

ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI

ORIGINAL APPLICATION No. 32 of 2021

Friday, this the 26th day of August, 2022

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Shinde Shashikant Manik, Ex. Sepoy, No. 14943757H, presently residing at Village – Wagholi, PO Kundalpur, Tal – Kavathe Mahakal, District Sangli (Maharashtra), Pin – 416405.

..... Applicant

Ld. Counsel for the : **Mr. Y.D. Kulkarni**, Advocate
Applicant

Versus

1. Union of India, (through Secretary, Ministry of Defence), 104, South Block, New Delhi-110011.
2. The Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), South Block, New Delhi-110011.
3. The Officer-in-Charge, The Records, Mechanised Infantry Regiment, PIN – 900476, C/o 56 APO.
4. The Principal Controller of Defence Accounts (Pensions), G-4/3 Section, Draupadi Ghat, Allahabad-211014 (UP).

.....Respondents

Ld. Counsel for the : **Mr. A.J. Mishra**, Advocate
Respondents. Central Govt. Counsel

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

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

- 8.1 *Quash and set aside the impugned decision of the Records, Mechanised Infantry Regiment, Ahmednagar in letter No. 8 March, 2020, No. 14943757/23437/DP dt. 8 July 2020 and 14943757H/LN/NER/Ld. Counsel/30816 dt. 5 Oct 2020 by which it has refused to process the claim of disability pension including service element and disability element.*
- 8.2 *The respondents may directed to change cause of discharge i.e. from Army Rule 13(3) III (iii) on medical ground being invalided out from service with medical category P2 (Permanent).*
- 8.3 *To grant service element and disability element @30% rounding off to 50% from the date of discharge as the applicant was locally discharged on medical ground with disability considered attributable to military service by Release Medical Board and assessed 30% for life.*
- 8.4 *The applicant be granted arrears of disability pension from the date of discharge i.e. from 21 Mar 2018 with 18% interest on its arrears amount.*
- 8.5 *That such other and further reliefs, as the nature and circumstances of this application may require, and the Hon’ble Tribunal may deem fit and proper to give effect to the aforesaid relief, be granted in favour of the applicant for dispensing justice.*

2. Facts giving rise to Original Application in brief are that applicant was enrolled in the Indian Army on 22.03.2012 and locally discharged from service on 21.03.2018 being inefficient soldier in Low Medical Category under Rule 13 (3) Item III (iii) of the Army Rules, 1954. The applicant, on 18.06.2012 while undergoing his basic military training sustained injury “**STRESS FRACTURE UPPER 1/3 TIBIA (LT)**” of severe nature during X-Country. On 10.10.2013 the applicant once again sustained severe injury, “**ACL AND MEDIAL MENISCUS TEAR (RT KNEE)**” while crossing 9 ft ditch during ground test of basic physical efficiency test, and accordingly, he was placed in low medical category. The applicant was required to acquire lowest tech qualification CL-IV within five years of his service and within one year of upgradation of medical category to SHAPE-1. At the time of discharge from service, Release Medical Board (RMB) held at Military Hospital, Patiala on 23.03.2018 assessed his disability ‘**ACL TEAR WITH FLAP TEAR MEDIAL MENISCUS AND RADIAL TEAR LATERAL MENISCUS (RT KNEE OPTD (S 83.2)**’ @30% for life as **attributable to** service. Since the applicant has been discharged from service being inefficient soldier without any type of pension, he preferred petition dated 05.01.2020 for grant of disability pension which was rejected vide letter dated 25.01.2020. The applicant preferred First Appeal dated 27.02.2020 which too was rejected vide letter dated 18.03.2020. The applicant also preferred Second Appeal dated 22.06.2020 which was also rejected vide letter dated 08.07.2020. The applicant served Legal Notice dated 10.09.2020 which too was rejected vide letter dated 05.10.2020. It is in

this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that applicant sustained injury during training as such it has been regarded as **attributable** to service by the RMB, as such he is entitled to disability pension. 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, 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 conceded that the disability of the applicant @30% for life has been regarded as attributable to service by the RMB. His further submission is as per existing rules the applicant was required to acquire lowest tech qualification CL-IV within five years of his service and within one year of upgradation of medical category to SHAPE-1. The applicant had complete six years of service on 21.03.2018 in medical category lower than SHAPE – 1 and had not passed TTT CI – IV in spite of having been given sufficient chances, hence applicant is not entitled to disability pension. He pleaded for dismissal of the Original Application.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. 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 whether the applicant is entitled for the benefit of disability pension and its rounding off?

6. 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 being inefficient soldier before completion of his terms of engagement 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.”

7. 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.

8. 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.”

9. 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 '**ACL TEAR WITH FLAP TEAR MEDIAL MENISCUS AND RADIAL TEAR LATERAL MENISCUS (RT) KNEE OPTD (S 83.2)**' and disease was contracted in service, therefore, the RMB has declared his disability as **attributable** to military service.

10. Moreover we find that the applicant has been discharged being an inefficient soldier as he had not cleared the TTT CI-IV test within the stipulated time and not due to low medical category. This approach we find is not proper. The applicant had not shied away from appearing for the test within the stipulated period. Rather he was willing to take the test,

but the respondents have not allowed him to take the test. The relevant portion of the Preliminary Enquiry conducted before his discharge has recorded the opinion as under:

“2. The individual was volunteer to attend class-IV and III upgradation. However due to present medical category status of the individual, medical certificate regarding permission to attend class-IV and III upgradation cadre could not be granted to the individual by the authorized medical authority.....”

11. In conspectus the benefit of doubt is very much in favour of the applicant and it can be concluded that he was a victim of misfortune and his budding career was abruptly cut short due to disability attributable to service. He is fully deserving of disability pension on this count.

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 @30% for life to be rounded off

to 50% for life may be extended to the applicant from the next date of his discharge.

14. In view of the above, the **Original Application No. 32 of 2021** deserves to be allowed, hence **allowed**. The impugned orders, rejecting the applicant's claim for grant of disability pension, are set aside. The applicant is entitled to get disability pension @30% for life which would be rounded off to 50% for life from the next date of his discharge. The respondents are directed to grant disability element to the applicant @30% for life which would stand rounded off to 50% for life from the next date of his discharge. However due to the law of limitation arrears of disability pension are restricted to three years prior to the date of filing this Original Application. The Original Application was filed on 11.01.2021. 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 from the date of this order till the actual payment.

15. No order as to costs.

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

Dated : 26 August, 2022

AKD/AMK/-