

**Court No. 1**

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

**ORIGINAL APPLICATION No. 195 of 2019**

Friday, this the 18<sup>th</sup> day of December, 2020

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 2872749N Ex. Rflman Hakim Singh, S/o Sri Nathi Singh, R/o Si Nathi Singh, R/o Village Kharba, PO Raya, District Mathura, (UP).

..... Applicant

Ld. Counsel for the Applicant : **Shri K.K. Misra**, Advocate.

Versus

1. Union of India, through its Secretary, Ministry of Defence, New Delhi.
2. The Chief of Army Staff, South Block New Delhi.
3. Officer-in-Charge, Records, Rajputana Rifles, Delhi Cantt.
4. PCDA (Pension), Allahabad.

.....**Respondents**

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

## ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

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

- (i) to quash CDA (P) Allahabad, letter No G3/83/1005/VI dt 28.11.84 (Annexure A-3 to OA).*
- (ii) Direct the respondents to grant 20% disability pension to the applicant duly rounded of to 50% as per the policy on the subject w.e.f. date of discharge from the service 01 Sep 1983.*
- (iii) Any other relief which Hon’ble Court may think just and proper may be granted in favour of the applicant.*
- (iv) Cost of the case may be allowed.*

2. Briefly stated facts of the case are that applicant was enrolled in the Indian Army on 01.02.1978 and was invalided out from service with effect from 01.09.1983 in Low Medical Category under Rule 13 (3) Item III (v) of the Army Rules, 1954 after rendering 05 years and 213 days of service. At the time of intalidment from service, the Invaliding Medical Board (RMB) held on 09.08.1983 assessed his disability ‘**GENERILISED SEIZURES (345)**’ @ 20% 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 vide letter dated 28.11.1984. The applicant preferred representations dated 13.11.2014, 09.03.2015 and 07.09.2017 but of no avail. 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 it is attributable to and aggravated by Military Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension as well as arrears thereof, as such the applicant is entitled to disability pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant @ 20% for life has been regarded as NANA by the IMB, hence applicant is not entitled to disability pension. 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

Release Medical Board proceedings as well as the records. The questions which needs to be answered are of two fold :-

- (a) Whether the disability of the applicant is attributable to or aggravated by Military Service?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability pension?

6. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Versus Union of India & Others***, 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. In view of the settled position of law on attributability, we find that the IMB has denied attributability to the applicant only by endorsing that the disability '**GENERALISED SEIZURES (345)**' is neither attributable to nor aggravated (NANA) by service without endorsing any reason. The applicant was enrolled in Indian Army on 01.02.1978 and the disability has started after more than three years of Army service i.e. on 11.06.1981. We are therefore of the considered opinion that the benefit of doubt in these circumstances

should be given to the applicant in view of ***Dharamvir Singh vs Union of India & Ors*** (supra) and the disability of the applicant should be considered as aggravated by military service, as such the applicant is entitled for the disability pension for two years from the date of his discharge i.e. with effect from 01.09.1983.

8. As for as the benefit of Broad Banding is concerned, since benefit of broad banding has been extended w.e.f. 01.01.1996, hence, prima facie the applicant is not entitled to broad banding for the period in question i.e. two years from 01.9.1983.

9. Since the applicant's IMB was valid for two years w.e.f. 01.01.1983, hence, the respondents will now have to conduct a fresh RSMB for him.

10. In view of the above, the Original Application No. **195 of 2019** deserves to be allowed, hence **allowed**. The impugned order dated 28.11.1984, annexed as Annexure No. 1 of the Original Application, is set aside. The disability of the applicant is held as aggravated by Army Service. The applicant is held to be entitled to disability pension @20% for two years from the date of his discharge i.e. 01.09.1983. The respondents are further directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement of disability pension. Respondents are directed to give effect to the order within four months from the date of receipt of a certified copy of this order failing which the

respondents shall have to pay interest @ 8% per annum till the date of actual payment.

11. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)  
Member (A) Member (J)  
Dated : 18 December, 2020

AKD/-