

Court No. 1
Reserved Judgment

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW
ORIGINAL APPLICATION NO. 471 of 2017**

Friday, this the 27th day of April, 2018

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

Chet Ram (No 15481790X Ex Havildar/Int (GD), son of Shri Sunder Ram, resident of Village Rirha/Kash, Post office : Gehra Tehsil : Sarkaghat, District Mandi (Himanchal Pradesh), Lastly posted at No. 3 PSS, CCCIU, Pin-900450 c/o 56 APO.

....Applicant

Ld. Counsel for the Applicant : **Shri Yash Pal Singh,
Advocate.**

Verses

1. Union of India, through the Secretary to Government of India, Ministry of Defence, New Delhi.
2. Additional Director General Personnel Services, Adjutant’s General Branch, Integrated Headquarters of Ministry of Defence (Army), DHQ PO, New Delhi-110011.
3. Officer - in - Charge Records, Intelligence Corps, PIN-908793, C/O 56 APO.
4. Commanding officer, No. 3 PSS, CCCIU, PIN-900450, C/O 56 APO.

.....Respondents

Ld. Counsel for the Respondents : **Dr Shesh Narain Pandey
Advocate, Sr. Central
Govt Standing Counsel.**

Assisted by : Maj Salen Xaxa, 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 setting aside the letter/order dated 15.10.2016 (Annexure no.1 to the Original Application); and order 26.07.2017 (Annexure No.2 to the Original Application) rejecting the claim of the applicant for disability pension, after summoning the relevant original records.

(b). Issuing/passing of an order directing the respondents to consider case of the applicant for grant of disability pension and provide the same from due date including arrears thereof with interest, and also the benefit of rounding off and other consequential benefits of ex-serviceman.

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

(d) Allowing this Application with cost.”

2. The facts in nutshell are that the Applicant was enrolled in the Indian Army on 05.01.2001 as a Sepoy and performed duties at various places in Field and Peace areas. During service, the applicant also claimed to have participated in various military operations, like, Operation Parakram and Operation Rakshak in the counter Insurgency Areas of Jammu and Kashmir. While serving with Central Command Counter

Intelligence Unit, the Applicant was examined in Sept 2014 at 158 Base Hospital and placed in low medical category 1H1A1P2 (Permanent) E1 for disability "SEIZURE DISORDER with effect from 04.04.2016. In April 2015, re-categorization Medical Board was held which extended the medical category of the Applicant P3 (Temporary) for another six months. Another re-categorization Medical Board was held in the month of Oct 2015 at 184 Military Hospital which upgraded/recommended the medical category p2 (temporary) for another six months. The last Medical Board was held in April 2016 at Command Hospital Lucknow where he was placed in medical category P2 (Permanent) with 20% disability for the disability aforesaid. Ultimately, the applicant was discharged from military service through Release Medical Board (RMB) with effect from 01.01.2017. His RMB has assessed his disability as 20% for life but given a composite assessment of NIL% for life because the disability as per medical opinion is neither attributable nor aggravated by military service (NANA). His claim for disability was denied by the respondents vide order dated 15.10.2016 on the ground that the aforesaid disability was neither attributable to nor aggravated by military service. Aggrieved, the applicant preferred an appeal which was rejected vide order dated 26.07.2017.

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

4. The learned counsel for the Applicant submits that the Applicant was discharged after completion of more than 15 years of service on the ground of disability "SEIZURE DISORDER" In the present case, it is submitted, no note of any disease was recorded at the time of appellant's acceptance for military service. He further submits that the respondents have failed to bring on record any document to suggest that the applicant was under treatment for such a disease or by hereditary he is suffering from such disease. In the absence of any note in the service record at the time of acceptance of joining of appellant, it was incumbent on the part of the Medical Board to call for records and look into the same before coming to an opinion that the disease could not have been detected on medical examination prior to the acceptance for military service, but nothing is on record to suggest that any such record was called for by the Medical Board or looked into it and no reasons have been recorded in writing to come to the conclusion that the disability is not due to military service. In fact, non-application of mind of Medical Board is apparent from the medical report.

5. Per contra, learned counsel for the respondents contends that the medical test at the time of entry is not exhaustive but its

scope is limited to broad physical examination and no entry can be made initially unless some constitutional or hierarchical disease occurs later on. The learned counsel in support of the above contentions refers to the judgment of the Apex Court in Secretary, Ministry of Defence and others vs A.V Damodaran (dead) reported in (2009) 9 SCC 140 and Controller of Defence Account and others Vs Balachandran Nair (2005) 13 SCC 128, in which the substance of what was held was that medical Board being an expert body and its opinion is entitled to be given due weight, value and credence.

6. In the Release Medical Board dated 08.08.2016, the medical opinion given by the Medical Board justifying NANA runs as under:

“NANA as the onset of disease was in modified field area and not related to infection or service related trauma.”

7. In giving the above opinion, the Medical Board referred to Chapter VI Para 33 of Guide to Medical Officers (Military Pension) 2002. The extract of the same being relevant is quoted below.

