

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

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

**ORIGINAL APPLICATION NO 229 of 2018**

Friday, this the 27<sup>th</sup> day of April 2018

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

No. 3182850A Ex Sep Jugendra Singh, S/o Sh. Chander Singh, R/O Tehsil- Sadabad, Distt-Mathura (Now New District-Hathras), U.P.

....Applicant

Ld. Counsel for the: **Shri D.S. Kauntae, Advocate**  
Applicant

Versus

1. The Union of India, through its Secretary, Govt. of India, Ministry of Defence, South Block, New Delhi-11.
2. Director AG, PS-4 (Pensions) IHQ of MoD (Army), DHQ, P.O.- New Delhi-110011I.
3. OIC Records, The JAT Regiment C/O 56 APO.
4. President Medical Board, 159 General Hospital, C/O 56 APO.
5. Principal Control of Defence Account (PCDA) P, Allahabad (U.P.).

....Respondents

Ld. Counsel for the : **Shri Amit Jaiswal, Central**  
Respondents. Govt Counsel assisted by  
Maj Salen Xaxa, OIC Legal Cell.

**ORDER**

**“(Per Hon’ble Air Marshal BBP Sinha, Member (A))”**

1. This O.A. has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant for grant of disability pension. The applicant has prayed for the following relief:

“(a) Quash/set aside the impugned order dated 08.04.1999 passed by the CDA (P) Allahabad being patently illegal on the face of record.

(b) After quashing/setting aside the aforesaid impugned order, direct the Respondent No 2, 3 & 5 to take all necessary steps as expeditiously as possible to grant and release the entire sum of disability pensionary benefits as per the rules @ 50% by giving the benefits of rounding off in favour of the Union of India Vs. Ram Avtar with 10% of interest with arrears restricting to three years prior filing the date of present O.A.

(c) Pass such further order or orders as this Hon’ble Court may deem fit and proper in the facts and circumstances of the case.”

2. We have heard Shri D.S. Kauntae, Ld. Counsel for the applicant and Shri Amit Jaiswal, Ld. Counsel for the respondents assisted by Maj Salen Xaxa, OIC Legal Cell.

3. Brief facts of the case are that the applicant was enrolled as Sep in the Army on 21.04.1988 and was discharged from service in low medical category CEE (Permanent) due to **“Seizure Disorder”** on 31.01.1999 under Army Rule 13 (3) III

(v) of the Army Rules 1954. Prior to his discharge from service, the applicant was brought before Release Medical Board held at 153 General Hospital wherein disability of the applicant “**Seizure Disorder (345) (V-67)**” was considered as constitutional in nature and was opined as neither attributable to nor aggravated (NANA) by military service and assessed @ 20% for two years. The applicant’s claim for grant of disability pension was preferred to PCDA (P) Allahabad vide letter dated 10.03.1999 which was rejected vide letter dated 15.06.1999 and the same was communicated to the applicant with an advice to prefer an appeal against rejection of disability pension within six months. The applicant preferred the first appeal on 17.01.2017 which is still pending before respondent No 2.

4. Per contra the Ld. Counsel for the respondents has stated that the petitioner had option at his door step to prefer an appeal against rejection of disability pension but he failed to do so. Instead of preferring the appeal against rejection of disability pension he opted to legal recourse and filed present O.A. On scrutiny of present O.A., it came to the notice that the applicant has annexed his appeal dated 17.01.2017 against rejection of disability pension as Annexure A-4 to O.A. but on bare perusal of First Appeal dated 17.01.2017, it may be seen that while submitting appeal, the petitioner did not adopt procedure as outlined at para 5 of IHQ of MoD (Army) letter dated 17.08.2009.

