

E-Court**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
SRINAGAR AT JAMMU**S.No. 19**ORIGINAL APPLICATION No. 129 of 2021****Tuesday, this the 24<sup>th</sup> day of January, 2023**"Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon'ble Lt. Gen. Ravendra Pal Singh, Member (A)"

No. 3981336W Ex Rect Sarban Singh  
S/o Shri Bhikam Singh,  
R/o Village - Raghuchak, PO - Ghagwal,  
Tehsil - Hiranagar, District - Kathua-184141 (J&K).

**..... Applicant**

Ld. Counsel for : **Sh. S.K. Saini**, Advocate  
the applicant

**Versus**

1. Secretary, Ministry of Defence,  
New Delhi- 110011 through its Secretary.
2. The Chief of the Army Staff, Integrated Headquarters of  
Ministry of Defence (Army) South Block, New Delhi-11
3. The Principal Controller of Defence Accounts (Pensions),  
Allahabad (UP)- 211014.
4. The Officer-in-Charge, Dogra Regiment Records, PIN  
900 235, C/o 56 APO.

**.....Respondents**

Ld. Counsel for the: **Shri Hunar Gupta**,  
Respondents Sr. Panel Counsel

**ORDER**"Per Hon'ble Mr. Justice Umesh Chandra Srivastava, 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:-

- "(a) The orders passed vide Letter dated 02.11.1987 (**Annexure A-4**) including all other orders under which the disability element from 28.09.1987 onwards has been rejected, be quashed as the same can not be sustained in the eyes of law being contrary to the well settled law.
- (b) The respondents may be directed to grant disability element of disability pension to the applicant for 40% disability with effect from 28.09.1987 to for life alongwith benefits of rounding off the same to 50% from 01.01.1996 to for life for the purpose of computing disability element along with 18% annual interest.
- (c) Issue any other appropriate order or direction which this Hon'ble Bench may deem fit and proper under the circumstances of this application."

2. The brief facts of the case are that the applicant was enrolled in the Indian Army on 29.07.1980 and was invalided out from service on 03.03.1982 in Low Medical Category "EEE" (Permanent) under Rule 13 (3) Item IV of the Army Rules, 1954 after rendering 01 year and 218 days of service. At the time of discharge, Invaliding Medical Board (IMB) held at 148 Base Hospital, Lucknow on 03.02.1982 assessed his disability **"FRACTURE LOWER THIRD SHAFT FEMUR (LT) N-821, E-885"** at 40% for two years and considered it as **attributable to military service**. Applicant's claim for grant of disability element of disability pension was submitted to PCDA (P) Allahabad vide Records The Dogra Regiment letter dated 30.11.1982. Accordingly the applicant was granted disability pension @ Rs. 98/- with effect from 04.03.1982 for two years (i.e., upto 02.02.1984) and service element @ Rs. 80/- with effect from

03.02.1984 for life vide PPO dated 09.02.1983. The applicant's Re-survey Medical Board (RSMB) was conducted at 166 Military Hospital on 07.09.1987 and the RSMB assessed the disability of the applicant at 40% permanent. The disability claim of the applicant was submitted to PCDA(P), Allahabad which was rejected vide letter dated 02.11.1987 decreasing the disability below 20%. Again a Re-survey Medical Board (RSMB) of the applicant was conducted at 166 Military Hospital on 28.03.1992 for assessment of the disability viz. **"FRACTURE LOWER THIRD SHAFT FEMUR (LT) N-821, E-885"** and the RSMB assessed the disability of the applicant at 20% Permanent). Thereafter, the claim of the applicant was submitted to CDA (P), Allahabad vide Records letter dated 30.04.1992 but the same was rejected vide letter dated 27.07.1992. Finally, the applicant was brought before the Re-Survey Medical Board at 166 Military Hospital on 12.11.2001 and the disability of the applicant was assessed at less than 20% (i.e. 1-6%) for five years. The claim of the applicant was again submitted to the PCDA (P), Allahabad vide Records letter dated 31.12.2001 but the same was rejected vide letter dated 22.03.2002 on the ground that the disability has been reviewed and re-assessed at less than 20% (i.e. 1-6%) for life from 28.03.2002. 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 LOWER THIRD SHAFT FEMUR (LT) N-821, E-885"** was assessed by the RMB at 40% for two years and held the disability as attributable to military service and thereafter finally, the RSMB has wrongly assessed the disability of the applicant at less than 20% (i.e. 1-6%) permanent. Ld. Counsel for the applicant has relied upon the Hon'ble Apex Court judgment in the case of **Dharamvir Singh vs Union of India & Ors**, reported in (2013) 7 SCC 316 and contended 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 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 @1-6% 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 being invalided out from service is entitled to disability element of pension being disability assessed above 20%/below 20% for life by IMB/RSMB, attributable to military service.

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 **"FRACTURE LOWER THIRD SHAFT FEMUR (LT) N-821, E-885"** 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 IMB, this being a case of invalidation, disability percentage cannot be held below 20%. Since, disability of the applicant was initially assessed @ 40% for two years considering it as attributable to military service and disability element was paid to him accordingly. In subsequent RSMB, disability of the applicant was assessed @ 40% for life, then 20% for life and in last RSMB, it was assessed below 20%. However, applicant has not been paid disability element after initial term of two years, though it was considered @ 40% for life. Hence, being a case of invalidation, we are of the considered view that applicant is held entitled for disability

element @ 20% for life from the date it was stopped.  
04.03.1982

9. Government of India, Ministry of Defence letter No. 16(5)/2008/D(Pen/Policy) dated 29.09.2009 stipulates that *"In pursuance of Government decision on the recommendations of the Sixth Central Pay Commission vide Para 5.1.69 of their Report, President is pleased to decide that Armed Forces personnel who are retained in service despite disability, which is accepted as attributable to or aggravated by Military Service and have foregone lump-sum compensation in lieu of that disability, may be given disability element/war injury element at the time of their retirement/discharge whether voluntarily or otherwise in addition to Retiring/Service Pension or Retiring/Service Gratuity."* In view of aforesaid letter, the applicant is entitled for grant of disability element of disability pension.

10. 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.

11. 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 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."

12. As such, in view of the decision of Hon'ble Supreme Court in the case of **Shiv Dass (supra)** as well as Government of India, Ministry of Defence letter No. 17(01)/2017(01)/D(Pen/Policy) dated 23.01.2018 and 31.01.2001, we are of the considered view that benefit of rounding off of disability element @ 20% for life to be rounded off to 50% for life may be extended to the applicant from the date it was stopped. Since, benefit of rounding off is applicable w.e.f. 01.01.1996, the applicant is also entitled benefit of rounding off w.e.f. 01.01.1996 as per Govt. of India, Ministry of Defence letter dated 31.01.2001.

13. In view of the above, the **Original Application No. 129 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 being a case of invalidation. Since, the applicant has been granted disability element for initial term of two years and thereafter, it was stopped, therefore, the applicant is entitled to get disability element @20% for life which would be rounded off to 50% for life from the date it was stopped/01.01.1996. The respondents are directed to grant disability element to the applicant @ 20% for life duly rounded off to 50% for life from the date it was stopped/01.01.1996. However, due to law of limitations settled by the Hon'ble Supreme Court in the case of **Shiv Dass (supra)**, the arrears of disability element will be restricted to three years preceding the date of filing of the instant O.A. The date of filing of Original Application is 06.04.2021. 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

14. No order as to costs.

15. 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<sup>th</sup> January, 2023  
Tilak/SB