“The factors which may trigger the seizures are sleep deprivation, emotional stress, physical and mental exhaustion, infection and pyrexia and loud noise.

Acceptance is on the basis of attributability if the cause is infection, service related trauma.

Epilepsy can develop after time lag/latent period of 7 years from the exposure to offending agent

(Trauma, Infection, TB). This factor should be borne in mind before rejecting epilepsy cases.”

8. The onset of the disease, according to the medical report has occurred on 12.09.2014 which means after 13 years and 08 months of service in the Army. It is submitted that the onset of disease occurred while the Applicant was posted at Bagnonai which was not a field area. It is opined that there was no history of fever sleep dep, physical mental or emotional stress or exposure to loud noises immediately prior to the onset of seizures and no evidence of infection or service related trauma.

9. In the instant case there are two issues which need to be decided. Firstly Is this case of normal release or a case of invalidation, and Secondly Is the disability attributable to or aggravated by military service?

10. Coming to the first issue the applicant had obtained the rank of Havildar and was thus eligible as a Havildar to serve upto December 2024 as per the 24 years normal service tenure of a Havildar. However he was discharged on medical grounds w.e.f. 01.01.2017 i.e. within 15 years 11 months 26 days of Service. However in light of Hon'ble Apex Court judgment in Sukhvinder Singh vs. UOI & Para 173 'A' (section 95 of Pension Regulation of the Army (2008) Part - I of pension regulation of his discharge, on medical grounds will be deemed to be an invalidation out of

service. Relevant extract of Para 173 'A' & relevant part of judgment are as follows:-

"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 employment are discharged before completion of their engagement, shall be deemed to have been invalidated 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."*

11. On the second issue of attributability, the subject matter is no more res integra. In the case of Dharamvir Singh Vs. Union of India and Ors reported in (2013) 7 Supreme Court Cases 316, in paras 29.6, 29.7, 30, 31, 33, 34 and 35 of the judgment, the observations made by Hon'ble the Apex Court are as under :

"29.1. Disability pension to be granted to an individual who is invalidated 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)."

12. In the instant case, the Release Medical Board has expressed its opinion that the disease is not attributable to, or aggravated by service primarily because the disease has not originated in filed area (but in modified field area) and is not connected to infection or service related trauma. Hence we have given our anxious thoughts to the reasons given by RMB to declare the disease as NANA. We have found that the reasons given by RMB for declaring the disease as NANA are inadequate and patchy and do not cover the spirit of the judgment ***Dharamvir Singh vs Union of India & Ors***, ***Dharamvir Singh vs. Union of India and Others***, reported in (2013) 7 SCC 316. Since the onset of disease is after 13 years of service and the triggers of his disease include, sleep deprivation, emotional stress, physical & mental exertion therefore saying that it is NANA because it didn't originate in

Field Area is not good enough and convincing. Hence we give benefit of doubt to the applicant in line with the above quoted judgment particularly because this disease can manifest upto 07 yrs after the initial exposure to trigger factors. Hence we consider this disease as aggravated by military service. In absence of any evidence on record to show that the applicant was suffering from the disability at the time of his acceptance in service and the fact that the applicant had put in over 13 years of service at the time of onset of disease, it will be presumed that the applicant was in sound physical and mental condition at the time of entering the service and deterioration in his health has taken place due to service.

13. The Apex Court has clearly held in the case of **Dharam Vir Singh** (supra) that as per Rule 423(a) of General Rules for the purpose of determining a question whether the cause of disability resulting from disease is or is not attributable to service. It is immaterial whether the cause giving rise to disability or death occurred in an area declared to be a field service/active service area or under normal peace conditions. Be that as it may, there is no denying of the fact that the Applicant has remained posted at various places including field/active area being in Intelligence Unit. He has also participated in various military operations like Rakshak and Parakram. Therefore, the presumption would be that the disability of the appellant has a causal connection with the

military service conditions and is hence considered as aggravated by military service.

14. On the issue of rounding off of disability pension, we are of the opinion that the case is squarely covered by the decision of **Sukhvinder Singh vs. Union of India and Others**, 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.**"*

15. As a result of foregoing discussions, we are of the opinion that the Applicant is deemed to have been invalidated out & his disability is aggravated by military service. Hence he is entitled to disability pension at the rate of 20% which should stand rounded off to 50% for life.

16. Thus, the O.A is **allowed**. The impugned orders dated 15.10.2016 (O.A-1) and 26.07.2017 (Annexure 2 to O.A.) passed by the Respondents are set aside. The Applicant is entitled for disability pension @ 20% for life which would stand rounded off to 50% for life w.e.f. his date of discharge i.e. 01.01.2017. The Respondents are directed to give effect to the order within four months from the date of receipt of a certified copy of this order. Delay in payment by respondents four months will attract interest @ 9%.

17. No order as to costs.

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

Dated: April, 27 , 2018
MH/-