

**RESERVED**  
**Court No.1**

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

**Original Application No. 591 of 2018**

Monday, this the 18<sup>th</sup> day of February 2019

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

Ratan Maity son of Late Parimal Maity, Ex. Gunner, Army No. 14412562-N, Resident of Village and P.O.-Kunjapur, District-Purva Midinapur, PIN-721431 (West Bengal).

..... Applicant

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

Versus

1. The Commanding Officer, 152 A.D. Regiment, C/o 99 APO.
2. The Principal Controller of Defence Accounts (Pensions), Allahabad (U.P.).
3. Adjutant General, Additional Directorate General Personnel Services, Adjutant General's Branch, Army Headquarters, D.H.Q., P.O. New Delhi-110011.
4. The Government of India, Ministry of Defence, Sena Bhawan, New Delhi-110105 through Under Secretary to Government of India.
5. Senior Record Officer, Vayu Raksha Top Khana Abhilekh, Air Defence Artillery Records, Nasik Road Camp-422102.

..... Respondents

Ld. Counsel for the : **Shri D.K. Pandey**,  
Respondents Central Govt Counsel.

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

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-

- (i) *To direct the respondents to pay disability pension to the applicant for life w.e.f. 01.08.02 with interest and other consequential benefits accordance with law.*
- (ii) *To pass such and further order which the Hon’ble Tribunal deem fit and proper under the circumstances of the case.*
- (iii) *To award the cost in favour of applicant and against the respondents.”*

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 31.10.1994 and was discharged from service on 31.07.2002 in low medical category ‘S1H1A1P5E1’ under Rule 13 (3) III (iii) of the Army Rules 1954. The Invaliding Medical Board (IMB) of the applicant was held on 27.06.2002 which opined applicant’s disability “**GENERALISED TONIC CLONIC SEIZURE-345**” as neither attributable to nor aggravated by military service (NANA) with disability element @ 15-19% for life. The claim of the applicant for disability pension was rejected by the PCDA (P) Allahabad vide order dated 18.03.2004 on the ground that the disability

of the applicant is NANA and constitutional in nature and does not relate to service and the disability being less than 20%. Thereafter first and second appeals preferred against rejection of disability pension claim were rejected vide order dated 16.02.2006 and 24.08.2007 respectively. Being aggrieved, the applicant has approached this Tribunal for grant of disability pension.

3. Ld. Counsel for the applicant submitted that at the time of enrolment, the applicant was found medically and physically fit for service and there is no note in the service documents of the applicant that he was suffering from any disease at the time of entry in service. Ld. Counsel for the applicant further pleaded that since the disease was contracted during the service of the applicant, his disability should be considered as attributable to and aggravated by military service. He further pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension. Relying upon the judgment of Hon'ble Apex Court in the case of **Sukhwinder Singh vs Union of India & Ors**, (2014) 4 SCT 163 (SC), the Ld. Counsel pleaded that the applicant is entitled to grant of disability pension and its rounding off.

4. Rebutting arguments of Ld. Counsel for the applicant, Ld. Counsel for the respondents submitted that the disability pension claim of the applicant was rightly rejected by the pension sanctioning authority on the ground of NANA which the IMB has opined as also being less than 20% and therefore the disability pension is inadmissible to the applicant. He pleaded the O.A. to be dismissed.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the IMB proceedings as well as the records. The questions which need to be answered are of three folds :-

(a) Whether the disability of the applicant is attributable to or aggravated by military service?

(b) Whether the applicant is entitled to grant of disability pension or not and if yes from which date?

(c) Whether the applicant is entitled for the benefit of rounding off of his 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 a cryptic sentence that the disability "**GENERALISED TONIC CLONIC SEIZURE - 345**" to be NANA without giving any meaningful reason. Moreover, in Invaliding Medical Board Proceedings on page 3 Para 1 against the question "**Did the disability exist before entering service?**" – "**No**" has been answered. The applicant was enrolled in the Army on 31.10.1994 and the disability was first time detected on 04.08.1998 i.e. approx four years of military service. 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.

8. 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 10<sup>th</sup> 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 invalidated 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. The relevant portion of the decision is excerpted below:-

*"4. By the present set of appeals, the appellant (s) raise the question, whether or not, an individual, who has retired on attaining the age of superannuation or on completion of his tenure of engagement, if found to be suffering from some disability which is attributable to or aggravated by the military service, is entitled to be granted the benefit of rounding off of disability pension. The appellant(s) herein would contend that, on the basis of Circular No 1(2)/97/D (Pen-C) issued by the Ministry of Defence, Government of India, dated 31.01.2001, the aforesaid benefit is made available only to an Armed Forces Personnel who is invalidated out of service, and not to any other category of Armed Forces Personnel mentioned hereinabove.*

*5. We have heard Learned Counsel for the parties to the lis.*

*6. We do not see any error in the impugned judgment (s) and order(s) and therefore, all the appeals which pertain to the concept of rounding off of the disability pension are dismissed, with no order as to costs.*

*7. The dismissal of these matters will be taken note of by the High Courts as well as by the Tribunals in granting appropriate relief to the pensioners before them, if any, who are getting or are entitled to the disability pension.*

*8. This Court grants six weeks' time from today to the appellant(s) to comply with the orders and directions passed by us."*

9. In the instant case, there is no dispute that the applicant's disability has been assessed as 15-19% for life. Thus in view of the law settled by the Hon'ble Apex Court on this matter, we are of the considered opinion that the applicant is entitled for the benefit of rounding off in terms of Government letter dated 31.01.2001 and the disability of the applicant @ 15-19% for life shall stand rounded off to 50% for life .

10. It is observed that claim for pension is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. In the case of ***Shiv Dass vs. Union of India***, reported in 2007 (3) SLR 445, Hon'ble Apex Court has observed:

*"In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone."*

11. As such, in view of the decision of Hon'ble Supreme Court in the case of ***Shiv Dass (supra)***, we are of the considered opinion that benefit of rounding off of disability



pension from 15-19% to 50% for life may be made applicable to the applicant from three preceding years from the date of filing of the O.A.

12. In view of the above, the O.A. deserves to be allowed, hence **allowed**. Though the applicant is entitled to disability pension w.e.f. the date of his discharge but the applicant has approached this Tribunal with a long delay, therefore the arrears of disability pension and benefits of rounding off to 50% shall be restricted to three years prior to the date of filing of this Original Application. The date of filing of this Original Application is 17.10.2013. 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)**      **(Justice S.V.S. Rathore)**  
**Member (A)**                              **Member (J)**

Dated :              February, 2019

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