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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-34633-2024
DATE OF DECISION-19.12.2024

UNION OF INDIA AND ORS.Petitioners

Versus

EX SEP JOGINDER AND ANR.Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Argued by: Mr. S.K Sharma, Senior panel counsel,
for the petitioners/UOI.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner herein-
Union of India, prays for the setting aside of the order dated 18.10.2019
(Annexure P-1), as passed by the learned Armed Forces Tribunal
concerned, whereby, the claim of respondent No. 1 for the grant of
disability pension was allowed.

Factual Background

2. Respondent No. 1 was enrolled in the Indian Army on
29.12.1965 in a fit state of health and was discharged from service on
31.12.1982 on completion of terms of engagement after rendering 17
years of service. At the time of discharge, he was found to be suffering
from “*THYROTOXICOSIS WITH BILATERAL EXOPATHALMAS*”
which was assessed by the Release Medical Board @ 30% for two
years and was declared to become neither attributable to nor becoming

aggravated by rendition of military service.

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3. The disability element claim of the respondent was rejected by the Competent Authority, however on filing of an appeal he was granted disability element from 01.01.1983 to 16.08.1984 and further from 17.08.1984 to 15.01.1996. Later, the respondent was put to re-survey medical board on 25.12.1995 and his disability was assessed to be less than 20% for five years and subsequent RSMB has also assessed his disability as less than 20% for ten years and last RSMB was held on 04.09.2014 which assessed his disability as assessed less than 20% (6-2%) for life.

4. Feeling aggrieved, respondent No.1 filed O.A., before the learned Armed Forces Tribunal concerned, rather for grant of disability pension. The said O.A., became allowed vide order dated 18.10.2019. The operative part of the said order is extracted hereinafter.

XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX

“ Now a question arises whether the personal suffering from the disability of less than 20% is entitled to the disability pension or not?

*The question has been answered by 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 11 whereof, the following observations were made:*

“Thirdly, there appear to be no provisions authorising the discharge or invalidating out of service where the disability is below 20 percent and seems to us to be logically so”.

“Fourthly, whenever a member of the Armed Forces is invalidated out of service, it perforce has to be assumed

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that his disability was found to be above 20%. Fifthly, as per the extant Rules/Regulations, a disability leading to invalidating our of service would attract the grant of fifty percent disability pension.”

On the basis of the above case law of the Hon’ble Supreme Court, we are of the opinion that the disability which has been re-assessed by the RSMB at less than 20% (i.e. 06-10%) can be deemed to be 20% and rounded off to 50%.

xxxxx xxxxx

*Therefore, in our view, the applicant is entitled to the arrears of disability pension @50% w.e.f. 25.6.2014 on which the right accrued to him by virtue of pronouncement made by the Hon’ble Supreme Court in **Sukhwinder Singh’s case (supra)**.*

In the result, the Original Application is allowed and the impugned orders dated 06.02.2019 (Annexure A-1) is set aside. The respondents are directed to calculate the arrears of disability pension w.e.f. 25.6.2014 and thereafter the applicant shall be entitled to disability pension at the same rate for life.....”

5. Feeling aggrieved from the aforesaid order as passed upon the O.A. (supra), by the learned Armed Forces Tribunal concerned, the petitioner-Union of India has filed thereagainst the instant writ petition before this Court.

Submissions of the learned counsel for the petitioners.

6. The learned counsel for the petitioners submits, that the learned Tribunal failed to appreciate that respondent No. 1 was never invalided out of service on account of medical disability but was

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discharged from service, as having being placed in low medical category, and/or on completions of his term of engagement, thus the provisions of Regulation 173 of the Pension Regulation for the Army, 1961 were not favourably attracted and as such, respondent No. 1 was not entitled to grant of disability pension.

“173. Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed 20 per cent or over.

7. Consequently, it is argued that the reliance placed by the learned Tribunal upon the verdict rendered by the Apex Court in case titled as **Sukhwinder Singh Vs. Union of India and Ors.**, to which **Civil Appeal No. 5605 of 2010** became assigned, was a mis-placed reliance thereons, as the expostulation of law made therein, was bestowable only in case the soldier was invalided from service but was not applicable in case the soldier was discharged from service as having being placed in low medical category, and/or on completion of his term of engagement.

Inferences of this Court.

8. For the reasons to be assigned hereinafter, the above argument does not appeal to the judicial conscience of this Court and is rejected. Initially, for the reason since the disability (supra) assessed by the Release Medical Board was less than 20 %, but when became

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declared to become aggravated by military service. Therefore, even though, in **Sukhwinder Singh's case (supra)** an expostulation of law is made that if a soldier is invalided from service on account of the release medical board declaring the said entailed disability being less than the required 20 %, therebys, yet on invaliding the soldier from service, the said percentum is deemed to be 20 %. Secondly, though therebys, it is imperative that on account of the disability (supra) entailed upon the soldier, thus he is unfit for being retained in the Army, wherebys, he is required to be invalided. Resultantly and reiteratedly, thus the invaliding of the soldier from service, but was the pre-requisite for the invalided soldier earning disability pension.

9. Be that as it may, even if the soldier is not invalided from service, but when the entailment of a disability, upon him, has been declared to become aggravated by rendition of military service, therebys, even though the said disability is less than 20 %. Therefore, as but a natural corollary thereto, the said percentum of disability is deemed to be upto 20 %, but irrespective of no order of invaliding the soldier from service being recorded. As such, irrespective of no order of invaliding the soldier from service rather being recorded, yet when the disability entailed upon him has been pronounced by the Release Medical Board to be less than 20 %, whereupon, in terms of the expostulation of law (supra) made in **Sukhwinder Singh's case (supra)**, rather therebys the said disability is deemed to be upto 20 %

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wherebys, the soldier was required to be imperatively invalided from service, but enigmatically, he has not been so invalided from service.

