

**E-Court****ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
SRINAGAR AT JAMMU**Syl. No. 29**ORIGINAL APPLICATION No. 225 of 2021**Monday, this the 23<sup>rd</sup> day of January, 2023**"Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon'ble Lt. Gen. Ravendra Pal Singh, Member (A)"**

No. 14322097L Ex. Hav. Sewa Singh

**..... Applicant**Ld. Counsel for : **Col. (Retd.) A.K. Sharma**, Advocate.  
the applicant**Versus**

Union of India and Others

**..... Respondents**Ld. Counsel for the: **Shri Manohar Anthal**, Advocate  
Respondents. Central Govt. Stating 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) *Direction to respondents for quashing of offending part of impugned RMB dated 23.05.1992 as Annexure A-3, letter dated 18.02.1994 and 05.07.2002 along with letter dated 12.05/06.2002 as Annexure A-4 & A-6 vide which the claim for*

*grant of disability element of disability pension of the petitioner has been rejected.*

- (ii) Directions to the respondents to release the disability element of disability pension of the petitioner by considering his disability @20% w.e.f. 01.10.1992 and @50% as per rounding off benefits w.e.f. 01.01.1996 against 6-10% disability for life as his disability has already been assessed as attributable to military service by the competent authorities as well as by the RMB with 18% annual interest till payment be made.*
- (iii) Issue any other appropriate order or direction which this Hon'ble Bench may deem fit and proper under the circumstances of the case.*

2. The brief facts of the case are that the applicant was enrolled in the Indian Army on 31.12.1974 and was discharged from service on 30.09.1992 in Low Medical Category before fulfilling the conditions of enrolment on the rank of Havildar. At the time of discharge, Release Medical Board (RMB) held at on 23.05.1992 assessed his disability '**FRACTURE PROXIMAL PHALANX RT INDEX FINGER V-67**' @6-10% for life as **attributable to military service**. Applicant's claim for grant of disability element of disability pension was rejected. The applicant preferred First Appeal which too was rejected vide letter dated 18.02.1994. The Re-Survey Medical Board (RSMB) also conducted on 07.02.2002 which assessed the applicant's disability @5% (Permanent). The applicant's claim for the grant of disability element of disability pension was rejected vide letter dated 12.05/06.2002. The applicant sent Demand Notice dated

05.01.2021 but of no avail. It is in this perspective that the applicant has preferred the present Original Application.

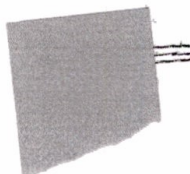
3. Ld. Counsel for the applicant pleaded that the applicant was fully fit at the time of enrolment and the said disability i.e.

**'FRACTURE PROXIMAL PHALANX RT INDEX FINGER V-67'**

was assessed by the RMB as **attributable to 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 the applicant was discharged from service prior to completion of terms of engagement on the rank of 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.

4. On the other hand, Ld. Counsel for the respondents submitted that as the disability of applicant has been assessed @6-10% by the RMB and @5% permanent by the RSMB i.e. below 20%, 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%. 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 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 on the rank of 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 invalided out of service."*

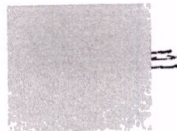
8. Thus, in light of above definition, it is clear that the applicant was in low medical category as compared the one when he was enrolled and hence his discharge is to be deemed as invalidation out of service.



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 '**FRACTURE PROXIMAL PHALANX RT INDEX FINGER V-67**' and disease contracted in service, therefore, the RMB has declared his disability as



attributable to 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 23.05.1992 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. It is also observed that claim for pension is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. In the case of **Shiv**

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**Dass vs. Union of India**, reported in 2007 (3) SLR 445,

Hon'ble Apex Court has observed:

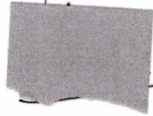
"In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone."

14. As such, in view of the decision of Hon'ble Supreme Court in the cases of **Shiv Dass** (Supra) and **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 life to be rounded off to 50% for life may be extended to the applicant with effect from three preceding years from the date of filing of the Original Application.

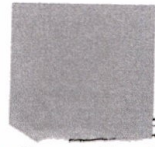
15. In view of the above, the **Original Application No. 225 of 2021** deserves to be allowed, hence **allowed**. The impugned orders, rejecting the applicant's claim for grant of disability element of disability pension, are set aside. The disability of the applicant is held above @20% for life. The applicant is entitled to

get disability element @20% for life which would be rounded off to 50% for life w.e.f. three years preceding the date of filing of Original Application. The respondents are directed to grant disability element to the applicant @20% for life which would stand rounded off to 50% for life w.e.f. three years preceding the date of filing of Original Application. The date of filing of Original Application is 26.06.2021. 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 till the actual payment

16. No order as to costs.



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



(Justice Umesh Chandra Srivastava)  
Member (J)

Dated: 23 January, 2023  
Tilak/-