

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BENCH AT NAINITAL)****ORIGINAL APPLICATION No. 433 of 2018**Friday, this the 16th day of August, 2019**“Hon’ble Mr. Justice Virender Singh, Chairperson
Hon’ble Air Marshal B.B.P. Sinha, Member (A)”**Ex. LRO Jagat Singh (No. 167457) son of late Sri Nathu Singh,
Village and Post Office – Selakui, District Dehradun, Uttarakhand,
Pin-248197.

..... Applicant

Ld. Counsel for the : **Shri Lalit Kumar**, Advocate.
Applicant

Versus

1. Union of India through Secretary, Ministry of defence, South Block, New Delhi-110011.
2. Chief of Naval Staff (for PDPA), Integrated Headquarters of MOD (Navy), New Delhi-110011.
3. Officer-in-Charge (NAVPEN), Naval Pension Office, C/o INS Tanaji, Sion – Trombay road, Mankhurd, Mumbai-400088.
4. Principal Controller of Defence Accounts (Pensions), Draupadi Ghat, Allahabad (U.P.).

.....**Respondents**Ld. Counsel for the : **Shri Neeraj Upreti**,
Respondents. Central Govt. Counsel

ORDER

“Per Hon’ble Air Marshal B.B.P. Sinha, Member (A)”

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

- (i) to direct the respondents to pay the disability element of the disability pension to the applicant at 30% to be rounded off to 50% from 8th February 2018 till life.*
- (ii) to award the interest @12% p.a. on the arrears that will become payable to the applicant, from 8th February 2018 till actual payment of the same.*
- (iii) to grant any other relief which the Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case.*

2. Briefly stated facts of the case are that the applicant was enrolled in the Indian Navy on 04.05.1987 and was discharged on 31.05.2002 in Low Medical Category on fulfilling the conditions of his enrolment. At the time of retirement from service, the Release Medical Board (RMB) held at the time of discharge assessed his disability ‘**SEIZURE DISORDER ICD 345**’ @ 30% for two years and opined the disability to be neither attributable to nor aggravated (NANA) by service. The applicant approached the respondents for grant of disability pension but the same was rejected by the respondents. Feeling aggrieved by the rejection order the applicant had filed Writ Petition before the Hon’ble High Court of Utrakhhand at Nainital which was transferred to this

Tribunal and was renumbered as T.A. No. 11 of 2013 (Navy). The said T.A. No. 11 of 2013 was allowed vide order dated 15.10.2014 and it was held that the applicant is entitled to disability pension @30% for two years from the date of discharge, as recommended by Release Medical Board. The respondents were also directed to refer the case to Re-Survey Medical Board for re-assessing the medical condition of the applicant for further entitlement of the disability pension, if any. In compliance of order dated 15.10.2014 passed by this Tribunal, the applicant was granted disability pension for two years from the date of his discharge and accordingly P.O.O. dated 20.08.2015 was issued. Further, the Re-Survey Medical Board (RSMB) was held on 08.02.2018 at Command Hospital, Lucknow. The RSMB assessed his disability '**SEIZURE DISORDER**' @ 30% for life and opined the disability benefit to be NIL for life. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. The disease of the applicant was contacted during the service, hence, Armed Forces Tribunal, Regional Bench, Lucknow vide its order dated 15.10.2014 had set aside the order to reject disability pension and granted disability pension @30% for two

years from the date of discharge. The Tribunal had further directed the respondents to refer the applicant for Re-Survey Medical Board for re-assessing further entitlement to disability pension. In this context he further submitted that firstly the respondents have not honoured the order of the Tribunal and taken over 04 years to conduct Re-Survey Medical Board and secondly after determining the disability of the applicant @30% for life, they have practically overruled the earlier Tribunal's order of granting disability pension to the applicant by annotating that it is a NANA case and not eligible for disability pension for life. He vehemently pleaded for correction of the gross injustice committed by the respondents and requested for grant of disability pension to the applicant.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant @30% for life has been regarded as due to non service factors by the RSMB, hence applicant is not entitled to disability pension after RSMB. He pleaded for dismissal of the Original Application.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the previous order of the Tribunal and the RSMB proceedings. In this case the disability of the applicant had been assessed as 30% for two years after his discharge from service on 01.06.2002 and the disease was opined by RMB to be NANA. This was overturned by the order of Armed Forces Tribunal, Regional Bench, Lucknow vide

its order dated 15.10.2014. Further, as a follow-up of the Tribunal order as above, an RSMB of the applicant was conducted on 08.02.2018. In this RSMB the disability '**SEIZURE DISORDER**' has been assessed @30% for life but it has been declared as NANA for life. Hence, the only question we have to answer is as to whether the RSMB has a right to overturn a judicial order of attributability and grant of disability pension, by declaring the disability as NANA in a follow-up RSMB?

6. After considering all issues and the Law already settled on this matter by the Hon'ble Supreme Court of India in the case of ***Dharamvir Singh Versus Union of India & Others***, reported in (2013) 7 Supreme Court Cases 316, we find it strange that a judicial order based on a settled law as decided by Hon'ble Supreme Court has been attempted to be overturned by the respondents. We take a dim view of this matter and once again declare the disease of the applicant i.e. '**SEIZURE DISORDER**' @ 30% for life as attributable to military service. The respondents have not only delayed the implementation of the Armed Forces Tribunal, Regional Bench, Lucknow order dated 15.10.2014 but have unnecessarily forced the applicant into a second round of litigation which was totally avoidable. For this act of respondents, they need to pay compensation to the applicant.

7. The law on the point of rounding off of disability pension is no more RES INTEGRA in view of Hon'ble Supreme Court judgment in the case of ***Union of India and Ors vs Ram Avtar & ors*** (Civil appeal No 418 of 2012 decided on 10th December 2014). In this Judgment the Hon'ble Apex Court nodded in disapproval of the policy of the Government of India in granting the benefit of rounding off of disability pension only to the personnel who have been invalided out of service and denying the same to the personnel who have retired on attaining the age of superannuation or on completion of their tenure of engagement. As such, in view of the law settled by the of Hon'ble Supreme Court we are of the considered view that the applicant is entitled to the benefit of rounding off of disability pension from @ 30% for life to 50% for life.

8. In view of the above, the **Original Application No. 433 of 2018** deserves to be allowed, hence **allowed**. The applicant's disability '**SEIZURE DISORDER**' @ 30% for life is to be considered as attributable to military service. The respondents are directed to grant disability element to the applicant @30% for life which would stand rounded off to 50% for life from the date of RSMB i.e. 08.02.2018. Additionally, the respondents are directed to pay a cost of Rs.50,000/- (Rupees Fifty Thousand only) to the applicant for unnecessary forcing him into a second round of litigation in this matter. 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 till actual payment.

No order as to costs.

(Air Marshal B.B.P. Sinha)
Member (A)

(Justice Virender Singh)
Chairperson

Dated: 16 August, 2019

AKD/-