

COURT NO 1
RESERVED

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

ORIGINAL APPLICATION No. 559 of 2018

Tuesday, this the 2nd day of April, 2019

“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal BBP Sinha, Member (A)”

IC No 45027-K Lt Col Manmohan Bisht (Retd) S/O Col SS Bisht, R/O Flat No 83/9102N, Celebrity Meados, Shushant Lok Golf City, Lucknow-30.

.....Applicant

Ld. Counsel for the : **Shri Parijaat Belaura**, Advocate.
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi.
2. Addl Dte Gen Personnel Services, Adjutants General’s Branch, Integrated Head Quarters, Ministry of Defence (Army), Room No 11, Plot No 108 (West), Barassey Avenue, Church Road, New Delhi-110001.
3. AG’s Branch/MP-6 (B), IHQ of MoD (Army), West Block III, RK Puram, New Delhi.
4. The Principal Controller of Defence Account (Pension), Draupadi Ghat, Allahabad (UP).

.....Respondents

Ld. Counsel for the
Respondents.

:**Shri Sunil Sharma**,
Central Govt Counsel

ORDER

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

1. The instant Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs.

(i) To set aside order dated 31.07.2017 (Anx 1) and order dated 14.03.2016 as it relates to partially rejection of applicant’s first appeal dated 02 Apr 2015 with regards to four disease (No-1 CAD, No-2 Primary Hypertension, No-3 Obesity and No-4 Diabetes Mellitus Type-II) out of five diseases.

(ii) To grant disability pension @ 80% and round of the same to 100% giving the benefit of Govt of India, Min of Def letter dated 31.01.2001, w.e.f. date of discharge of applicant i.e. 01.09.2014.

(iii) To pay arrear of disability pension along with 12% interest from the date of his discharge i.e. 01.09.2014 till it is actually paid.

(iv) Any other suitable relief this Hon’ble Court deems fit and proper may also be granted.

2. At the very outset it may be observed that the petition for grant of disability pension was preferred by the applicant with delay of 02 months and 14 days. Since payment of pension involves recurring cause of action, as such, the delay was condoned vide order dated 26.11.2018.

3. The brief facts of the case are that the applicant was commissioned in the Indian Army on 26.08.1982 and had retired from service with effect from 31.08.2014 in low medical category S1H1A1P2E1 for the disabilities (i) Schizophrenia @ 30% (ii) CAD IWMI DVD-PICA to LCX @ 30% (iii) Primary Hypertension @ 30% (iv) Obesity @ 1-

5% and (v) Diabetes Mellitus-II @ 30%. The Release Medical Board (RMB) held on 28.02.2014 viewed applicant's all five disabilities as neither attributable to nor aggravated by military service (NANA). Thereafter the applicant appealed against the rejection of his disability pension. Based on his first appeal he was examined again by a First Appeal Medical Board in December 2015. This Medical Board reviewed the disabilities of the applicant and conceded his first disability 'Schizophrenia' to be attributable to military service @ 40% for life. For other four disabilities they agreed with the original opinion of RMB i.e. NANA. The officer is in receipt of disability pension for the disability Schizophrenia @ 40%. However, subsequently the applicant has preferred second appeal to grant him disability pension for the other four disabilities. The second appeal was rejected vide order dated 31.07.2017. Hence this O.A.

4. Learned Counsel for the applicant submitted that at the time of commission, the applicant was examined by the Medical Board and was found medically and physically fit for a service in the Indian Army and there is no note, whatsoever, in his service documents that he was suffering from any disease at the time of entry in service. Ld. Counsel for the applicant further submitted that the

applicant was first detected to be suffering from 'Schizophrenia' w.e.f. March 2000, CAD-IWMI-DVD-PTCA to LCX w.e.f. April 2005, Primary Hypertension w.e.f. August 2010, Obesity w.e.f. August 2010 and Diabetes Mellitus Type-II w.e.f. September 2011. The Ld. Counsel for the applicant further submitted that since the above disabilities have taken place while on military duty, these should have been either attributable to or aggravated by military service and the applicant should be granted disability pension. He further contended that the Appellate Medical Board has considered composite disability for all the disabilities @ 80% for life, therefore the applicant should be granted disability pension for the balance four disabilities and his disability should be rounded off to 100% in terms of **Ram Avtar & Others**.

5. Per contra, Ld. Counsel for the respondents has conceded that the Appellate Medical Board has assessed applicant's disability 'Schizophrenia' @ 40% for life as attributable to military service, therefore he is entitled to disability pension 40% for life rounded off to 50% for life in terms of policy letter dated 05.09.2017 w.e.f 01.01.2016. He however, pleaded that the applicant is not eligible for disability pension for other four diseases as the same has been rejected as NANA by the RMB, First Appeal

and the Second Appeal. He pleaded for O.A. to be dismissed.

6. Heard Shri Parijaat Belaura, Ld. Counsel for the applicant and Shri Sunil Sharma, Ld. Counsel for the respondents and perused the records. We have perused the Appellate Medical Board proceedings.

7. From the facts and circumstances of the case we find that the Appellate Medical Board conducted on 21.12.2015 at Base Hospital, Delhi Cantt has assessed the applicant's first disability i.e. Schizophrenia @ 40% for life attributable to military service whereas other disabilities mentioned at serial No (ii) to (v) have been found as neither attributable to nor aggravated by military service. We have also noted that while examining the opinion of RMB, the First Appeal Medical Board has opined that though there is evidence of genetic loading of Schizophrenia in the family of the applicant i.e. his younger brother is suffering from same disease, however they have given him benefit of doubt and declared the disease as attributable to military service. We have gone through the reasons given in the RMB and Appeal Medical Board to declare other four diseases of the applicant as NANA and we have also gone through medical literature which makes it very clear that patients who suffer from

Schizophrenia have serious mental limitations and usually fail to take care of themselves and take medicines in time. Therefore, we go by the opinion of Appellate Medical Board and consider Schizophrenia as attributable to military service @ 40% for life and all other diseases of the applicant as NANA. The disability Schizophrenia @ 40% for life shall stand rounded off to 50% for life in terms of Hon'ble Apex Court judgment in the case of ***Union of India and Ors vs Ram Avtar & Ors*** (Civil Appeal No. 418 of 2012 dated 10th December 2014).

8. Thus in the result, the Original Application is **Partly allowed**. The applicant is held entitled to disability pension @ 40% for life which would stand rounded off to 50% for life w.e.f. his date of discharge i.e. 31.08.2014. However due to law of limitations the arrears of rounding off of disability element are restricted to three years before filing this O.A. The date of filing this O.A. is 10.04.2018. The respondents are directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 9% per annum.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

Dated: April, 2019

gsr

(Justice S.V.S. Rathore)
Member (J)