

RESERVED
COURT NO 1

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

ORIGINAL APPLICATION No. 123 OF 2018

Monday, this the 18th day of February 2019

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

Ex Rect Krishna Kumar S TC-55/155, Kuttikkadu Veedue Kaimanam, Pappanacode-PO Trivandrum, District-Kerala State, Pin-695018, presently residing at Post/P.S. Mahanagar, Rahimnagar Naibasti, Lucknow, U.P.

.....Applicant

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

Versus

1. Union of India through Army Chief Sena Bhawan, New Delhi.
2. Additional Director General Personnel Service/AG's Branch, IHQ of Min of Defence (Army), C/O 56 APO, PIN-900256.
3. Commanding Officer/Office Record Madras Regt Abhilekh Karyalay C/O 56 APO, PIN-900458.
4. Chief of Office PCDA Pension Dropadi Ghat, Allahabad, U.P.

.....Respondents

Ld. Counsel for the : **Shri Anurag Mishra**,
Respondents. Central Govt Counsel.

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

1. Being aggrieved by denial of disability pension, the applicant has filed the present Original Application under Section 14 of the Armed Forces Tribunal Act, 2007 wherein he has sought the following reliefs:-

(i) Hon’ble Court may kindly be please to quash the order dated 09 November 2015 second appeal rejected by opposite party for claim of disability pension is neither attributable nor aggravated by military service of the applicant as contained in Annexure No 1 with O.A.

(ii) Hon’ble Court may kindly be pleased to provide disability pension to the applicant which has arises during army service as observed by the medical authority for the disease SEIZURE DISORDER 395 during service of the applicant.

(iii) Issue a direction to the opposite party by the Hon’ble Court for consideration of disability pension in favour of the applicant for the disease SEIZURE disorder 395 which has not been properly treatment provided by the medical authority at Wallington hospital, Puna before discharge on medical category to the applicant.

(iv) To pass any other such order which this Hon’ble Tribunal may deem fit in the fact of the present case.

(v) Allow the present original application with cost.

2. Brief facts of the case are that the applicant was enrolled in the Madras Regiment of Indian Army on 03.04.2001 and invalided out of service w.e.f. 27.11.2001 in low medical category having rendered 07 months and 24 days of service due to “SEIZURE DISORDER 345”. The IMB of the applicant was held on 23.10.2001 at Military Hospital, Wellington. As per counter affidavit the IMB has assessed his disability @ 20% for life neither attributable to nor aggravated by military service (NANA). Disability pension claim of the applicant was rejected vide order dated 31.10.2002 and thereafter first and second appeals were also rejected vide

orders dated 11.11.2014 and 09.11.2015 respectively. Hence this O.A.

3. Ld. Counsel for the applicant pleaded that the applicant was enrolled in the Army in medically and physically fit condition. It was further pleaded that a member is to be presumed in sound physical and mental condition upon entering service if there is no note or record to the contrary at the time of entry. In the event of his subsequently being invalided out from service on medical grounds, any deterioration in his health is to be presumed due to service conditions. He pleaded that the disability of the applicant is due to stress and strain of military service while undergoing basic military training and it should be accepted as attributable to military service. Relying upon Hon'ble Apex Court judgments in the cases of ***Dharamvir Singh vs UOI & Ors***, (2013) 7 SCC 316, ***Sukhvinder Singh vs UOI & Ors***, (2014) STPL (WEB) 468 SCC, ***Veer Pal Singh vs Ministry of Defence***, (2014) (32) Volume L.C.D. 17, the Ld. Counsel for the applicant pleaded for disability pension to be granted to the applicant.

4. On the other hand, Ld. Counsel for the respondents submitted that the applicant was initially admitted in Military Hospital, Wellington on 14.06.2001 i.e. within two months after start of basic military training and was transferred to Command Hospital (Southern Command), Pune on 18.08.2001

where the Neurologist gave his opinion that the applicant presented with four episodes of GTC Seizure since May 2001. He was transferred back to MH, Wellington where on holding IMB he was invalided out of service. He further contended that since the IMB has opined the disability to be constitutional in nature, it cannot be termed as either attributable to or aggravated by military service. He further accentuated that the applicant is not entitled to disability pension in terms of Rule 173 of Pensions Regulations for the Army 1961 (Part-I) which stipulates that, "unless otherwise specifically provided, a disability pension 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 and is assessed at 20% or over but in the instant case the disability of the applicant has been assessed at 20% for life and NANA, therefore the applicant is not entitled to disability pension. The Ld. Counsel for the respondents further submitted that claim for disability pension, first appeal and second appeal have rightly been rejected. He pleaded the O.A. to be dismissed.

