

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW  
CIRCUIT BENCH AT NAINITAL**

**ORIGINAL APPLICATION No. 1029 of 2022**

Thursday, this the 21<sup>st</sup> day of September, 2023

**“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)  
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

No. 14579244L Ex. Cfn. Raunak Ali, S/o Nabab Ali, R/o Village Manihargoth, Post Office Tanakpur, District Champawat, Uttarakhand-262309.

..... **Applicant**

Ld. Counsel for : **Shri Kishore Rai**, Advocate.  
the applicant

**Versus**

1. Union of India , Ministry of Defence, through its Secretary, South Block, New Delhi-110001.
2. P.C.D.A. (P), Allahabad, Uttar Pradesh.
3. Chief of the Army Staff, Integrated Headquarters, Ministry of Defence, New Delhi-110011.
4. Senior Record Officer, EME Records, Secunderabad, PIN-500021, C/o 56 APO.

.....**Respondents**

Ld. Counsel for the: **Shri Neeraj Upreti**, Advocate  
Respondents. Central Govt Counsel.

## **ORDER**

**“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”**

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. A direction/order to quash the order dated 14.03.2007 passed by respondent No. 1 by which the claim of the applicant has been rejected (contained as Annexure No. 5 to the Original Application).*
- ii. A direction to the respondents to grant the disability pension to the applicant w.e.f. the date of discharge i.e. 31.12.2000 along with rounding to the tune of 50%.*
- iii. To summon the entire records of the applicant pertaining to computation of his disability pension.*
- iv. Any other relief to which the applicant is found entitled may also very kindly be granted to the applicant.*

2. The brief facts of the case are that the applicant was enrolled in the Corps of EME of Indian Army on 01.03.1985 and was discharged from service on 31.12.2000 in Low Medical Category after rendering 15 years and 10 months of service 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, Ambala on 10.10.2000 assessed his disability '**NON SEMINOMATOUS GERM CELL TUMOUR RT TESTIS (OPTD) ICD NO. 186 V-67'** @ 15-19% for two years and opined 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 17.01.2002 which was

communicated to the applicant vide letter dated 14.02.2002. The applicant preferred First Appeal dated 05.06.2002 which too was rejected vide letter dated 07.04.2005 which was communicated to the applicant vide letter dated 14.05.2005. The applicant also preferred Second Appeal which too was rejected vide letter dated 14.03.2007. 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 Cfn, 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 two years i.e. below 20% as NANA, he is not entitled to disability element of pension in terms of Regulation 173 of Pension Regulations for the Army, 1961 (Part – I) and his claim was rightly denied by the respondents being disability below 20% as 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 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 or aggravated by 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 the rank of Cfn. 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 '**NON SEMINOMATOUS GERM CELL TUMOUR RT TESTIS (OPTD) ICD NO. 186 V-67**' and disease contracted in service, therefore, 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 10.10.2000 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 element 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 w.e.f. 31.12.2000, hence, the respondents will now have to conduct a fresh RSMB for him to decide his future eligibility to disability element of disability pension.

15. In view of the above, the **Original Application No. 1029 of 2022** deserves to be partly allowed, hence, **partly allowed**. The impugned orders, rejecting the applicant's claim for the 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 from the next date of his discharge. Respondents are directed to grant disability element of disability pension to the applicant @20% for two years from the next date of his discharge. The respondents are further directed to conduct a Re-Survey Medical Board (RSMB) 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.

17. Ld. Counsel for the respondents orally submitted to grant Leave to Appeal against the above order which we have considered and no point of law of general public importance being involved in the case the plea is rejected

**(Vice Admiral Atul Kumar Jain)**  
**Member (A)**

**(Justice Ravindra Nath Kakkar)**  
**Member (J)**

Dated: 21 September, 2023

AKD/-