life in view of **Sukhvinder Singh** (supra) with benefit of rounding off to 50% for life in terms of the decision of Hon'ble Supreme Court in ***Union of India and others v. Ram Avtar*** (Civil Appeal No 418 of 2012 dated 10.12.2014).

12. It is clarified that applicant has been discharged from service due to non availability of sheltered appointment in the unit commensurate to his disability being placed in low medical category A2 (Permanent), hence, applicant cannot be reinstated into service as per rules on the subject.

13. As a result of foregoing discussion, the O.A. is **partly allowed**. The Impugned orders passed by the respondents are set aside. The applicant is entitled to disability element of pension @ 20% for life duly rounded off to 50% for life from the next date of discharge from service. The respondents are directed to grant disability element @ 50% for life from the next date of discharge from service. However, due to law of limitations settled by the Hon'ble Supreme Court in the

case of ***Shiv Dass v. Union of India and others*** (2007 (3) SLR 445), the arrear of disability element will be restricted to three years preceding the date of filing of the instant O.A. The date of filing of this O.A is 09.02.2022. The respondents are directed to give effect to this order within a period of four months from the date of receipt of certified copy of the order. Default will invite interest @ 8% per annum till actual payment.

14. No order as to costs.

15. Pending Misc. Application(s), if any, shall stand disposed of.

**(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)**  
**Member (A) Member (J)**

Dated: May, 2022

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