

**Reserved**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW  
(CIRCUIT BENCH, NAINITAL)**

**ORIGINAL APPLICATION No 341 of 2018**

Thursday, this the 02<sup>nd</sup> day of August, 2018

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

No. 4072209 Ex Rfn 14 Garhwal Rif Sunil Kumar son of Shri D.S. Rawat resident of House NO. 77/2 Vijay Colony, Post Office Hathibarkula, District Dehradun.

...Applicant

Counsel for the applicant: **Shri Mangal Singh Chauhan**, Advocate

Versus

1. Union of India through its Secretary, Ministry of Defence, New Delhi.
2. The Chief Controller (Defence Accounts) Pension, Allahabad, (U.P.)
3. The Chief of Army Staff, Army Head Quarters, New Delhi.
4. Record Officer, Garhwal Rifles Regiment Centre, Lansdowne, U.K.-246155.

.... Respondents

Ld. Counsel for the Respondents : **Dr. Chet Narayan Singh**,  
Central Government Counsel

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

1. By means of the present O.A. the applicant has approached this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 for grant of disability pension.

2. Shorn of details, the facts emerging from the record are that that applicant was enrolled in the Indian Army as Sepoy on 12.08.1989. On completion of training, he was posted to 14 Garhwal Rifles. While serving with the Unit, the applicant was admitted to 154 General Hospital on 29.01.1993 and was diagnosed suffering from **FIT (INV) 345**. The applicant was brought before Medical Board which downgraded his Medical Category **CEE (Physical)**. The applicant in view of his willingness certificate was permitted to continue to serve in low medical category subject to availability of sheltered appointment. Since sheltered appointment was not available in 14 Garhwal Rifles, therefore, he was discharged from service on 28.02.1995 under Rule 13 (3) iii (v) of the Army Rules, 1954. Before discharge he was subjected to Release Medical Board (RMB) held on 28.01.1995. The Release Medical Board assessed his disability @ less than 20% (15-19%) for two years and opined the disability to be “neither attributable to nor aggravated by military service” (NANA).

3. Claim for disability pension was forwarded to the PCDA (P), Allahabad which was rejected on 12.09.1996. The appeal preferred by the applicant was also rejected vide order dated 16.12.1999. Hence this O.A.

4. Since the issue of payment of pension involves recurring cause of action, as such, the delay in preferring the O.A. was condoned vide order dated 31.07.2018.

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

6. For adjudication of the controversy involved in the instant case, we need to address two issues; firstly, is the disability attributable to service or not; and secondly, if found to be attributable to, can the benefit of rounding off be extended to the applicant? The provisions of Pension Regulations for the Army, 1961 (Part-1) and the Entitlement Rules for Casualty Pension Award, 1982 are relevant and the same are excerpted herein below;

(a) Pension Regulations for the Army 1961 (Part I)

*Para 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 at 20 percent or over.*

*The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II."*

(b) Entitlement Rules for Casualty Pension Award, 1982

*"5. The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions:-*

Prior to and During Service.

- (a) *A member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance.*
- (b) *In the event of his subsequently being discharged from service on medical grounds any deterioration in his health which has taken place is due to service.*  
Onus of Proof.

9. *The claimant shall not be called upon to prove the conditions of entitlement. He/she will be given more liberally to the claimants in field/afloat service cases.*

Diseases

14. *In respect of diseases, the following rule will be observed:-*

- (a) *cases.....*
- (b) *a disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service, if no note of it was made at the time of the individual's acceptance for military service. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.*

7. The law on the point of attributability of the disability is no more RES INTEGRA in view of a catena of decisions on the subject. With regard to payment of disability pension, their Lordships of Hon'ble Supreme Court have held that Army personnel shall be presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance and in the event of his being discharged from service on medical grounds, any deterioration in his health, which may have taken place, shall be presumed due to service conditions. In the case of ***Sukhvinder Singh Vs Union of India and Ors*** reported

in 2014 STPL (WEB) 468 SC their Lordships have held 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 extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension.**”*

8. In the counter affidavit the respondents have averred that the Release Medical Board had considered the disability was neither attributable to nor aggravated by Military service (NANA). The Medical Board, copy of which has been filed as Annexure-5 to the counter affidavit, reveals that the Medical Board had opined that the disability occurred when the individual (applicant) was serving in Operational Area. Thus, the symptoms of disease may be held to be result of stress strain of military service and can trigger the disease suffered by the applicant. The bald explanation given in Release Medical Board is one line cryptic statement ‘this is a constitutional disease’. This cryptic statement would not suffice to explain as to how a fit soldier with service of approximately six years developed this disease. Hence we would like to give benefit of doubt to the soldier. Thus, in view of the above judgment and

settled law on the point, we are of the considered opinion that the disability of the soldier is attributable to military service.

9. Admittedly, the benefit of rounding off of disability pension came into force with effect from 01.01.1996; as such the applicant is not entitled to the benefit of rounding off of disability pension from the date of discharge but he is entitled to rounding off to 50% w.e.f. 01.01.1996.

10. In view of the discussion held above, this OA deserves to be allowed and is hereby **allowed**. The impugned orders are hereby set aside. Since the Release Medical Board has assessed the disability @ 15-19%, in the circumstances of the case, and the settled legal position on the matter we treat it to be @ 20%. The respondents are directed to grant disability pension to the applicant at the rate of 20% for two years from the date of discharge i.e. 28.02.1995. However, w.e.f. 01.01.1996 the disability of 20% shall be rounded off to 50%. The respondents are also directed to conduct Re-Survey Medical Board for re-assessing the present medical condition of the applicant. Future entitlement of disability pension shall be subject to the outcome of Re-Survey Medical Board. The respondents shall comply with the order within four months from the date of receipt of a certified copy of this order, failing which the respondents shall be liable to pay interest at the rate of 9% per annum to the applicant on the amount accrued till the date of actual payment.

No order as to cost.

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

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

Dated : Aug, 2018  
anb