5. We have considered the submissions of the learned counsel for the parties and perused the material placed on record.

6. Since the applicant was enrolled in a medically fit condition and discharged after completion of more than 10 years of service 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, 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, and the applicant is considered entitled for grant of disability pension particularly so because RMB has not given reasons as to why the disease could not be detected at the time of enrolment. The operative portion of judgment of ***Dharamvir Singh*** (supra) is reproduced as under:-

*“18. A disability “attributable to or aggravated by military service” is to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982, as shown in Appendix II. Rule 5 relates to approach to the Entitlement Rules for Casualty Pensionary Awards, 1982 based on presumption as shown hereunder:*

*“5. The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions:*

***Prior to and during service***

*(a) 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.*

*(b) In the event of his subsequently being discharged from service on medical grounds any deterioration in his health, which has taken place, is due to service.”*

*From Rule 5 we find that a general presumption is to be drawn that 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. If a person is discharged from service on medical ground for deterioration in his health it is to be presumed that the deterioration in the health has taken place due to service.”*

*“28. The learned counsel for the respondent Union of India relied on decisions of this Court in **Om Prakash Singh v. Union of India** (2010)12 SCC 667, **Ministry of Defence v. A.V. Damodara** (2009) 9 SCC 140, **Union of India v. Ram Prakash** (2010) 11 SCC 220 and submitted that this Court has already considered the effect of Rules 5, 14(a), (b) and (c) and held that the same cannot be read in isolation. After perusal of the aforesaid decisions we find that Rules 14(a), 14(b) and 14(c) as noticed and quoted therein are similar to Rule 14 as published by the Government of India and not Rule 14 as quoted by the respondents in their counter-affidavit. Further, we find that the question as raised in the present case that in case no note of disease or disability was made at the time of individual’s acceptance for military service, the Medical Board is required to give reasons in writing for coming to the finding that the disease could not have been detected on a medical examination prior to the acceptance for service was neither raised nor answered by this Court in those cases. Those were the cases which were decided on the facts of the individual case based on the opinion of the Medical Board.”*

7. Additionally since the applicant's services were cut short and he was removed prematurely on medical grounds by RMB, his discharge will be deemed to be a case of invalidation out in terms of Regulations 173A of Pension Regulations for the Army 1961 which reads as under:-

*“173-A. Individuals who are placed in a lower medical category (other than ‘E’) permanently and who are discharged because no alternative employment in their own trade/category suitable to their low medical category could be provided or who are unwilling to accept the alternative employment or who having retained in alternative appointment are discharged before completion of their engagement, shall be deemed to have been invalided from service for the purpose of the entitlement rules laid down in Appendix II to these Regulations.*

**Note.** *The above provision shall also apply to individuals who are placed in a low medical category while on extended service and are discharged on that account before the completion of the period of their extension”.*

8. Since it is a deemed case of invalidation, his disability of 20% will be rounded off to 50% in terms of Hon'ble Apex Court Judgment on rounding off of disability pension rendered in the case of **Sukhwinder Singh vs Union of India & Ors** reported in (2014) STPL (WEB) 468 SC. In our view, the case is fully covered by the aforesaid decision of Hon'ble The Apex Court in which the substance of what has been held is that even if an individual is assessed to be less than 20%, the *“disability leading to invaliding out of service would attract the grant of fifty*

*per cent disability pension.*”. Para 9 of the judgment, being relevant is quoted below.

*“9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Thirdly, there appears to be no provisions authorizing the discharge or invaliding out of service where the disability is below twenty per cent and seems to us to be logically so. Fourthly, wherever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent. **Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension.**”*

9. In view of the above the Original Application deserves to be allowed and the applicant is entitled for grant of disability pension w.e.f. 31.01.1999 for two years @ 20% rounded off to 50% for two years. Applicant’s Re-survey Medical Board shall also be conducted. Further entitlement of disability element of pension shall be subject to the outcome of the RSMB.

10. Accordingly, O.A. is **allowed**. The impugned orders are set aside. The respondents are directed to grant disability element of pension to the applicant @ 20% and after rounding off @ 50% for two years discharge i.e. 31.01.1999 and further entitlement for disability pension shall be subject to outcome of

Re-Survey Medical Board. The entire exercise shall be completed by the respondents within a period of four months from the date of production of a certified copy of this order, failing which the respondents shall be liable to pay interest at the rate of 9% to the applicant on the amount accrued till the date of actual payment.

No order as to cost.

**(Air Marshal BBP Sinha)**  
**Member (A)**

Dated: 27 April, 2018

JPT

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