

Reserved
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION NO. 550 of 2018

Wednesday, this the 3rd day of April, 2019

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

No 14393904Y Ex Gnr Brij Kishor Pandey, S/o Late Shri Shiv Ram Pandey, Village- Daulatpur, Post – Bajhera (Bewar), Dist – Mainpuri (U.P.) PIN – 205301.

....Applicant

Ld. Counsel for the applicant: **Shri Rohitash Kumar Sharma,**
Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, DHQ PO, New Delhi - 110011.
2. The Chief of the Army Staff, Integrated HQ of Ministry of Defence (Army), DHQ PO, New Delhi – 110011.
3. Additional Director General, Personnel Services (PS-4), Integrated HQ of Ministry of Defence (Army) DHQ PO, New Delhi – 110011.
4. Vayu Raksha Topkhana Abhilekh, Air Defence Artillery Records, Nasik Road Camp – 422401.
5. Controller Defence Account, (Pension), Draupadi Ghat, Allahabad, U.P.).

.....Respondents

Ld. Counsel for the: **Dr Chet Narain Singh,**
Respondents. Central Govt. Counsel.

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

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has claimed following reliefs:-

- “ (a) Call for records including the Invalid Medical Board Proceedings.*
- (b) Quash the order dated 05.07.2001, 01.08.1995, 20.11.1991 and 14.11.1991 of respondents rejecting the appeal of the applicant dated 14.12.1995 for grant of disability pension as well as finding of medical board by which the disability of the applicant has been found to be not attributable or aggravated by military service.*
- (c) Issue directions to respondents to conduct Review Medical Board or grant disability pension to the applicant w.e.f. 27.02.1991 and arrears to be paid along with interest of 18 percent in a time bound manner.*
- (d) Issue such other order/direction as may be deemed appropriate in the facts and circumstances of the case.”*

2. The undisputed factual matrix on record is that the applicant joined the Army on 04.12.1985 and was discharged from service on 26.02.1991. He was placed in low medical category for disability **“Affective Psychosis MDP (Manic Phase)”** prior to his release from service. His disability was assessed by Invalid Medical Board (IMB) @ 15-19% for two

years and opined as neither attributable to nor aggravated by Military Service (NANA). His claim for grant of disability pension was rejected by the respondents vide letter dated 14.11.1991. The applicant preferred First Appeal against the rejection of disability pension claim which was also rejected vide order dated 27.02.1998. Being aggrieved, the applicant has approached this Tribunal for grant of disability pension by means of present O.A.

3. Learned counsel for the applicant pleaded that since the applicant was enrolled in a medically fit condition and was discharged in low medical category and there is no note in the service documents that he was suffering from any disease at the time of entry into service, his disability should be considered as attributable to and aggravated by Military Service and the applicant should be granted disability pension.

4. **Per Contra**, learned counsel for the respondents submitted that the Medical Board considered the disability of the applicant @ 15-19% for two years and disability was found neither attributable to nor aggravated by Military Service. Paragraph 173 of Pension Regulations 1961 (Part-1) clearly states that pension may be granted to an individual who is invalided out from service on account of disability, which is attributable to or aggravated by military service and percentage

of disablement is assessed as 20% or above. Since his disability was considered @ 15-19% for two years and was found neither attributable to nor aggravated by Military Service, hence his claim for grant of disability pension has correctly been rejected. He prayed for Original Application to be dismissed.

5. We have heard learned counsel for the parties and perused the record.

6. The proposition of law with regard to attributability has already been settled by the Hon'ble Supreme Court and is no more a *res integra*. On careful perusal of IMB, we find that the reason for declaring the disability of the applicant as NANA was that the medical board had opined that the disease of the applicant is due to constitutional disorder and not connected with service. We do not find this cryptic explanation to be satisfactory. The applicant was posted in Srilanka in Operation 'OP PAWAN'. In this posting of over one year, the applicant was exposed to combat stress with exposure to death & frequent casualties. After over one year of tenure in Srilanka, the applicant came back to India in February 1989 and within a short span of 15 months i.e. in June 1990, his symptoms of abnormal behaviour became evident. Thus we find that this short and crisp statement of IMB that disease is constitutional in

nature and is not connected to service does not reflect the complete truth. In this background the possibility of his disability being aggravated due to involvement in counter insurgency operation at Srilanka due to the related stress and strains of military duty can't be ruled out. . Hence we would like to give benefit of doubt to the applicant in terms of the law settled by Hon'ble Supreme Court in terms of judgment of ***Dharamvir Singh vs. Union of India and others***, reported in (2013)7 SCC 316 and ***Sukhvinder Singh Vs. Union of India***, reported in (2014) STPL (WEB) 468 SC,. Thus considering all issues we are of the opinion that the disability of the applicant i.e. "Affective Psychosis MDP (Manic Phase)" should be considered as aggravated by Military Service.

7. We have noted that the IMB has assessed the composite disability as 15-19% for two years. In this case also, the law is well settled by Apex Court in the case of ***Sukhvinder Singh*** (supra) that the minimum disability for invalidation has to be 20%. Relevant portion of judgment is reproduced as under:-

"9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the

morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Thirdly, there appears to be no provisions authorizing the discharge or invaliding out of service where the disability is below twenty per cent and seems to us to be logically so. Fourthly, wherever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent. Fifthly, as per the extent Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension.”

Thus in view of the law settled by Apex Court, the disability of the applicant is deemed to be 20% and aggravated by military service.

8. Keeping in view the judgment of **Veer Pal Singh vs Ministry of Defence**, reported in (2013) 8 SCC 83, we feel that the case of the applicant should be recommended for Re-survey Medical Board to reassess further entitlement of disability pension, if any.

9. However we would like to clarify that disability pension consists of two elements i.e. service element and disability element. Thus due to law of limitations, the applicant will not be entitled to any arrears as his disability element, however he will be entitled to arrears of service element from three years before filing this Original Application.

10. In view of the above the Original Application deserves to be partly allowed.

11. Accordingly the O.A. is **partly allowed**. The disability of the applicant i.e. **“Affective Psychosis MDP (Manic Phase)”** @ 20% for two years, is to be considered as aggravated by military service. The impugned orders passed by the respondents are set aside. Due to law of limitations the applicant will not be eligible for any arrears of disability element. However he is eligible to receive service element arrears from three years prior to his filing of this Original Application. The date of filing this Original Application is 15.05.2018. The respondents are further directed to refer the applicant’s case for Re-survey Medical Board to determine further entitlement of disability element. The respondents are 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 intake interest @ 9% till actual date of payment.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

Date: April 2019
Ukt/-

(Justice SVS Rathore)
Member (J)