

**Court No. 1**  
**Reserved Judgment**

**ARMED FORCES TRIBUNAL, CIRCUIT BENCH,  
NAINITAL**

**Original Application No. 449 of 2017**

**Friday, this the 23<sup>rd</sup> day of February, 2018**

**Hon'ble Mr. Justice S.V.S. Rathore, Member (J)**  
**Hon'ble Lt Gen Gyan Bhushan, Member (A)**

Ex Rect No 4086381M, Dhan Singh, S/o Shri Prem Singh  
Village – Dob, Post Office – Gaumukh, District – Tehri.

**..... Applicant**

By Legal Practitioner – **Shri Mangal Singh Chauhan, Advocate,**  
**Learned counsel for the Applicant.**

Versus

1. Union of India, through its Secretary, Ministry of Defence, New Delhi.
2. The Chief Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (U.P.).
3. The Chief of Army Staff, Army Headquarters, New Delhi.
4. Record Officer, Garhwal Rifles Regiment Centre, Landsdowne, U.K.- 246155.

**..... Respondents**

By Legal Practitioner – **Dr. Chet Narain Singh, Advocate,**  
**Learned Counsel for the**  
**Respondents.**

**ORDER**

**“Hon’ble Lt Gen Gyan Bhushan, Member (A)”**

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has claimed following reliefs:-

(a) *To set aside the impugned rejection orders dated 18.12.2003 & 27.06.2005 passed by the respondents in contravention of the disability pension rules.*

(b) *To issue a direction to the respondent No. 1 to provide the disability pension to the petitioner w.e.f. 05.03.2003 onwards with 18% interest pay the compensation to the petitioner Rs. 2 Lakh for denying the disability pension.*

(c) *To issue, any other order or direction which this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case.*

(d) *Allow the cost throughout.*

2. The undisputed factual matrix on record is that the applicant was enrolled in the Indian Army on 20.03.2002 and was invalided out from service due to disease “**Schizophrenia**” with effect from 11.03.2003 (Afternoon). Medical Board assessed the disability of the applicant as 15 to 19% for life and considered it to be neither attributable to nor aggravated by military service. His claim for grant of disability pension was rejected by the respondents vide letter dated 16.02.2004 stating that his disability is less than 20% and is neither attributable to nor aggravated by military service. His appeal was also rejected by the respondents vide letter dated 27.06.2005. Being

aggrieved, the applicant has approached this Tribunal for grant of disability pension by means of present O.A. The delay in filing of Original application has been condoned vide order dated 09.10.2017.

3. We have heard Shri Mangal Singh Chauhan, Ld. Counsel for the applicant and Dr. Chet Narain Singh, Ld. Counsel for the respondents and perused the record.

4. Learned counsel for the applicant submitted that the applicant was enrolled in the Indian Army on 20.03.2002 in medically fit condition and was invalided out from service due to "**Schizophrenia**" with effect from 11.03.2003 (Afternoon) under Rule 13 (3) III (iii) of Army Rules 1954. Invaliding Medical Board assessed the disability of the applicant as 15 to 19% for life and declared it to be neither attributable to nor aggravated by military service. His claim for grant of disability pension was rejected by the respondents vide letter dated 16.02.2004 stating that his disability is less than 20% and is neither attributable to nor aggravated by military service. His appeal was also rejected by the respondents vide letter dated 27.06.2005. Then the applicant filed Original Application No. 291 of 2011 in this Tribunal with the prayer to re-instate the applicant in service. The said Original Application was disposed of with the directions that if the applicant submits an appeal under Rule 143 of Regulations for the Army 1987, the same shall be considered in accordance with the law. Accordingly, the applicant was medically examined again and was found unfit for service in the Armed Forces. Learned counsel for the

applicant submitted that in Medical Board Proceeding Page 6, Para 2, it has been mentioned that “**Did the disability exist before entering service – NO**” therefore disability has to be deemed as attributable to and aggravated by military service since the applicant was enrolled in a medically fit condition and there is no note in the service documents that he was suffering from any disease at the time of entry into service. His disease developed due to stress and strain of service. He further submitted that in similar cases, various Benches of the Armed Forces Tribunals have granted disability pension, as such the disability pension be granted and as per Government Order dated 31.01.2001 and verbally prayed that the disability pension be rounded off to 50%.

5. **Per Contra**, learned counsel for the respondents submitted that the Invalided Medical Board considered the disability as 15 to 19% for life and found it neither attributable to nor aggravated by military service. Learned counsel for the respondents further submitted that in terms of Para 173 of Pension Regulations, his claim has correctly been rejected. Learned counsel for the respondents initially opposed the entitlement of disability pension based on policy, but subsequently acceded that in similar cases various benches of Armed Forces Tribunal has granted disability pension and the case is squarely covered by those judgments, the applicant is entitled to grant of disability pension.

6. Since the applicant was enrolled in a medically fit condition and was invalidated out in low medical category and respondents have not produced any documents on record to prove that the disability/disease existed at the time of enrolment therefore the disability has to be considered as attributable to and aggravated by military service in terms of judgment of ***Dharamvir Singh vs. Union of India and others***, reported in (2013)7 SCC 316, ***Sukhvinder Singh vs. Union of India***, reported in (2014) 14 SCC 364, ***Union of India and others vs. Angad Singh Titaria***, reported in (2015) 12 SCC 257 and ***Union of India and others vs. Rajbir Singh***, reported in (2015) 12 SCC 264 and the applicant is considered entitled for grant of disability pension.

7. On the issue of rounding off of disability pension, we are of the opinion that the case is squarely covered by the decision of ***Union of India vs. Ram Avtar & Others***, (Civil Appeal No. 418 of 2012 decided on 10 December.

8. Keeping in view the discussion above, the applicant is considered entitled for grant of disability pension as also the benefit of rounding off of his disability pension.

9. Accordingly, the Original Application No. 449 of 2017 is **allowed**. The impugned orders passed by the respondents are set aside. The respondents are directed to grant disability pension to the applicant by rounding it off to 50% for life from three years prior to

filing of Original Application. 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. In case the respondents fail to give effect to this order within the stipulated time, they will have to pay interest @ 9% on the amount accrued from due date till the date of actual payment.

No order as to costs.

**(Lt Gen Gyan Bhushan)**  
**Member (A)**

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

Dated : February 2018  
Ukt/-