

**COURT NO 1**  
**RESERVED**

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

**ORIGINAL APPLICATION No 612 of 2017**

Tuesday, this the 28<sup>th</sup> day of August, 2018

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

No. 14332230W Ex-Gnr (OFC) CK Shrivastava, S/O Shri Brij Lal Shrivastava, resident of House No 631/550 Ismileganj Faizabad Road, Lucknow, Pin-226025.

...Applicant

Counsel for the applicant: **Shri Thakur Balram Ji Srivastava,**  
Advocate.

Versus

1. Union of India through Defence Secretary, Ministry of Defence, DHQ, PO-New Delhi-110011.
2. Chief of Army Staff, IHQ of MoD (Army), South Block, DHQ, PO-New Delhi-110011.
3. Commanding Officer 204 Div Locating Battery, C/O 56 APO.
4. Director General Armed Forces Medical Services, IHQ of MoD (Army), Sena Bhavan, DHQ, PO-Rajaji Marg, New Delhi-110011.

.... Respondents

Ld. Counsel for the Respondents : **Shri Amit Jaiswal,**  
Central Government Counsel

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

1. The present Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007. The applicant has prayed:-

(a) That the letter of Arty Record bearing number 14432230/LC/2/NE-5 (C) dated 30 June 2017, (Annexure-A-1) with its contents for rejection of the disability pension be ordered to be cancelled.

(b) That the applicant be granted 100% service element as his disability pension on Invalidment with effect from 12 February 1981.

(c) That an order be passed to Arty Records Nasik Road Camp to prepare and despatch the details of the salary and allowances last admissible to the applicant for preparation and issue of the PPO by PCDA (Pension) Allahabad to the Bank Account of the Applicant through the Defence Pension Disbursement Officer Government Treasury Officer Lucknow at the earliest.

(d) That an order be passed to revise the disability pension as per Government Order on One Rank One pension basis as per the notification of the Ministry of Defence.

(e) To award the costs of the petition in favour of the petitioner.

2. Brief facts of the case are that the applicant was enrolled in the Indian Army (Regiment of Artillery) on 02.03.1978. After due training, he was posted to 204 Division Locating Battery as OFC (Operator Fire Controller). In the year 1980 the applicant’s unit moved to operational area in J&K. While serving in the unit he fell sick and he was sent to 22 Field Hospital which referred him to 166 Military Hospital (MH) on 03.10.1980 for treatment. The applicant was frequently treated at various Military Hospitals including Army Hospital, Delhi Cantt. He was finally diagnosed to

be suffering from “**(RT) Focal Seizure (IMB)-V-67**” and invalided out of service on 11.02.1981 (AN) in low medical category in terms of Rule 13 (3) item III (iii) of Army Rules, 1954. Prior to his release, he was brought before an Invaliding Medical Board held at 166 MH on 13.01.1981 to assess the cause, nature and degree of disablement. The duly constituted Invaliding Medical Board regarded his disability as idiopathic in nature and the disability was assessed at 15-19% for two years neither attributable to nor aggravated by military service. Claim for grant of disability pension was rejected by PCDA (P) Allahabad vide order dated 30.04.1981 stating that the disability is neither attributable to nor aggravated by Military Service (NANA).

3. Ld. Counsel for the applicant vehemently prayed for grant of disability pension on the grounds that the applicant had joined his service in a medically fit state and was invalided out in a low medical category. Hence his disability should be considered as attributable to military service. Ld. Counsel pleaded that the applicant was fully fit during training and thereafter the disease was first started on 03.10.1980 i.e. 02 years 07 months after his enrolment when he was serving in an operational area in J&K. Since the applicant was exposed to various military related situations and activities therefore this disease is attributable to military service and hence the applicant should be granted disability pension.

