

**RESERVED****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW  
(CIRCUIT BENCH AT NAINITAL)****ORIGINAL APPLICATION No. 282 OF 2018**Friday, this the 01<sup>st</sup> day of June, 2018**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)  
Hon’ble Air Marshal BBP Sinha, Member (A)”**No 14354783 Ex GNR/SKT/CLK Suresh Kumar Dogra son of Amichand, R/o  
Village Barotiwala, Vikasnagar, District Dehradun, Uttarakhand-248198.**..... Applicant**Ld. Counsel for the : **Shri Kishore Rai, Advocate.**  
Applicant

Versus

1. Union of India, Ministry of Defence through its Secretary South Block, New Delhi-11000.
2. P.C.D.A. (P), Allahabad, Uttar Pradesh.
3. Appellate Committee on First Appeals Dir PS-4, AG’s Branch, Army HQs DHO PO New Delhi – 110011
4. Senior Record Officer, Artillery Records, Nasik Road Camp, Maharashtra.

**.....Respondents**Ld. Counsel for the : **Shri Bhanu Pratap Singh,**  
Respondents. Addl. Central Govt. Standing Counsel**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.

*“i. A direction to quash the order dated 23.07.1984 passed by respondent no.2 (contained as Annexure No.3 to this original application) or to*

*ii. A direction to grant the disability pension to the applicant from the date of his discharge from service on medical grounds w.e.f. 24.06.1984*

*iii. A direction to the respondents to provide medical facility to the applicant*

*iv. To summon the entire records of the applicant pertaining to computation of his disability pension*

*v. Any other relief to which the applicant is found entitled may also very kindly be granted to the applicant.”*

2. Delay in filing this O.A. has been condoned by vide order dated 30.05.2018.

3. Shorn of unnecessary details, the facts as they emerge from the record are that the applicant was enrolled in the Army as GNR/ SKT on 12.11.1980. The applicant was diagnosed suffering from LOW BACK ACHE (SPIN BIFID) by the Medical Board since January, 1983. It is averred in the O.A. that the applicant had sprained his back while doing Battle Physical Efficiency Test. The Medical Board downgraded him to medical category CEE permanent w.e.f. 12.08.1983. Further retention of the applicant was not recommended by the Commanding Officer. The applicant was brought before the Release Medical Board to assess the cause and the degree of his disablement on 08.03.1984. The Release Medical Board opined his disability as having been aggravated by Military service and assessed his disability at 20% for 2 years. Accordingly, the applicant was discharged from Army service w.e.f. 24.06.1984. Pension claim of the applicant was processed and rejected by the PCDA (P) Allahabad vide order dated 06.07.1984 on the ground that the disability was neither attributable to nor aggravated by military service. The applicant approached the appropriate authority by representing his cause to which no heed was paid, as such, the applicant again approached the Record Officer concerned which was also met the same fate.

4. Learned counsel for the applicant submitted that the onset of the disease suffered by the applicant was not at the pre-enrolment stage; hence he is entitled to disability pension in view of pronouncements of the Hon'ble Supreme Court as well as various Benches of the Armed Forces Tribunal.

5. Refuting submissions of learned counsel for the applicant, learned counsel for the respondents in the counter affidavit have denied the claim of the applicant on the ground that since the disability of the applicant was neither attributable to nor aggravated by military service, he was not entitled to the disability pension.

6. We have heard learned counsel for the applicant as also learned counsel for the respondents. We have also perused the material on record.

7. In the case reported in (2009) 1 SCC 216, *Union of India and ors vs. Rajpal Singh*, considering the settled law emerging out of this judgment, it is clear that the respondents erred in releasing him through Release Medical Board; he should have been released through Invaliding Medical Board (IMB). Hence the release of the applicant is to be deemed as 'INVALIDATION OUT OF SERVICE'.

8. The proposition of law with regard to attributability of disability pension and the percentage of disability has been well enunciated by the Hon'ble Supreme Court and is no more a RES INTEGRA. Hon'ble the Supreme Court in the case of **Dharamvir Singh versus Union of India and others**, reported in (2013) 7 SCC 316, has observed the provisions of the Pension 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).”*

9. In the present case, it is undisputed that at the time of entry in service, the applicant was found to be medically fit. The onset of the disability was on account of injury suffered during Battle Physical Efficiency Test (BPET) detected after four years of his enrolment in military service. This aspect is absolutely clear in the opinion of the Release Medical Board. Admittedly, the Release Medical Board has therefore opined that the disability was aggravated by Military service and assessed it @ 20% for two years. We fail to understand as to how and why the PCDA (P) Allahabad has over ruled the opinion of the

Release Medical Board and noted the disability as 'neither attributable to nor aggravated' by military service without any physical medical examination of the applicant.

10. Keeping in view the facts of the present case and the pronouncement of the Hon'ble Apex Court in the case of **Dharamvir Singh** (supra), the disability of the applicant is to be considered as attributable to Military service. Since, the period of disability of two years is w.e.f. 24.06.1984, hence the benefit of rounding off cannot be extended to the applicant because the scheme of rounding off has come in force with effect from 01.01.1996.

11. In view of the discussion held above, this OA deserves to be allowed and is hereby **allowed**. The impugned orders are hereby set aside. The respondents are directed to grant disability pension to the applicant at the rate of 20% for two years from the date of discharge i.e. 24.06.1984. The respondents are also directed to conduct Re-Survey Medical Board for re-assessing the present medical condition of the applicant. Future entitlement of disability pension shall be subject to the outcome of Re-Survey Medical Board. The respondents are further directed to comply with the order within four months from the date of receipt of a certified copy of this order, failing which the respondents shall be liable to pay interest at the rate of 9% per annum to the applicant on the amount accrued till the date of actual payment.

No order as to costs.

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

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

Dated: June 01 , 2018  
anb