

ARMED FORCES TRIBUNAL, REGIONAL BENCH, GUWAHATI**ORIGINAL APPLICATION No. 31 OF 2024**

Friday, this the 20th day of March, 2026

"Hon'ble Mr. Justice SK Gupta, Member (J)
Hon'ble Lt Gen CP Mohanty, Member (A)"

No. 4374552A Ex-Nk Lalthuthlung Mawia, Village & Post
Office-Bikhawthir, District-Kolasib, State-Mizoram, Pin-796091.

..... Applicant

Ld. Counsel for the : **Shri AR Tahbildar, Advocate**
Applicant

Versus

1. The Union of India, Represented by the Secretary, Ministry of Defence, Sena Bhawan, New Delhi-11.
2. The Officer-in-Charge, Records The Assam Regiment, Pin-900332, C/o 99 APO.
3. Additional Directorate General, Personnel Services, PS-4(d), Adjutant General's Branch, IHQ of MoD (Army), DHQ, PO-New Delhi.
4. The Principal Chief of Defence Accounts (Pension), Allahabad, Pin-211014, Uttar Pradesh.

.....Respondents

Ld. Counsel for the : **Ms Dipanjali Bora, Advocate**
Respondents. Central Govt. Counsel



ORDER

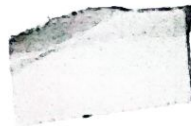
1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

(i) To quash and set aside the impugned order No 4030/4374552A/Pen (DP) dated 27.12.2021 (Annexure-C) passed by the Record Officer, The Assam Regiment rejecting claim of disability element of pension to the applicant.

(ii) To direct the authorities to grant disability element of pension @ 20% (rounded off to 50%) to the applicant with arrear and interest thereon with effect from three years prior to the date of filing of the instant application.

(iii) And/or pass such order or further order(s) as your Lordship may deem fit and proper.

2. Briefly stated, the applicant was enrolled in the Indian Army on 30.12.2006 and he was invalided out from service w.e.f. 13.03.2020 under Rule 13 (3) III (iii) of Army Rules, 1954 having rendered 13 years, 02 months and 13 days service. At the time of discharge he was in low medical category P5 for the disability 'Smear Positive Pulmonary Tuberculosis (Relapse) (A-15.2)' and his disability was assessed @ 100% for for one attributable to military service vide Release Medical Board

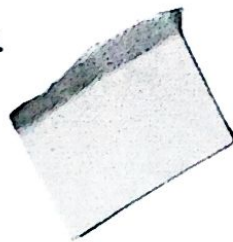


(RMB) held on 18.02.2020. Accordingly, service element was granted to the applicant w.e.f. 14.03.2020 for life and disability element was granted to him for the period 14.03.2020 to 16.02.2021 vide PPO No. 170202100391 dated 16.07.2021. His Re-assessment medical board was held at 160 Military Hospital on 22.10.2021 which assessed his degree of disablement @ 5% for life. Accordingly, his disability element pension was stopped in terms of Para 173 of Pension Regulations for the Army, 1961 (Part-I) as it became below 20%. After stoppage of disability element of pension, the applicant submitted RTI application dated 12.11.2023 with a request to provide copy of re-assessment medical board. On getting copy of re-assessment medical board, he submitted application dated 31.01.2024 to Records, the Assam Regiment which was replied vide letter dated 17.05.2024 stating that the applicant should prefer first appeal before the Appellate Authority, which he failed to forward and file this O.A. for grant of disability element of pension.



3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found medically and physically fit for service in the Army and there is no note in the service documents of the applicant that he was suffering from any disability at the time of enrolment in Army. The disability of the applicant was contracted during the service, hence the disability is either attributable to or aggravated by Army Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability element of pension in similar cases, as such the applicant be granted disability element of pension and it's rounding off.

4. Learned counsel for the applicant further submitted that once disability of the applicant was re-assessed below 20% the authorities either ought to have re-instated him into service or continued to grant him disability element of pension, since he was invalided out of service because of his disability, which made him unfit for further service.



5. On the other hand, Ld. Counsel for the respondents contended that disabilities of the applicant i.e. 'Smear Positive Pulmonary Tuberculosis (Relapse) (A-15.2)' has been re-assessed below 20% therefore, the applicant is not entitled to disability element of pension in terms of Para 173 of Pension Regulations for the Army, 1961 (Part-I). He pleaded for dismissal of O.A.

6. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Release Medical Board proceedings as well as the records.

7. It is not disputed that the applicant was enrolled in the Army on 30.12.2006 and he was invalided out from service w.e.f. 13.03.2020 by an invalidation medical board. At the time of invalidation, he was granted degree of disablement @ 100% for one year and the disability of the applicant was held attributable to military service. The applicant's re-assessment medical board was held at 160 Military Hospital on 22.10.2021 which assessed his degree of disablement @ 5% for life. Since

the degree of disablement was below 20% his disability element of pension was stopped.

8. The fact of this case is squarely covered by the judgment rendered by the Hon'ble Supreme Court in civil appeal No 5605 of 2010 decided on 25.06.2014, ***Sukhwinder Singh vs Union of India & Ors.*** The relevant extract of the aforesaid judgment is appended below:-

"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. Thus, from the above, the Hon'ble Supreme Court has, therefore, categorically held that once a soldier is invalidated out from service, the only presumption would be that the disability he incurred upon is 20% because otherwise, there is no question of invaliding out the soldier from service. The stand of the respondents that it is less than 20% and as such, the applicant is not entitled to disability element of pension, is neither legal nor valid in view of the judgment passed in the case of **Sukhwinder Singh** (supra). Therefore, the disability element of pension cannot be denied to the applicant on this score only.

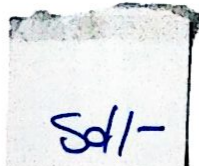
10. It is cardinal principle of law that the incumbent, who has been invalidated out from service, is entitled to the grant of disability element of pension irrespective of the percentage thereof as per the ratio of the judgment in the case of **Sukhwinder Singh** (supra). In the case in hand, the disability of the applicant admittedly is attributable to military service and the applicant is held entitled to the disability element of pension w.e.f. next date of his invalidation.

11. In view of the above, the applicant is entitled to 20% disability element of pension which would rounded off to 50% in view of judgment of *Union of India & Ors vs Ram Avtar*, CA No 418 of 2012 decided on 10.12.2014. Impugned orders passed by the respondents are set aside and O.A. is allowed accordingly.

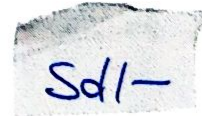
12. Apropos above, the respondents are directed to grant 50% disability element of pension to the applicant w.e.f. 14.03.2020 along with arrears, however, in view of the limitation, the applicant shall be entitled to arrears w.e.f. three years preceding the date of filing this O.A. which was filed on 12.08.2024.

13. No order as to costs.

14. Miscellaneous application(s), pending if any, stand isposed off.



(Lt Gen CP Mohanty)
Member (A)



(Justice SK Gupta)
Member (J)

Dated : 20.03.2026

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