10. Nonetheless, in the larger interest of justice, if ultimately he has been permitted to be released/discharged from service, thus on having being placed in low medical category and/or on completion of his term of engagement, therebys, the said release from service, rather than his being invalided from service perforce, yet does not render the expostulation of law (supra) made in **Sukhwinder Singh's case (supra)**, to be inapplicable to him, as upon making the supra expostulation of law, to be ineffective to the present soldier, therebys gross injustice would become perpetuated vis-a-vis the present respondent. The reason for so stating becomes aroused from the factum, that if otherwise the soldier was unfit to be retained in service, therebys, he was naturally required to be bestowed the benefit of disability pension. The further reason for so concluding becomes also sparked, from the factum that since no adverse remarks became awarded to the present respondent, during the term of his serving in the Army, whereupons, on the said disability becoming entailed upon him during his rendering service in the Army, thus, he would not have been released, but yet merely on having being placed in low medical category, and/or on completion of his term of engagement, he has been released. Contrarily, rather an order qua his being invalided from service, but was required to become rendered. Therefore, when the Army has released him from service, even merely on having being

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placed in low medical category, thus, not on account of his not being an able soldier, rather has so done, upon the Army untenably accepting his release merely on low medical category, thereby, the said release on low medical category, is construable to his being invalided from service, even without an order to the said effect becoming recorded.

11. Now, in case the above inference is not recorded thereupon, in the garb of the Army authorities rather releasing the soldier from the Army, merely on his being placed in low medical category besides this Court also validating the same. Resultantly thereby, despite his entailing supra disability, which is declared to be attributable to military service and despite the fact that it is less than 20 %, besides despite the fact that the said percentum of disability is required in terms of the supra expostulation of law, to be construable to be upto 20 %, whereby, an order of his being invalided from service but was required to be passed. Therefore, the Army Authorities have yet ill chosen to untenably seek theirs becoming relieved from the apposite onerous obligation, thus cast upon them, qua upon a soldier becoming entailed with disability (supra), thus his being bestowed with disability pension, through theirs rather than proceeding to make the imperative invalidings of the present respondent from service, theirs thus untenably releasing/discharge the soldier from service as having being placed in low medical category and/or on completion of his term of engagement. In sequel, it appears that, the supra has ensued from the Army Authorities, reiteratedly untenably escaping the onerous statutory

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obligation cast upon them, to award to the present respondent the disability pension, which otherwise in terms of the supra expostulation of law, he became entitled to become so endowed.

12. Furthermore, a perusal of impugned order reveals, that the applicant was held entitled to the arrears of disability pension @ 50 % w.e.f. 25.06.2014, which is date of the pronouncement of the verdict by the Apex Court in **Sukhwinder Singh's case (supra)**.

13. Though the judgment passed by the Hon'ble Apex Court in case titled as **Sukhwinder Singh Vs. UOI and others** (supra) was passed on 25.06.2014. However, prima facie, though the benefits thereof cannot be denied to the present respondent merely on the ground that it has only prospective effect and that it has no retrospective effect. The reason being that even if assumingly no explicit retrospective effect became assigned to the verdict (supra), wherein, in para No. 11 thereof, para whereof has been extracted above, a declaration of law is made to the effect, that even if the soldier is discharged on account of the assessed percentum of disability being below 20 %, yet the said per centum of disability being construable to be @20% and further the same being rounded off to 50%. Resultantly the beneficent effect of the said declaration of law, thus though is also *prima facie*, to be endowed to the soldiers, irrespective of the date of pronouncement of the said judgment. If the said endowment is not made, thereupons, *prima facie*, to the considered mind of this Court, an arbitrary cut off date would become employed inter-se those soldiers

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who became discharged prior to the making of the verdict (supra), thus with those soldiers who became discharged subsequent to the passing of the verdict (supra).

14. It appears that it was even not the intrinsic tenor and spirit of the supra declaration of law passed by the Apex Court in the verdict (supra), as such, the declaration of law is required to be employed even vis-a-vis the present petitioner.

15. Even otherwise since the declaration of law made in verdict (supra) makes the said declaration to be an expostulation of law in rem, thereby, the expostulation of law in rem, as made in verdict (supra) also makes the thereunders conferred benefits vis-a-vis the defence personnel concerned, to, *prima facie*, also entitle the concerned, thus to at any time seek the granting of the endowments as made thereunders, and that too, in the fullest complement, as spelt thereunders, besides irrespective of the bar, if any, of delay and laches.

16. Be that as it may, owing to the non making of any challenge to the afore at the instance of respondent No. 1, besides his also not seeking a declaration, that in terms of the supra in rem expostulations of law made in **Sukhwinder Singh's case (supra)**, thus he be bestowed the benefits thereof. Resultantly, this Court is constrained to after **dismissing** the writ petition uphold the verdict made by the Tribunal concerned, whereby, the arrears of disability pension have been restricted to the applicant w.e.f. 25.06.2014.

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17. The impugned order, as passed by the learned Tribunal concerned, is maintained and affirmed.
18. Disposed of alongwith all pending application(s), if any.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

19.12.2024
mahima

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No