5. We have heard Ld. Counsel for the parties and perused the material placed on record. While perusing the IMB, we have noticed that the disability percentage is written as 20% but there is certain marking i.e. < which can be interpreted to read as less than 20% disability. However though the respondents have taken a stand in the counter affidavit that

the disability is 20%, we are clear that in light of the Hon'ble Apex Court judgment in the case of **Sukhvinder Singh** (supra), the disability of the applicant can't be less than 20%. Therefore the only question which needs adjudication is whether his disability is attributable or aggravated by military service.

6. On careful perusal of the medical documents, it has been observed that on 14.06.2001 at about 0315 hours it was noticed by another recruit that the applicant was lying on the floor and shouted vigorously with twisting of arms and legs and froth coming from his mouth. This fact has been endorsed by the doctor while completing applicant's case sheet on 14.06.2001 (**Annexure 7 to the CA**) and ultimately the applicant was found to be suffering from "SEIZURE DISORDER" while undergoing basic military training. The applicant was finally invalided out of service on 27.11.2001 by a duly constituted Invaliding Medical Board (IMB) held on 23.10.2001 at MH, Wellington.

7. Further it is worthwhile mentioning that the applicant, when transferred back to MH, Wellington was recommended to travel with sick attendant. On the point of premature discharge from service, it is submitted that since the disease as per IMB has started within two months of enrolment and constitutional in nature, we feel it imperative to quote summary and opinion given by Neurologist at Command

Hospital Pune on the applicant while admission in the Hospital,
as under:-

*“A case of SEIZURE DISORDER in a Recruit.
EEG is abnormal. He has had 5 Episodes.
Recommended INVALIDMENT in P5 (permanent) for seizure.”*

8. It has further been noticed that the respondents while rejecting second appeal of the applicant have given concrete reasons to deny attributability/aggravation factor, relevant extracts of which are as under:-

“Perusal of the enclosed medical and service documents revealed that the indl presented with an episode of generalized tonic clonic seizures in Jun 2001 when he was undergoing his ab initio recruit training in a peace station (Wellington). There was no antecedent history of trauma, CNS infection or undue physical exertion. He was managed adequately for his ID at a service hospital. The ID is a disease which may develop at any age without obvious discoverable cause. X x x x x x.”

9. There is hard evidence that the petitioner’s behaviour was abnormal shortly after enrolment and thereafter he was referred for psychiatric evaluation. Therefore there appears to be strong weightage in the stand of the respondents that the disease was constitutional in nature and that psychiatric ailment could not be detected during enrolment medical board. We are in agreement with the opinion of Psychiatrist and IMB proceedings that a recruit suffering from mental disorder cannot bear stress and strain of military training. Additionally, a recruit is akin to a probationer and hence prima facie the respondents as an employer have a right to discharge a recruit who is not meeting the medical requirement of military service. In view of the foregoing and the fact that the disease manifested within two months of

enrolment, we are in agreement with the opinion of IMB that the applicant was suffering from "SEIZURE DISORDER" before enrolment and thus the disability cannot be accepted as attributable to or aggravated by military service.

10. Apart from, in similar factual background Co-ordinate Bench of this Tribunal dismissed T.A. No. 1462/2010 vide order dated 23.05.2011 wherein the applicant was enrolled on 21.01.2000 and was discharged on 27.04.2010 as he was suffering from Schizophrenia which is alike "SEIZURE DISORDER". Said disability was assessed @ 80% for two years and it was opined by the Medical Board to be neither attributable to nor aggravated by military service. Said order of this Tribunal has been upheld by Hon'ble Apex Court as Civil Appeal Dy. No. 30684/2017 was dismissed on delay as well as on merits.

11. In view of the above, the O.A. is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice S.V.S. Rathore)
Member (J)

Dated: February, 2018
gsr