

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

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

**ORIGINAL APPLICATION No. 701 of 2017**

Wednesday, this the 09<sup>th</sup> day of May, 2018

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

**Ex Sigmn Lal Bahadur Patel (No. 5722392X), S/o Late  
Sri Shankar Lal Patel, R/o Lakhanpur Kandou, P.O.  
Atrampur, Teh : Soraon, Allahabad (U.P.) - 229412  
..... Applicant**

Ld. Counsel for the Applicant : **Col A . K Srivastava (Retd),  
Advocate.**

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi - 110011.
2. The Chief of the Army Staff, IHQ of MoD (Army), South Block, New Delhi - 110011.
3. Officer Commanding The Records Signals Jabalpur (M.P.)
4. Principal Controller of Defence Account PCDA (Pensions), Draupadi Ghat, Allahabad - 211014.

**.....Respondents**

Ld. Counsel for the Respondents. Counsel : **Ms Appoli Srivastava,**  
Advocat, Central Govt. Standing  
Counsel assisted by **Maj Rajshri  
Nigam** OIC Legal Cell.

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

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

*“(a) Issue/Pass an order or direction of appropriate nature to quash/set-aside the respondents impugned order, dated 04 Jul 2016 forwarded to him recently vide The Signal Records letter dated 16 Feb 2017, rejecting applicant’s disability claim (**Annexure No. A-1**) and remarks contained in IMB proceedings that his disability was neither attributable to nor aggravated by military service (**Annexure No. A-2**)*

*“(b) Issue/Pass an order or direction of appropriate nature to the respondents to grant the applicant his entitled 40% disability pension, comprising of service element and disability element, duly rounded off to 50% in terms of MoD letter No. 1(2)/97/D(PEN-C) 31 Jan 2001 duly supported by Hon’ble Supreme Court decision in Civil Appeal No. 418 of 2012 Titled UOI & Others v Ram Avtar.*

*“(c) Issue/Pass an order or direction of appropriate nature as this Hon’ble Tribunal deems appropriate in favour of the accused.*

*“(d) Allow this application with costs and Interest.”*

2. The facts of the case draped in brevity are that the applicant was enrolled in the Indian Army on 25.09.2010 and was invalided out of service on 10.01.2016 under Army Rule 13 (3) Item No (iii) on medical grounds being in low medical category on account of suffering from BI POLAR AFFECTIVE DISORDER RELAPSE. The total service rendered by the

Applicant was five years and 106 days in the Army. Before being invalidated out, the applicant was brought before Invaliding Medical Board which was held on 31.10.2015 at Military Hospital Jodhpur which assessed the disability as 40% for life but at the same time opined it to be neither attributable to nor aggravated by military service. On matter being processed for disability pension, the competent authority disallowed the claim for disability pension in view of the medical opinion that the disability was neither attributable to nor aggravated by military service vide communication dated 04.07.2016. It is in this backdrop that the aforesaid O.A has come to be filed.

3. Learned counsel for the respondents propped up rejection of the claim for disability pension referring to provisions of Rule 81 (a) of Pension Regulations for the Army 2008 (Part I) in which conditions postulated for grant of disability pension are that the service personnel who is invalided from service on account of a disability which is attributable to or aggravated by such service may be granted a disability pension consisting of service element and disability element. Since disability was regarded as neither attributable to nor aggravated by the military service and not connected with service by the invaliding Medical Board, the applicant is not eligible for grant of disability pension due to policy constraint as per Rule 81 (a) of the Pension Regulations 2008

aforesaid. Additionally, it is contended that since disability had occurred during posting at the peace station, it was not regarded as attributable to or aggravated by military service.

4. Repudiating the above contentions advanced by learned counsel for the respondents, the learned counsel for the applicant submitted that at the time of enrolment, the applicant was found to be medically fit in all respects attended with submission that in view of the decision of the Hon'ble Apex Court in the case of **Dharamvir Singh vs Union of India and others (2013) 7 SCC 316**, the disability of Bipolar Disorder Relapse has to be treated as attributable to and aggravated by military service.

5. We have heard learned counsel or the Applicant as also learned counsel for the respondents. We have also gone through the materials facts on record.

