

ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW

Original Application No. 136 of 2010

Thursday this the 10th day of March, 2011

“Hon’ble Mr. Justice Janardan Sahai, Member (J)  
Hon’ble Lt. Gen. P.R. Gangadharan, Member (A)”

Sanjay Sharma Ex.-Sergeant(Engine Fitter)  
Service No.765860-H,aged about 39 years,  
Son of late Shri Jagdish Prasad Sharma,  
Resident of Kuldeep Enclave,Jogeshwar Nishad,  
Air Force Chakeri,Kanpur.

..Applicant

By Legal Practitioner Shri Subhash Pandey

Versus

1. Union of India through Appellate Committee,  
on First Appeal in short ACFA(DDPA-III)  
Air, Head Quarter, Vayu Bhavan,  
New Delhi-11.
2. Air Force Record Office, Subroto Park, New Delhi.

..Respondents

By Legal Practitioner Shri K D Nag, Sr.Standing Counsel  
for the Central Government

ORDER

“Hon’ble Mr. Justice Janardan Sahai”

1. The applicant was enrolled in the Indian Air Force on 08.03.1991.

It appears that he went on casual leave in December, 1999 and while on casual leave, he sustained gunshot injury. He was treated in All India Institute of Medical Sciences (in short AIIMS) in December, 1999 and was shifted to Army Research & Referral Hospital (in short RR

*12.12.2006*

Hospital), New Delhi on 24.12.1999. It appears from Annexure RA-1 of the rejoinder affidavit that the applicant was discharged from R R Hospital on 22.12.2006 and advised for sedentary work only. The applicant was brought before an Invaliding Medical Board on 13.11.2008. The Invaliding Medical Board found that the applicant was suffering from disability 'Seizure, Hemiplegia' and assessed the percentage of disability at 100% for life time. The copy of the Invaliding Medical Board proceedings has been annexed alongwith the rejoinder affidavit as Annexure RA-1. The Invaliding Medical Board found that the disability of the applicant is neither attributable to or aggravated by Military service. The applicant was discharged on 28.01.2009. His claim for disability pension was rejected by CDA(F) on 19.03.2009. The appeal of the appellant against the rejection was dismissed on 22.09.2009. Aggrieved, the applicant has filed the present OA.

2. In the counter reply filed by the respondents, they have set up the case that the disability was not attributable to Military service.
3. Learned counsel for the applicant Sri Subhash Pandey made two submissions. The first submission was that the applicant had sustained gunshot injury while he was on casual leave. In support of the contention, he relied upon the averments made in para 12 of the rejoinder affidavit in which it is stated that while travelling in the Bus, he was attacked by anti-social elements and, therefore, the applicant even though on casual leave is entitled to payment of disability pension because it is expected as a duty of a Military man to stand up in such a situation and to resist the

*and hence the disability is attributable to service or*  
dacoits. The second submission made by the learned counsel for the applicant is that the applicant was advised sedentary work by RR Hospital in its opinion dated ~~06.11.2006~~ <sup>in the Discharge Summary of 06.11.2006</sup> but the applicant was being made to perform the normal trade duty and, therefore, the stress and strain has caused the disability.

4. The first submission of the learned counsel for the applicant that the applicant was travelling by Bus and was attacked by anti-social elements has not been corroborated by any material and the applicant has not been able to prove this case. However, we find force in the second submission made by the learned counsel for the applicant. The papers supplied to the applicant <sup>attached</sup> alongwith discharge summary by RR Hospital contains the opinion/ advise that the applicant should do sedentary work. The fact that normal trade duty were, however, being taken from the applicant despite medical advice is corroborated by the Commanding Officer in his certificate dated 21.10.2008, which is a part of the IMB proceedings annexed with the rejoinder affidavit. It is stated in the column relating to Nature of Duties in the Unit – 'Trade Duty'. The applicant's trade was 'Engine Fitter' and his case is that it involves climbing up aircraft for repairs etc. The opinion of the Classified Specialist Dr.A.K.Pandey, Med. & Neurology is a part of the IMB proceedings and the said Classified Specialist has opined that stress and strain is known to aggravate 'Seizure', which was the cause of his seizure aggravation. No reason has been given in the counter affidavit for not relying upon this opinion. On the basis of these facts, it can be reasonably inferred that the disability



from which the applicant was suffering has been aggravated by Military service. We also find that the Invaliding Medical Board has not given any reasons for its opinion that the disability is neither attributable to nor aggravated by Military service. No doubt, it has been held by high authority that the opinion of the Medical Board is entitled to great weight and has ordinarily to be accepted. In this case, there is another Medical opinion of the Classified Specialist that the disease has been aggravated by stress and strain. It is also well settled that the strength of the opinion of the expert lies in the reasons given. In the present case, no reasons have been given by the Invaliding Medical Board. Moreover, the entitlement of disability pension is based not only upon the clinical aspect upon which the expert's opinion has weight but also upon a proper application of the Entitlement Rules. Rule 9 of the Entitlement Rules for

Casualty Pensionary Awards, 1982 reads as follows:

*"9. The claimant shall not be called upon to prove the conditions of entitlements. He/she will receive the benefit of any reasonable doubt. This benefit will be given more liberally to the claimants in field/afloat service cases."*

The Rule brings about a change in the burden of proof. The benefit of any reasonable doubt has, therefore, to be given to the applicant. We, therefore, find merit in the contention of the learned counsel for the applicant that the disability is connected with Military service and even if there is any doubt, the benefit has to be given to the claimant. We also find from the proceedings of the Invaliding Medical Board that in answer to the question whether disability existed since before entry of the

applicant into service, the Medical Board has answered 'No'. Thus, it is clear from this finding itself that the disability originated during Military service.

5. In the result, the Original Application is allowed. The orders of the CDA (P) dated 19.03.2009 rejecting the disability pension claim of the applicant and the orders of the appellate authority dated 22.09.2009 are set aside. The applicant would be entitled to the payment of disability pension, which will be quantified by the CDA.

**Lt. Gen. P.R. Gangadharan)**  
Member (A)

**(Justice Janardan Sahai)**  
Member (J)

PPS/-