

RESERVED
Court No. 1

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

ORIGINAL Application No 253 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)

Ram Kumar (No. 13951465-Sep) S/O Late Devi Prasad, R/O
Village & Post-Akbaria, District-Shahjahanpur.

.....Applicant

Ld. Counsel for: **Shri V.K. Pandey**, Advocate
the applicant

Versus

1. Union of India through Secretary, Ministry of Defence,
South Block, Delhi-110011.
2. Incharge, Army Medical Corps Record Office, PIN-
900450.
3. Principal Controller of Defence Account (Pensions),
Allahabad.

..... Respondents

Ld. Counsel for the : **Dr. Gyan Singh**,
Respondents Central Govt 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 whereby the applicant has sought the following reliefs:-

- (i) *This Hon’ble Court may graciously be pleased to direct the respondents to decide the second appeal of the applicant dated 6.5.2013 (Annexure No A-5).*
- (ii) *This Hon’ble Court may graciously be pleased to direct the respondents to give disability pension along with its arrears and interest to the applicant w.e.f. 19.11.1987 towards his disability, ‘NEUROSIS EEE (Permanent)’ for life.*
- (iii) *This Hon’ble Court may further be pleased to pass such other and/or further order as deem fit, proper and necessary in the circumstances of this case.*
- (iv) *Award costs to the applicant.*

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 12.11.1980 and discharged from service w.e.f. 19.11.1987 (FN) under Rule 13 (3) (iv) of Army Rules, 1954 on account of disability ‘NEUROSIS’ after having completed 07 years and 06 days of service. The records affirm that medical documents in respect of the applicant were destroyed in the year 2008 vide Destruction Board Proceedings dated 01.02.2008 (**Annexure No CA-1**). Disability pension claim was rejected vide order dated 11.06.1988. Appeal dated 06.09.1988 preferred against rejection of disability pension claim was also rejected vide order dated 12.05.1989. The applicant has preferred second appeal dated 06.05.2013 after elapse of approx 25 years which is still pending. It appears that after having slept for over 29 years, the applicant had approached this Tribunal for grant of disability pension in the year 2016 by filing M.A. No. 2760/2016. Since payment of disability pension involves recurring cause of action, the delay in

filing Original Application was condoned vide order dated 08.05.2018. 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 and was invalided out of service in low medical category. 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 in his service documents at the time of entry. 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 conditions. Relying upon the Hon'ble Apex Court judgments in the cases of **Dharamvir Singh vs UOI & Ors**, (2013) 7 SCC 316, **Sukhwinder Singh vs UOI & Ors**, (2014) STPL (WEB) 468 SCC, **UOI & Ors vs Rajbir Singh**, (2009) 9 SCC 140, **Veerpal Singh vs MoD**, (2013) 8 SCC 83, **UOI & Ors vs Ram Avtar** in Civil Appeal No 418 of 2012 decided on 10.12.2014 Ld. Counsel for the applicant submitted that the applicant is entitled to grant of disability pension as was granted to the incumbents on the directions of the Supreme Court. He further submitted that the disability of the applicant is due to stress and strain of military service and pleaded for disability pension to be granted to the applicant.

4. On the other hand, Ld. Counsel for the respondents submitted that though the medical documents of the applicant are not available, however, from the records available, it appears that the disability pension claim was rejected by PCDA (P) Allahabad as his disability was regarded as neither attributable to nor aggravated by military service (NANA) and communicated to the applicant vide letter dated 11.06.1988. He further submitted that appeal was also

rejected by Govt of India, Min of Def vide order dated 12.05.1989 on the same ground. The Ld. Counsel for the respondents further pleaded that para 173 of Pension Regulations for the Army, 1961 (Part I) puts an embargo for grant of disability pension to the applicant as his disability is NANA in the instant case. Ld. Counsel for the respondents further submitted that numerous petitions have been dismissed by Regional Benches and the Principal Bench on account of non availability of RMB/IMB. He pressed for O.A. to be dismissed.

5. We have heard Ld. Counsel for the parties and perused the material placed on record.

6. At the very outset as submitted by both the parties it has been observed that the applicant was invalided out of service on 18.11.1987 on account of suffering from "NEUROSIS". The personal file of the applicant does not contain medical documents which are necessary for examination of certain factual position of the disease, the opinion of Medical Board for reasons declaring the disease as NANA, as well as percentage of the disability. The counter affidavit filed by the respondents also does not contain the medical documents. The respondents have stated during hearing that the medical documents of the petitioner have been destroyed and are not available. Therefore, neither the applicant nor the respondents have placed on record the medical documents i.e. IMB of the applicant. Thus in the absence of medical documents no order can be passed by this Tribunal in vacuum since weeding out of medical documents has been established by board proceedings dated 01.02.2018 (supra).

7. In counter affidavit filed by the respondents it has been brought out that since the applicant is not a pensioner, his service documents have been destroyed on completion of its mandatory retention period of 25 years in accordance with Para 592 to 596 of Defence Service Regulations for the Army, 1987 (Revised Edition).

8. During arguments, Ld. Counsel for the applicant relying upon O.A. No. 30 of 2017 decided by Regional Bench Chennai on 09.02.2018 in the case of **Ex-Sapper G. Jagannathan vs UOI & Ors**, pleaded that the incumbent was granted disability pension in the absence of medical documents but after going through the aforesaid judgment it has been found that the judgment was delivered on other grounds. Additionally, the Hon'ble Apex Court made it very clear in the case of **Dharamvir Singh vs UOI & Ors**, (2013) 7 SCC 316 that '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.'

9. It is further submitted that since the applicant was invalided out of service after completion of 07 years of service, he may have been entitled to grant of disability pension in pursuance to Hon'ble Apex Court judgments in the case of **Dharamvir Singh vs UOI & Ors**, reported in (2013) 7 SCC 316 and **Sukhwinder Singh vs UOI & Ors** reported in (2014) 14 SCC 364 provided the medical documents were available and the opinion of the board on attributability/aggravation factor and percentage of disability could have been ascertained. Therefore in the present circumstances when medical documents have been destroyed, the applicant's entitlement to disability pension cannot be ascertained.

10. In view of the foregoing discussion, we are not in a position to presume that the disease of the applicant was either attributable to or aggravated by military service because of following reasons:-

(i) The IMB proceedings are not available and therefore the opinion of the medical board as to why the disease could not be detected at the time of enrolment cannot be scrutinised to decide attributability.

(ii) The delay of over 29 years after discharge of the applicant in 1987 is the primary reason for destruction and non availability of IMB proceedings.

11. Thus, 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 SVS Rathore)
Member (J)

Dated : February, 2019
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