

E-Court**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
SRINAGAR AT JAMMU****S.No. 14****ORIGINAL APPLICATION No. 86 of 2021**Tuesday, this the 24th day of January, 2023**"Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Lt. Gen. Ravendra Pal Singh, Member (A)"**Ex-Rfn Mohd Akbar (No. 9083429) Aged 61 years,
S/o Ahmed Din,
R/o VPO Shahpur Tehsil Haveli
District Poonch (J&K)-185101.**..... Applicant**Ld. Counsel for the Applicant : **Shri Naresh Ghai**, Advocate**Versus**

1. Secretary, Ministry of Defence, South Block,
New Delhi- 110011.
2. COAS thro Addl Director General PS-4,
MoD IHQ Army (TA), M-Block,
New Delhi-1
3. Principal Controller of Defence Accounts (Pensions),
Allahabad- 211014.
4. OIC Records, JAK LI, PIN 911096, C/o 56 APO

..... RespondentsLd. Counsel for the: **Shri Rajesh Thappa** ,
Respondents. Central Govt Standing 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:-

"By quashing **Annexure A-1 & 2 (PCDA) holding ID Chronic Suppurative Otitis Media** as NANA, whereby invalidated out for **Zero%** disability) AND by upholding the ID as Attributable as held by RMB (**Annexure A-3**) And by relying **Sukhvinder Singh v UOI & Ors: 2014 STPL (WEB 468 SC)** and Applicant be granted:

- (i) Disability Pension (50%: minimum) wef 13-7-1986, with interest @ 12%.
- (ii) Fixed Medical Allowance as payable to those pensioners who are not given ECHS treatment like in para13 of Pension Regulations for Army, 2008 from the date of discharge till the date ECHS card/treatment given, with interest ."

2. The brief facts of the case are that the applicant was enrolled in the Indian Army on 01.02.1980 and was invalidated out from service on 12.07.1986 in Low Medical Category under Rule 13 (3) Item III (v) of the Army Rules, 1954. At the time of discharge, Release Medical Board (RMB) held at 148 Base Hospital on 02.06.1986 assessed his disability **CHRONIC SUPPUROTIVE OTITIS MEDIA(BIL) v 67"** @ 0% and considered it as neither attributable to not aggravated by military service (NANA). Applicant's claim for grant of disability pension was rejected by the PCDA (P) Allahabad vide letter dated 14.11.1986. The applicant preferred First Appeal which too was rejected by the JAKLI Records vide letter dated 03.11.2012. The applicant also served a Legal Notice dated 13.03.2020 which was also replied by the JAK LI Records vide letter dated 01.06.2020 intimating that the applicant is not entitled for disability pension. 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. **CHRONIC SUPPURATIVE OTITIS MEDIA(BIL) v 67"** was wrongly considered as neither attributable to nor aggravated by military service by the RMB. 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**, (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 also 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, his discharge from service should be deemed invalidation as held in the case of **Sukhwinder Singh** (supra) and applicant deserves to be granted 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 @0% 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%. His further submission is that since the applicant was discharged on his own request on compassionate grounds, he is not entitled for grant 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 entitled to disability pension being disability below 20% as NANA.

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 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 invalidated 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 **CHRONIC SUPPURATIVE OTITIS MEDIA(BIL) 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 11.07.1986 is to be treated as invalidation in terms of Rule 4 of the Entitlement Rules (supra) and the disability assessed should not be less than 20% in case of invalidation.

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 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 case of **Shiv Dass (supra) and Sukhwinder Singh (supra)** as well as Government of India, Ministry of Defence letter dated 31.01.2001 and 23.01.2018, we are of the considered view that benefit of rounding off of disability pension @ 20% for life to be rounded off to 50% for life may be extended to the applicant from the date of its applicability, i.e. w.e.f. 01.01.1996 as per Government of India, Ministry of Defence letter dated 31.01.2001.

15. In view of the above, the **Original Application No. 86 of 2021** deserves to be allowed, hence allowed. The impugned order, rejecting the applicant's claim for grant of disability pension, is set aside. The disability of the applicant is held as aggravated by service and above @20% for life. The applicant is entitled to get disability pension @20% for life which would be rounded off to 50% for life from 01.01.1996. The respondents are directed to grant disability pension to the applicant @20% for life duly rounded off to 50% for life 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 pension will be restricted to three years preceding the date of filing of the instant O.A. The date of filing of Original Application is 24.02.2021. 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.

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

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

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 24th January, 2023
Tilak/SB