

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on: 18.11.2025
Pronounced on: 27.11.2025
Uploaded on: 27.11.2025

Whether the operative part or full
judgment is pronounced: **Full judgment.**

CJ Court

**WP(C) No 1294/2024
CM No. 3263/2024**

Union of India through its
Secretary Ministry of Defence
New Delhi and others.

...Petitioner(S)/Appellant(s)

Through: - Mr. Vikas Sharma, Advocate

Vs.

Balwant Singh

...RESPONDENT(S)

Through: - Mr. Chakshu Sharma, Advocate

**CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE**

JUDGMENT

OSWAL 'J'

1) Admittedly, the respondent, after serving in the Army for 24 years, was granted extension in the service with effect from 10.12.2006 to 09.12.2008. During the extended period, he was downgraded to Low Medical Category P2 (T-24) for the diagnosis of INTRACEREBRAL HEAMORRHAGE (LT) BASALGANGLIA 1-6" with effect from 05.03.2007 and finally, the respondent was downgraded to Lower Medical Category P2 (P), as such, was considered ineligible for further retention in

service. The respondent was examined by the Release Medical Board and the Release Medical Board assessed his disability at 15-19% for life on 02.08.2008. The proceedings of the Release Medical Board were approved by DDMS, 167 Military Hospital, and the respondent was discharged from service on 31.08.2008 (AN) and prior to his discharge, the respondent had rendered 25 years and 266 days of service. The respondent thereafter claimed the benefit of disability element @ 20% for life, however, the same was rejected by the competent authority.

2) Feeling aggrieved, the respondent approached the Armed Forces Tribunal, Srinagar Bench at Jammu (hereinafter to be referred as "the Tribunal") by filing O.A No. 51/2002 seeking benefits of disability element @ 20 % against 15-19% for life with effect from the date of his discharge. The learned Tribunal vide its order dated 14.02.2023 allowed the Original Application and held the respondent entitled to the benefit of disability element @ 20% for life, which upon rounding off came to 50% for life with effect from three years preceding the date of filing of the Original Application.

3) Aggrieved by the order dated 14.02.2023, the petitioners have filed this writ petition challenging the same on the grounds that the respondent was not entitled to the disability pension as he had already completed the tenure of his service and moreover, his disability had been assessed at 15-19%, which is below 20% as required in terms of Regulation 179 of the Pension Regulations for the Army, 1961 for grant of disability element.

4) The respondent has filed the objections and placed reliance on the Regulation 173-A of the Pension Regulations for the Army, 1961. It is stated that the respondent was invalided while he was on extended period of service and letter dated 07.02.2001 of Ministry of Defence itself provides for one time opportunity to the Army Personnel for re-conducting their Medical Board. Reliance has been placed upon the judgment of the Hon'ble Supreme Court of India in “**Sukhvinder Singh vs. Union of India and others**”, 2014(4) S.C.T. 163.

5) Mr. Vikas Sharma, learned counsel for the petitioners has submitted that the respondent had already completed his tenure of service, as such, he was not entitled to any disability pension and further that as per the disability assessed by the Medical Board, the respondent was having 15-19% disability, which was less than the disability prescribed under the Regulations for entitlement of disability pension.

6) *Per contra*, Mr. Chakshu Sharma, learned counsel for the respondent, in support of his submissions, has placed reliance on Regulation 173-A of the Pension Regulations for the Army, 1961 and Regulation 95 of the Pension Regulations for the Army Part-1, 2008. He has submitted that an individual, who is placed in a lower medical category (other than 'E'), permanently and who is discharged because no alternative employment in his own trade/category suitable to his low medical category could be provided or who is unwilling to accept the alternative employment or who having retained in alternative appointment is discharged before completion of his engagement, shall be deemed to have been invalided out of service. He has further submitted that this provision is equally applicable

to an individual, who was on extended period of service, but discharged before completion of his period of extension. He has further argued that in terms of para 7.2 of communication dated 31.01.2001, where armed force personnel is invalided out under circumstances mentioned in para 4.1 of the said communication, the percentage of the disability assessed as less than 50% by the Invaliding Medical Board is required to be reckoned as 50% for computing disability element.

7) Heard learned counsel for the parties and perused the record.

8) It is the case of the petitioners that in terms of Regulation 179 of Pension Regulations for Army, 1961, an individual retired/discharged on completion of tenure or on completion of service limits or on completion of terms of engagement or on attaining the age of 50 years (irrespective of their period of engagement), if found suffering from a disability attributable to or aggravated by military service and recorded by Service Medical Authorities, shall be deemed to have been invalided out of service and shall be granted disability pension from the date of retirement, if the accepted degree of disability is 20% or more. This Regulation is being used as a shield to resist the claim of the respondent by asserting that the respondent has already completed the tenure of his service and that his disability has been assessed at 15 -19% by the Released Medical Board.

9) Regulation 173-A of the Pension Regulations for Army, 1961 and Regulation 95 of the Pension Regulations for the Army, Part-1 2008, provide that an individual who is placed in a low medical category (other than 'E') permanently and who is discharged because no alternative

employment in his own trade/category suitable to his low medical category could be provided or who is unwilling to accept the alternative appointment or who having been retained in alternative appointment is discharged before completion of the engagement, shall be deemed to have been invalided out of service. This provision shall also apply to an individual, who is placed in a low medical category while on extended period of service but is discharged on that account before completion of the period of his extension. Once the petitioners have admitted that the respondent was granted extension from 10.12.2006 to 09.12.2008, they cannot take recourse to Para 173-A of the aforesaid Regulations to object his claim on the ground that he had completed his tenure of service.

10) Next it was urged that the respondent was not entitled to disability pension as his disability was assessed at 15-19%. Regulation 179 (supra) provides that disability must be 20% or more. The Hon'ble Supreme Court in **Sukhvinder Singh vs. Union of India** (supra) has held that wherever 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. The petitioners have not been able to dispute the application of the communication dated 31.1.2001 in the case the respondent as Para 7.2 of the said communication, provides that percentage of disability assessed less than 50% by the Invaliding Medical Board is to be reckoned as 50% for computing of disability element but under the circumstances mentioned in Para 4.1 of the said communication. Thus, it is clear that notwithstanding the percentage of disability as assessed by the Release Medical Board, the respondent is entitled to disability pension.

11) We have examined the order passed by the learned Tribunal and we do not find any illegality in the same warranting interference at our end.

12) In view of what has been said and discussed hereinabove, the petition lacks merits and the same is, accordingly, **dismissed**.

(RAJNESH OSWAL)
JUDGE

(ARUN PALLI)
CHIEF JUSTICE

Jammu
27.11.2025
Karam Chand.

<i>Whether the Judgment is speaking:</i>	<i>No/Yes</i>
<i>Whether the judgment is reportable:</i>	<i>No/Yes</i>