4. Ld. Counsel for the respondents submitted that the applicant was invalided out of service after rendering about three years of

service due to his disability “(RT) Focal Seizure (INB) V-67”. The IMB assessed his disability @ 15-19% for two years opining that the same is neither attributable to nor aggravated by military service. It has also been pleaded that the PCDA (P) Allahabad upheld the recommendations of IMB and rejected the disability pension claim. Accordingly the Ld. Counsel concluded by stating that the applicant is not entitled to disability pension as per existing Pension Regulations on the subject.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also perused the relevant material on record. The only ground put forth by the respondents for denial of disability pension is that his disability is less than 20% and that it has been opined to be neither attributable to nor aggravated by military service by Invaliding Medical Board.

6. The law on attributability of a disability has already been well settled by the Hon’ble Supreme Court in the case of ***Dharamvir Singh Vs. Union of India and Ors*** reported in (2013) 7 Supreme Court Cases 316. In this case the Apex Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words:-

*"29.1. Disability pension to be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable to or aggravated by military service to be*

*determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).*

*29.2. 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 [Rule 5 read with Rule 14(b)].*

*29.3. The onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).*

*29.4. If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service [Rule 14(c)]. [pic]*

*29.5. If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service [Rule 14(b)].*

*29.6. If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons [Rule 14(b)]; and 29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 - "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."*

7. The above judgment has been constantly followed and further explored by the Supreme Court in **Union of India and others v. Rajbir Singh** (CA No. 2904 of 2011 decided on

13.2.2015); **Union of India and others v. Manjit Singh** (CA No. 4357-58 of 2015 (arising out of SLP ( C) No. 13732-33 of 2015) decided on 12.5.2015; **Union of India v. Angad Singh** (CA No. 2208 of 2011 decided on 24.2.2015); **KJS Butter v. Union of India** (CA No. 5591 of 2006 decided on 31.3.2011; **Ex. Hav Mani Ram Bharia v. Union of India and others**, Civil Appeal No. 4409 of 2011 decided on 11.2.2016; **Satwinder Singh v. Union of India** (O.A. 621 of 2014), **Bharat Kumar Vs UOI & Ors.**(O.A. 1235 of 2014), and also in a very recent judgment of Hon'ble Apex Court in the case of **Ex 6 GNR Laxman Ram Poonia vs. Union of India** (2017) 4 SCC 697.

8. When we look at the applicant's case of disability in light of the above order, we find that the reasons given by IMB for the disability being NANA is very cryptic and lacks logic and rationality i.e. "Disease is idiopathic in nature". Basically in medical terms this expression means that the cause of disease is unknown. Thus in the totality of circumstances we do not consider it as an adequate ground to deny attributability of the disease to the applicant particularly in light of the fact that the applicant was serving in an operational in J&K when the disease first started.. Hence we give benefit of doubt to the applicant and consider this disease as attributable to military service.

9. The next point is that invalidation should not be done for a disability percentage which is below 20%. In this case applicant's disability was 15-19%. The law on this aspect has been well settled by the Hon'ble Supreme Court in the case of **Sukhwinder**

**Singh vs Union of India & Ors** reported in (2014) STPL (WEB)

468 SC. The relevant portion of judgment is as follows:-

*“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.**”*

In light of above judgment we hold that the disability percentage of the applicant shall be deemed to be 20% for two years from the date of his discharge. However, since the benefit of rounding off of disability is effective only from 01.01.1996 hence the applicant will not be entitled to rounding off for these two years of disability pension.

10. In view of the discussion held above, this O.A. deserves to be allowed and is hereby **allowed**. The impugned orders are set aside. Since the Invaliding Medical Board had 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 element of disability

pension to the applicant at the rate of 20% for two years after his discharge i.e. w.e.f. 12.02.1981. 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 element of disability pension shall be subject to the outcome of Re-Survey Medical Board. The applicant will be entitled to service element of disability pension w.e.f. his date of discharge. However the arrears of service element of disability pension will be restricted to three years before filing this O.A. The date of filing of this O.A. is 28.09.2017. 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 costs.

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

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

Dated : 28 August, 2018  
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