

2024.P1111C.100683 DO



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-19137-2024 (O&M)

Date of Decision: 20.08.2024

UNION OF INDIA AND OTHERS

...Petitioners

Versus

BUDHI SINGH RANA, EX PO (EM) No. 69075 AND ANR

...Respondents

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present:- Ms. Bhavana Datta, Advocate
for the petitioners (Senior Panel Counsel-UIO).

SUDHIR SINGH, J.

The petitioners have filed the present writ petition for issuance of a writ in the nature of certiorari for setting aside the impugned order dated 22.03.2021 (Annexure P-2), passed by the learned Armed Forces Tribunal (for short 'the AFT'), whereby the Original Application filed by the respondent No.1, was allowed and he was held entitled to the arrears of disability pension @ 50% w.e.f. 25.06.2014, on which the date of right was accrued to him by virtue of pronouncement made by the Hon'ble Supreme Court in Civil Appeal No. 5605 of 2010- Sukhwinder Singh Vs. Union of India and others, decided on 25.06.2014. However, the arrears were restricted to three years, prior to the date of filing of the Original Application.

2. The facts of the case are that respondent No.1 was enrolled in the Indian Navy on 24.04.1964. He was discharged from the service on 30.04.1979, after completion of 15 years and 06 days of qualifying service. He was sanctioned Service Pension vide PPO No Navy/D/2062/79 dated 27.11.1979. At the time of the release of the respondent No.1, the Release Medical Board assessed the disability of the respondent No.1 as Pulmonary Tuberculosis assessed at 20%, to service and he was sanctioned disability pension w.e.f. 01.05.1979 to 22.12.1980. The successive Release Medical Board had extended the said award upto 21.11.1996. The Re-survey Medical Board on 30.08.1996, assessed the disability of the petitioner less than 20% and accordingly, in terms of Regulations 101 and 105-B of Navy Pension Regulations 1964, the disability pension of respondent No.1 was discontinued w.e.f. 21.11.1996. The appeal filed by the respondent No.1 was rejected by the competent authority. Aggrieved against the said action, respondent No.1 filed Original Application before the learned AFT.

3. Learned counsel appearing for the petitioners vehemently argues that while passing the impugned order the learned AFT has not taken into account the settled position that the opinion of an expert body should not be interfered with. It is further contended that the judgment of the Hon'ble Supreme Court in Sukhwinder Singh's case (supra) is not applicable to the case of the respondent No.1 as he was discharged from service after completion of 15 years and 06 days and was not invalided out of the service. It is further argued that it is not a case where respondent No.1 was denied grant of disability pension

rather it was discontinued only after the assessment of the Re-survey Medical Board, which had found the disability of respondent No.1 less than 20%. Reliance is placed upon under Rule 173 of Pension Regulations for the Army 1961(Part 1). Accordingly a prayer for setting aside the impugned order has been made.

4. We have heard learned counsel for the petitioners and have also gone through the paper book including the impugned order passed by the learned AFT.

5. A perusal of the impugned order would show that the claim of respondent No.1 was considered and granted by the learned AFT in terms of the judgment of Hon'ble Supreme Court in Sukhwinder's case (supra). The relevant part from the impugned order reads as under:-

“11. In taking such a view, reliance was placed on the judgment of the Hon'ble Supreme Court in Civil Appeal No. 5605 of 2010, “Sukhwinder Singh vs. UOI and others” decided on 25.06.2014. In paragraph 9 whereof the following observations were made:-

“Fourthly, whenever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that it is disability was found to be above 20%. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty percent disability pension.”

12. On the basis of the above case law of the AFT Regional Bench Chandigarh as well as of the Hon'ble Supreme Court, we are of the opinion that the disability which has been assessed by the RSMB at less than 20%(i.e., 11-14%) can be deemed to be 20% and to be rounded off to 50%.

13. Now the question arises as to from which date the applicant is entitled to the disability pension on the basis of the above rate. In this reference it is to be seen as to on which date his right to get disability pension @ at least 20% was recognized. His right as recognized or accused on the date of pronouncement of judgment by the Hon'ble Supreme Court in Sukhwinder Singh's case(supra) which was decided on 25.06.2014. Hence, in our view the starting point of cause of action being entitled to get broad-banding of the disability percentage came to be recognized by judicial pronouncement made by the Hon'ble Supreme Court in Sukhwinder Singh's case(supra) which was decided on 25.06.2014."

6. In the present case the petitioners' sole claim is that the disability of respondent No.1 has reduced to be less than 20%. However, as held by the Hon'ble Supreme Court in Sukhwinder Singh's case (supra), whenever a member of the Armed Forces is invalided out of service, his disability is to be assumed to be above 20%.

7. Indisputably, when the petitioner was discharged from the service, the Release Medical Board had assessed his disability as Pulmonary Tuberculosis assessed at 20%, Pulmonary Attributable to service. The said award continued till 21.11.1996, and had been discontinued thereafter on the ground that the said disability had improved. The fact remains that the disability of respondent No.1 is to be considered at the time of his discharge which in the instant case was 20%. As per the law laid down by the Hon'ble Supreme Court in Sukhwinder Singh's case (supra), whenever a member of the Armed

Forces is invalided out of service, his disability is to be assumed more than 20% and would attract grant of fifty percent disability pension.

8. We find that the level of disability of respondent No.1 is to be seen on the date of his discharge and on that basis he should be entitled to the disability pension.

9. In view of the above, we do not find any merit in the present writ petition, the same is hereby dismissed.

[SUDHIR SINGH]
JUDGE

[KARAMJIT SINGH]
JUDGE

20.08.2024
Himanshu

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No