

E-CourtARMED FORCES TRIBUNAL REGIONAL BENCH
SRINAGAR AT JAMMUS. No. 25

ORIGINAL APPLICATION No. 184 of 2021

Tuesday, the 24th day of January 2023CORAM:HON'BLE MR. JUSTICE UMESH CHANDRA SRIVASTAVA (J)
HON'BLE LT. GENERAL RAVENDRA PAL SINGH, MEMBER (A)

Ram Ditta

Applicant

(By : Lt. Col. S.N. Sharma (Retd.), Advocate)

Versus

Union of India & Ors

Respondents

(By: Mr. Manohar Anthal, CGSC)

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 :-

- "(i) Direction to the respondents for setting aside of impugned letters as per Annexure A-4 & A-5 wherein the disability pension claim of the applicant has been rejected/denied by the respondents.*
- (ii) Direction to the respondents to grant disability element of disability pension to the applicant along with the benefits of rounding off of disability element of disability pension @50% against @11-14% (less than 20%) w.e.f 01.02.2001 for life and arrears @ 18% annual interest.*
- (iii) Any other order that the Hon'ble Tribunal may deem fit in the facts and circumstances of the case."*

_____/2021 Ram Ditta

2. Briefly stated, applicant was enrolled in the Army on 10.12.1983 and was discharged from service on 01.02.2001 at his own request after rendering 17 years 01 month and 22 days of service in the rank of Naik, in low medical category E2 (P) for the disability viz. "**VITREOUS HAEMORRHAGE**" with 11-14% for two years. At the time of discharge from service, the Release Medical Board (RMB) held on 13.12.2000 assessed his disability "**VITREOUS HAEMORRHAGE**" @11-14% for two years and opined that the disability to be attributable to military service due to disability contracted in High altitude area (HAA). The claim of the applicant was rejected vide PCDA (P) letter dated 04.07.2021 on being premature retiree and his disability assessed @11-14% (less than 20%). The applicant served a legal notice dated 24.08.2020 to the respondents for grant of disability pension and the same was denied by the respondents vide Records letter dated 26.10.2020 on being premature retiree, his disability assessed @11-14% (less than 20%). It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant submitted that at the time of enrolment, the applicant was found mentally and physically fit for service in the Army and there is no note of any disability/deformities as given by the Medical Authorities at the time of his enrolment. The disease of the applicant was contracted during the military service and was considered as attributable to Military Service. Ld. Counsel for the applicant further submitted that various Benches of Armed Forces Tribunal have granted disability pension in similar cases. He 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 the Hon'ble Delhi High Court judgment in the case of CWP 2967 of 1989, **Mahavir Singh Narwal vs. Union of India and Anr**, decided on 05.05.2004 wherein it has been stated that premature retiree will be treated as invaliding out from service and contended that since applicant's services were cut short and he was invalided out from service prior to completion of terms of engagement, therefore, applicant being invalided out from service deserves to be granted disability element of disability pension @20% 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 @11-14% for two years i.e. below 20%, he is not entitled to disability element of pension in terms of para 53 of Pension Regulations for the Army, 2008 (Part-I) or 173 of Pension Regulations for the Army, 1961 (Part - I) and his claim was rightly denied by the respondents being disability below 20%, he 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 the issue that applicant's disability being attributable to military service being discharged before completion of terms of engagement is entitled to disability element of pension and its benefit of rounding off being disability assessed below 20% for two years by RMB?



7. 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."

8. 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 "**VITREOUS HAEMORRHAGE**" 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 since the disability of the applicant being aggravated by military service as held by the RMB and since the services of the applicant were cut short, it will be a case of deemed invalidation, disability percentage cannot be held below 20%. Hence, being a case of deemed invalidation, we are of the considered view that applicant is entitled for

disability element @ 20% for two years from the date of discharge/invalidation from service.

9. In view of the above, applicant is held entitled to 20% disability element for two years from the next date of discharge/invalidation from service. The applicant will also be eligible for the benefit of rounding off of disability element from 20% to 50% for two years 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) and Govt. of India, Ministry of Defence letter dated 31.01.2001.


10. Since the applicant's RMB was valid for two years w.e.f, 01.02.2001, hence, the respondents will now have to conduct a fresh RSMB for him to decide his future eligibility to disability pension.


11. In view of the above, the **Original Application No. 184 of 2021** deserves to be allowed, hence, **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 being attributable to military service and a case of deemed invalidation, the applicant is entitled to get disability element of disability pension @ 20% for two years duly rounded off to 50% for two years from the next date of his discharge/invalidation from service. The respondents are directed to grant disability element of disability pension to the applicant @20% for two years duly rounded off to 50% for two years from the next date of his discharge/invalidation from service. The respondents are further directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement 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.

12. No order as to costs.

13. Pending Misc. Application(s), if any, shall stand disposed off.


(Lt. Gen. Ravendra Pal Singh)
Member (A)


(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 24 January, 2023
Tilak/SB