

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 40 of 2020**

Wednesday, this the 3<sup>rd</sup> day of February, 2021

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

Ex Havildar Chini Lal Sharma (No. 13863159F)  
 S/o Uma Shankar Sharma  
 R/o Village – Nipania, PO – Bahadura,  
 Dist – Ballia (UP)

..... Applicant

Ld. Counsel for the Applicant: **Col B.P. Singh** (Retd), Advocate

Versus

1. Union of India, through Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi – 110011.
3. Principal Controller of Defence Account (Pension), Draupadi Ghat, Allahabad.
4. Officer-in-Charge, Records ASC Records (South) Pin code – 900493, C/o 56 APO.

..... Respondents

Ld. Counsel for the Respondents : **Ms. Anju Singh**,  
 Central Govt Counsel.

**ORDER**

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

“(a) Issue/pass an order or direction to the respondents to quash/set-aside the rejection orders vide PCDA (P) letters dated 20.07.1998, rejection of Appeal, vide letter dated 18.05.2011 and 07.07.2016 (Annexure No A1(i) to A1 (iii) being per se illegal, arbitrary and without application of mind.

(b) issue/pass an order or direction of appropriate nature to the respondents to grant the entitled to the extent of 50% and the same be “rounded off” to 75% disability pension to the applicant from 15.05.1997 for life to the applicant, as a matter of right as provided Govt of India letter No 1(2)/97/I/D (Pen-C) dated 31 Jan 2001 (Annexure No A-11) supported by the position held by the Supreme Court, as mentioned above.

(c) Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.

(d) Allow this application with costs.”

2. Briefly stated facts of the case are that the applicant was enrolled in the Army on 30.12.1977 and was invalided out from service on 14.05.1997 in low medical category under Army Rule 13 (3) III (iii) after rendering 19 years, 04 months and 14 days of service. The Invaliding Medical Board (IMB) assessed his disability “**SCHIZOPHRENIA**” @ 50% for two years and opined the disability as neither attributable to nor aggravated by military service. The disability claim of the applicant was rejected by PCDA (P) Allahabad vide their letter dated 10.06.1998. The applicant submitted first appeal dated 04.08.2016 and second appeal dated 30.12.2018 which have not been replied by the respondents. It is in this perspective that the applicant has preferred the present O.A.

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 Indian 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 submitted that the act of overruling the recommendations of IMB by higher competent authority of PCDA (P) was wrong and should be set aside. He placed reliance on the judgment of the Hon'ble Apex Court in the case of *Dharamvir Singh vs. UOI & Ors*, (2013) 3 SCT 778 and *Sukhvinder Singh vs. Union of India*, reported in (2014) 14 SCC 364 and pleaded that applicant be granted disability pension @ 50% duly rounded off to 75% in view of Govt. of India letter dated 31.01.2001.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant i.e. "**SCHIZOPHRENIA (Old)**" has been regarded as 50% for two years by IMB as neither attributable to nor aggravated by military service and not connected with service. Hence, as per Rule 173 of Pension Regulations for the Army 1961 (Part-1), applicant is not entitled for disability pension. He pleaded for dismissal of the O.A.

5. Heard learned counsel for the parties and perused the material placed on record. We have also gone through the IMB and the rejection order of disability pension claim. The question before us is simple and straight i.e. – is the disability of applicant attributable to or aggravated by military service?

6. The law on attributability of a disability has already been well settled by the Hon'ble Supreme Court in the case of *Dharamvir Singh Vs. Union of India and Ors*, (2013) 7 SCC 213. 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/aggravation, we find that the IMB has denied attributability/aggravation to applicant only by endorsing a cryptic sentence in the proceedings i.e. 'disease is constitutional in nature'. We do not find this cryptic remark adequate to deny attributability/aggravation to a soldier who was fully fit since his enrolment and the disease in question had first started on completion of about 11 years of service, therefore, we are of the considered

opinion that the benefit of doubt should be given to applicant as per the Hon'ble Supreme Court judgment of ***Dharamvir Singh*** (supra) and his disability should be considered as aggravated by military service.

8. In view of the above, applicant is held entitled to 50% disability element for two years from his date of invaliding from service. The applicant will also be eligible for the benefit of rounding off of disability element from 50% to 75% for two years in terms of the decision of Hon'ble Supreme Court in ***Union of India and others v. Ram Avtar*** (Civil Appeal No 418 of 2012 dated 10.12.2014).

9. As a result of foregoing discussion, the O.A. is **allowed**. The impugned orders are set aside. The disability of the applicant is to be considered as aggravated by military service. The applicant is entitled to disability element of pension @ 50% for two years duly rounded off to 75% for two years from the date of invaliding from service i.e. 15.05.1997. The respondents are directed to grant disability element @ 75% for two years from the date of invaliding from service. The respondents are directed to give effect to this order within a period of four months from the date of receipt of certified copy of the order. The respondents are also directed to conduct a Re-survey Medical Board for the applicant to assess his further entitlement of disability pension. Default will invite interest @ 8% per annum till actual payment.

10. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)  
Member (A) Member (J)

Dated: February, 2021

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