6. Be that as it may, the law on attributability of a disability has already been well settled by Hon'ble Supreme Court in the case of **Dharamvir Singh Vs. Union of India and Ors** 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. It would crystallise from the aforesaid decision that the Apex Court clearly ruled that 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. The only reason assigned in the instant case is that since disease had occurred during posting in peace station, it was opined to be neither attributable to nor aggravated by the military service. In our view, the reasons assigned by the Invalidating Medical Board are not in tune with spirit and intention of the judgment of the Apex Court.

8. In Civil Appeal Nos. 4357-4358 of 2015 (arising out of SLP (CIVIL) Nos. 13732-13733/2014) "Union of India vs Manjeet Singh", decided on May 12, 2015, the same view has been reiterated by the Apex Court. We quote para 22 of Majeet Singh's case (supra) to draw further strength to rely upon Dharamvir's Singh case (supra) and it says as under:

*"Be that as it may, adverting inter alia to Rule 14(b) of the Rules, we are of the unhesitant opinion that reasons, that the diseases could not be detected on medical examination prior to acceptance in service, ought to have been obligatory recorded by the Medical board sans whereof, the respondent would be entitled to the benefit of the statutory inference that the same had been contracted during service or have been aggravated thereby. There is no reason forthcoming in the proceedings of the Medical Board, as to why his disabilities eventually adjudged to be constitutional or genetic in nature had escaped the notice of the authorities concerned at the time of his acceptance for the Army service."*

9. The Apex Court in the latest judgments rendered in Civil Appeal No 4409 of 2011 Ex Hav Mani Ram Bharia vs Union of India and Others, decided on 11.02.2016 and also Civil Appeal No 1695 of 2016 (arisen out of SLP (c) No. 22765 of 2011) in Satwinder Singh vs Union of India and Ors, decided on 11.02.2016, has reiterated the same view.

10. Medical literature on Bipolar is clear that besides hereditary vulnerability, stress is a major factor in triggering this disease. Studies done in the medical field on identical twins have established beyond doubt that hereditary factor is not the only factor for Bipolar. If that was so both identical twins should have had the same disease. However in most of the studies of Bipolar, only one of the identical twins has Bipolar disease, while the other doesn't normally have it. Hence, it establishes the fact that other factors like stress play a major role in triggering this disease. Additionally, the medical specialist opinion in his medical board has ruled out genetic loading implying that this disease is not there in his family. Thus in view of above facts denying him attributability/ aggravation of disease due to military service, only because the disease didn't originate in a field or Counter Insurgency Area or High Altitude station but at a peace station amounts to being unfair to the applicant who has put in more than 05 years of service in the Army. There is no gainsaying that a presumption arises in favour of the petitioner being fit on the date of his

recruitment, and the disease subsequently detected while in service even though in peace station, can be said to be aggravated by Military Service and this presumption can't be denied by the respondents. The stand taken by the respondents that the report of the Medical Board to the effect that the disease is hereditary in nature, cannot be said to be sufficient rebuttal of the presumption particularly so when specialist medical opinion in the medical board rules out genetic loading. Thus the benefit of doubt will have to go to applicant and the disease should be considered aggravated by military service.

11. On the issue of rounding off of disability pension, we are of the opinion that the case is squarely covered by the decision of ***K.J.S. Buttar vs. Union of India and Others***, reported in (2011) 11 SCC 429 and Review Petition (C) No. 2688 of 2013 in Civil appeal No. 5591/2006, ***U.O.I. & Anr vs. K.J.S. Buttar and Union of India vs. Sukhvinder Singh Vs Union of India and Ors*** reported in **2014 STPL (WEB) 468 SC**.

12. The issue of rounding off of disability pension on invalidation has been well settled by Hon'ble Apex court. Thus, we would like to refer to the decisions of Hon'ble the Apex in the case **of Sukhvinder Singh Vs Union of India and 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.”***

13. Thus as a result of foregoing discussion, the O.A is allowed. The impugned orders passed by the respondents are set aside. The disability of the applicant is to be deemed to be aggravated by military service. The respondents are directed to grant disability pension to the applicant @ 40% for life, which would stand rounded off to 50% for life from the date of discharge. The respondents are further 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.

14. No order as to costs.

**(Air Marshal BBP Sinha) (Justice S.V.S. Rathore)**  
**Member (A) Member (J)**

Dated: May, 09 ,2018

MH/-