

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

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

**ORIGINAL APPLICATION No. 694 OF 2017**

Wednesday, this the 13<sup>th</sup> day of February 2019

**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)**  
**Hon’ble Lt Gen (Dr.) N.B. Singh, Member (A)”**

Ex Nk Siddharth Shankar Tiwari (No. 13974382-A) C/O  
Neelu Mishra, W/O R Mishra, Gatte No. 72, Gangotri  
Nagar, Naini, Allahabad-211008 (Near Patrol Pump).

.....Applicant

Ld. Counsel for: **Col A.K. Srivastava**, Advocate  
the Petitioner

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. The Chief of the Army Staff, IHQ of MoD (Army), South Block, New Delhi-110011.
3. OC AMC Centre & Records, Lucknow.
4. Principal Controller of Defence Account (Pension), PCDA (P), Draupadi Ghat, Allahabad-211014.

.....Respondents

Ld. Counsel for the : **Dr. Shailendra Sharma Atal**,  
Respondents. Central Govt Counsel.

**ORDER****“Per Hon’ble Lt Gen (Dr.) N.B. Singh, Member (A)”**

1. This O.A. has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 against the impugned orders dated 01.04.2009 and 22.05.2017 (Annexure A-1 and A-2 to the O.A.) denying him the grant of disability pension for life, resulting in recurring financial loss to the applicant. He has prayed for grant of disability pension @ 50% for life w.e.f. 01.11.2009. There was a delay of 07 years 09 months and 09 days in filing of the O.A. which was condoned vide order dated 18.12.2017.

2. Brief facts of the case are that the applicant was enrolled in the Army Medical Corps (AMC) on 21.10.1988 and the onset of the ailment started on 23.10.1991. As a consequence he was discharged from service on 31.10.2009 after rendering approx 21 years of service in Low Medical Category (LMC) P2 (Permanent) with disability assessed as 20% for life. His disability of ‘Generalized Seizure’ was assessed as neither attributable to nor aggravated (NANA) by military service. He has submitted that the onset of the disease was in Modified Field Area and has placed reliance on the judgment of Hon’ble Apex Court in the cases of ***Dharamvir Singh vs. Union of India & Others***, (2013) 7 SCC 316, ***KJS***

**Buttar vs Union of India & Others**, Civil Appeal No 5591 of 2006 and **Union of India & Others vs. Ram Avtar**, Civil Appeal No 418 of 2012. His appeal dated 18.03.2017 was rejected by the respondents vide AMC Records letter dated 22.05.2017. Despite providing a number of chances to the respondents, the counter affidavit has not been filed by the respondents and hence the opportunity of filing of the same was closed vide order dated 17.12.2018. We therefore proceed to dispose of the O.A.

3. We have perused the extracts of the medical board proceedings (Annexure A-1) provided by the applicant as per which the disability 'Generalized Seizure (ICD No G-40.4)' was assessed at 20% for life, the onset was in November 1990 at Suratgarh (Rajasthan) and the disability was considered as NANA. We also reproduce below an extract of Part-2 of the medical board proceedings dated 09.03.1991 as under:-

"OPINION OF THE BOARD

PART-2

1. Was the disability contracted in service? -Yes.
2. Was it contracted in circumstances over which he had no control? -Yes.
3. Is it directly attributable to service? -No.
4. If so, by what specific conditions? -NA.
5. If not directly attributable to service, Was it aggravated thereby and if so, by what specific conditions?" -No

4. The issue of grant of disability pension to individuals who have been invalided out/discharged on account of a disability is no more res integra in view of observations of the Hon'ble Apex Court in the cases of **Dharamvir Singh vs. Union of India & Others**, (2013) 7 SCC 316 and **Rajbir Singh vs. Union of India & Others**, (2015) 12 SCC 264 where it has been held that the issue whether or not the disability is attributable to or aggravated by military service is to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 wherein Rule 5, 9 and 14 have been highlighted. Regarding the aforesaid Rules, it has been observed as follows in para 10 in **Rajbir Singh's** (supra) case :-

*"10. From a conjoint and harmonious reading of Rules 5, 9 and 14 of Entitlement Rules (supra) the following guiding principles emerge: (i) a member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance; (ii) in the event of his being discharged from service on medical grounds at any subsequent stage it must be presumed that any such deterioration in his health which has taken place is due to such military service; (iii) the disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service, if no note of it was made at the time of the individual's acceptance for military service; and (iv) if medical opinion holds that the disease, because of which the individual was discharged, could not have been detected on medical examination prior to acceptance of service, reasons for the same shall be stated."*

5. Thus, there are presumptions that any deterioration in health of a discharged individual is due to military service and that the individual is presumed to be in sound

physical and mental health on entering service and that ordinarily the disease will be deemed to have arisen in the service unless a note is made at the time of the individual's acceptance for military service or unless reasons are stated in writing why the disease could not have been detected earlier. Apparently, there is no such note in the present case, as is evident from Part-2 of the re-categorization medical board proceedings. It is noted that the board has held that the disability was contracted in service, in circumstances beyond the control of the applicant.

6. It is seen that his claim for disability pension has been rejected solely on the ground that the Release/Invalided Medical Board has assessed the disability as NANA without giving cogent reasons for the same. It is also noted that the onset of the disease took place in Modified Field Area and as per Annexure-3 to Appendix-2 of Entitlement Rules (supra) post traumatic epilepsy and other mental changes have been categorized as diseases affected by training, marching and prolonged stress and strain etc. The benefit is to be given more liberally to claimants in field (Rule 9 of the Entitlement Rules (supra)).

7. In view of the above facts and circumstances of the case we are of the opinion that aggravation of the disease by military service has to be conceded and the O.A. deserves to be allowed, hence **allowed**. The applicant is entitled to disability element @ 20% for life along with the benefit of broad banding of the disability element from 20% to 50%, as per Govt of India, Min of Def Circular dated 18.04.2016 and relying upon the decision of the Hon'ble Apex Court decision in the case of **Ram Avtar** (supra). However, the arrears of disability pension are restricted to three years prior to filing of the O.A. in terms of para 9 of the judgment in the case of **Shiv Dass vs. Union of India & Others** reported in 2007 (3) SLR 445. The date of filing of the present O.A is 13.10.2017. All payments shall be made within four months from the date of production of a certified copy of this order. In case of default, the applicant shall be entitled to interest @ 8% per annum.

No order as to costs.

**(Lt Gen (Dr.) N.B. Singh)**  
**Member (A)**

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

Dated: February, 2019  
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