

**RESERVED**  
**Court No.1**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW**

**Original Application No 374 of 2018**

Wednesday, this the 3<sup>rd</sup> day of April 2019

**Hon'ble Mr. Justice S.V.S. Rathore, Member (J)**  
**Hon'ble Air Marshal BBP Sinha, Member (A)**

Ex No. 15440562A Ex Recruit Santosh Kumar, son of Shri Dharam Nath Prasad, Village-Bhagwanpur, Post-Sahatwar, Tehsil-Bansdeeh, District-Ballia (UP)-277211.

.....Applicant

Ld. Counsel for the: **Col (Retd) Rakesh Johri**, Advocate  
Applicant

Versus

1. Union of India through The Secretary, Ministry of Defence, New Delhi-110001.
2. Chief of the Army Staff, Integrated Headquarters of the Ministry of Defence, South Block, New Delhi-110001.
3. Adjutant General, Integrated Headquarters of the ministry of Defence, South Block, New Delhi-110001.
4. Officer-in-Charge, Records AMC, PIN-900322, C/O 56 APO.
5. Principal Controller General of Defence Accounts Pensions, Draupadi Ghat, Allahabad-211014.

..... Respondents

Ld. Counsel for the : **Shri GS Sikarwar**  
Respondents Central Govt Counsel.

**ORDER****“Per Hon’ble Air Marshal BBP Sinha, Member (A)”**

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

- (i) *to issue/pass an order or direction to the respondents to set aside/quash the arbitrary order of denial of disability pension to the applicant as contained in AMC Records letter No 15440562/Pen/DPI dated 30.08.2013 (Annexure No A-1).*
- (ii) *to issue/pass an order or direction to the respondents to set aside/quash the arbitrary order of rejection of first appeal preferred by the applicant against denial of the disability pension as contained in Army HQs letter ADG PS/AG’s Branch, Army Headquarters letter No B/40502/219/2014/AG PS-4(Imp-II) dated 28.07.2015 (Annexure No A-2).*
- (iii) *to issue/pass an order or direction to the respondents to set aside/quash the arbitrary order of rejection of the second appeal preferred by the applicant as conveyed by letter Addl Dte Gen Pers Services, AG’s Branch, IHQ of MoD (Army), New Delhi letter No B/38046A/80/2016/AG/PS-4 (2<sup>nd</sup> Appeal) dated 15.09.2016 (Annexure No A-3).*
- (iv) *issue/pass an order or direction to the respondents to grant him 40% disability pension as assessed by the Invalidment Medical Board (IMB) along with benefit of rounding off with effect from i.e. the day of discharge of the applicant being his constitutional right.*
- (v) *issue/pass any other order or direction as this Honourable Tribunal may deem fit in the circumstances of the case.*
- (vi) *Allow this application with cost.*

2. Brief facts of the case are that the applicant was enrolled in the Army Medical Corps (AMC) on 20.09.2012 and invalided out of service after rendering about 06 months of service on 29.03.2013 in low medical category **S5H1A1P1E1** due to disease **‘Moderate Depressive**

**Episode'** with disability @ 40% for life neither attributable to nor aggravated by military service (NANA).

3. On account of having abnormal behaviour in the unit and sleeping less, the applicant was admitted in the Command Hospital (CC) Lucknow within three months of enrolment for psychiatric evaluation and was diagnosed to be suffering from 'Moderate Depressive Episode' w.e.f. 17.12.2012. The Invaliding Medical Board (IMB) held on 25.02.2013 recommended the applicant to be discharged from service. Subsequently, disability pension claim in respect of the applicant was rejected vide order dated 30.08.2013. Later first and second appeals preferred against rejection of disability pension claim were rejected vide orders dated 28.07.2015 and 15.09.2016 respectively. Hence this O.A.

4. Ld. Counsel for the applicant submitted that the applicant was enrolled in the Army in medically and physically fit condition. It was further submitted that a member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service. The Ld. Counsel further submitted that the applicant was

invalided out in medical category S5H1A1P1E with disability element @ 40% for life as such in view of Hon'ble Apex Court judgment in the case of ***Sukhvinder Singh vs. Union of India***, reported in (2014) 14 SCC 364, he is entitled to grant of disability pension.

5. On the other hand, Ld. Counsel for the respondents submitted that Rule 173 of Pension Regulations for the Army 1961 (Part-I) provides that 'unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided from service on account of disability which is attributable to or aggravated by military service and is assessed at 20% or over'. He further submitted that in the case in hand the disability 'Moderate Depressive Episode)' @ 40% for life started within three months of enrolment and was viewed by duly constituted IMB as NANA by military service hence, the applicant is not entitled to disability pension. Accordingly, the pension sanctioning authority has rightly rejected applicant's claim for grant of disability pension.

6. We have heard Ld. Counsel for the parties and perused the material placed on record. We have also gone through the IMB.

7. On careful perusal of the Invaliding Medical Board (IMB) it emerges that the applicant was enrolled in Army Medical Corps (AMC) on 20.09.2012 and the disability was first detected on 17.12.2012 i.e. within three months from the date of enrolment. The applicant was sent to Command Hospital (CC), Lucknow for psychiatric evaluation. After admission in the hospital, the applicant's condition was thoroughly investigated and Col KP Seshadri, Classified Specialist (Psychiatry) had given opinion on the applicant on 20.02.2013. Relevant extract are excerpted below:-

*'This 25 year old recruit, who has done only about 03 months of service has suffered a major psychiatric illness-Moderate depressive Episode. Though he was improved now, further relapses are possible and he will not be able to withstand the stress and strains of training and service. He will be more of a liability rather than an asset to the service. In view of all the above **he should be invalided out of service.** A case of Moderate Depressive Episode'.*

(Highlighted by me)

8. We have given our anxious consideration on submissions made by both the parties and are of the considered opinion that the applicant was suffering from '**Moderate Depressive Episode**' prior to joining the service, hence it is NANA by military service. The disease was detected within a short span of time of his enrolment i.e. within three months after enrolment. We agree with the opinion of the IMB that the disease is unconnected with

service and that all psychiatric disorders cannot be detected at the time of Recruit Medical Board.

9. In view of the above, the O.A. is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

No order as to costs.

**(Air Marshal BBP Sinha)**  
**Member (A)**

Dated : April, 2019

gsr

**(Justice SVS Rathore)**  
**Member (J)**