

RESERVED

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW
(CIRCUIT BENCH, NAINITAL)**

ORIGINAL APPLICATION No. 352 of 2018

Friday, this the 03rd day of May, 2019

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

Digambar Singh Kharayat No. 14704329/Ex/RECT S/O Shri Mohan Singh Kharayat, R/O Village Sripur Bichwa (Mazra Form), P.O. Sripur Bichwa District-Udham Singh Nagar (Uttarakhand).

..... Applicant

Ld. Counsel for the Applicant : **Shri Kishore Rai,
Advocate.**

Versus

1. Union of India, Ministry of Defence through its Secretary, South Block, New Delhi-110011.
2. CDA (P), Draupadighat, Allahabad (UP).
3. Addl Dte Gen Personnel Services, Adjutant General's Branch, Integrated HQ of MoD (Army), DHQ, PO, New Delhi-110011.
4. Senior Record Officer, Kumaon Regiment, Ranikhet.

.....Respondents

Ld. Counsel for the Respondents. : **Ms Pushpa Bhatt,
Central Govt. Standing Counsel
Counsel assisted by Lt Col Subodh
Verma, OIC Legal Cell.**

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

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

(i) Issue a direction to quash the order dated 21.05.2009 passed by respondent No 1 (contained as Annexure No 6 to this original application) or to ,

(ii) Issue a direction to grant disability pension to the applicant as per disability pension rules along with rounding off to the tune of 50% or to,

(iii) To summon the entire records of the applicant pertaining to computation of his disability pension.

(iv) Any other relief to which the applicant is found entitled may also very kindly be granted to the applicant.

2. The brief facts of the case are that the applicant was enrolled in the Indian Army on 11.03.2005 and was invalided out from service on 02.12.2005 in low medical category S5H1A1P1E1 under Rule 13 (3) of the Army Rules, 1954 due to the disability 'Dissociative Motor Disorder F-44.4'. At the time of invalidation he had rendered a total of approx 09 months of service in the Army as a recruit. The Invaliding Medical Board (IMB) assessed the disability of the applicant as 20% for five years neither attributable to nor aggravated by Military service (NANA). Disability pension claim was rejected by order dated 15.11.2006. The applicant preferred an appeal against rejection of disability pension which was also rejected vide order dated 12.11.2007. Thereafter second appeal preferred

by the applicant was also rejected vide order dated 21.05.2009. Hence this O.A.

3. Learned counsel for the applicant submitted that since the applicant was enrolled in a medically fit condition and invalided out of service in low medical category, his disability should be considered as attributable to and aggravated by military service and he should be granted disability pension. He further submitted that there is a causal connection between service of the applicant and the disability as it occurred while on duty and there was no note in his service documents with regard to suffering from any disability at the time of enrolment. Relying upon the Hon'ble Apex Court judgment in the case of ***Sukhwinder Singh vs Union of India & Others***, reported in (2014) STPL (WEB) 468 SC, Ld. Counsel for the applicant vehemently argued that the disease of the applicant is principally due to stress and strain of military service and should be considered as aggravated by military service.

4. Per contra the respondents have filed the counter affidavit denying the claim of the applicant. It has been pleaded by the respondents that the applicant was invalided out of service in low medical category 'S5H1A1P1E1' under Army Rule 13 (3) due to the disability 'Dissociative Motor Disorder F-44.4' by a duly constituted Invaliding Medical Board and the Board opined that the disability is neither attributable to nor aggravated

(NANA) by military service. He further submitted that since the IMB has considered the disability of the applicant as neither attributable to nor aggravated by military service, PCDA (P), Allahabad and the appellate authority have rightly rejected the disability element claim giving due weightage, value and credence to the opinion of the IMB which is an expert body and who examined the applicant physically. He therefore pleaded the O.A. to be dismissed.

5. We have given our anxious consideration to the material placed on record and the arguments by both the Ld. Counsels. The applicant was enrolled on 11.03.2005 and for the first time the disability of the applicant was detected on 15.07.2005 i.e. within four months from the date of enrolment. He was referred to MH Bareilly where on 01.10.2005 the Graded Specialist (Psychiatry) gave the following opinion on the applicant's condition:-

*"Disability: Dissociative Motor Disorder F 44.4
19 years old recruit was transferred from MH Ranikhet for psychiatric evaluation as a case of conversion disorder.
Perusal of documents and evaluation of patient revealed the personal to have sustained injury to his knees while undergoing BPET in May 05. Since he continued to have pain in the knee joints, he reported sick in MH Ranikhet in July 05. He was managed by surgeon and after his pain decreased he was granted 04 weeks sick leave. On expiry of sick leave he was brought back by his brother as he continued to complain of weakness and difficulty in walking. He had exhibited transient unresponsiveness and was then referred to CH (CC) Lucknow for further investigations and management. Has been evaluated by Neurologist and no organic cause and symptoms detected. A psychiatric referral now in CH (CC) where psychiatric evaluation revealed the individual to have started walking normal in response to counselling & ectonus. He was then transferred back to MH Ranikhet where he again manifested with similar symptoms and was then referred back*

to his dependent psychiatry centre MH Bareilly. No genetic loading for psychiatric illness. Unit report dated 14 Sep 05 satisfactory.

Physically evaluated by Neurologist, Medical Specialist and Surgical Specialist and no organic cause detected for his symptoms. The individual walks slowly, dragging his lower limbs with a peculiar gait. There is excessive trembling and shaking of both Lower Limbs. He is anxious and dysphuric on MSE and exhibits attention seeking behaviour. Secondly low mood present but no depressive cognition or suicidal ideations. In touch with reality, has been exposed to anxiolytics and intensive counselling and supportive measures, but response to treatment is only partial. He continues to exhibit conversion symptoms.

In view of long term symptoms of conversion in a recruit during his training phase, he is unlikely to be a fit soldier in future. Recommended to be invalided out of service in S-5."

6. We further take note of the endorsement made by the medical officer, MH Bareilly at the time of discharge as under:-

"Fit to travel by road/train in entitled class with 1x2 escorts who have been explained their duties. Guards to hand over patient to NOK and to receive handing taking over in duplicate. xxxxxx".

7. The applicant was found to be suffering from the aforesaid disability within four months of his enrolment. In this particular case we have found that the IMB has given adequate reasons to justify the disability of the applicant to be neither attributable to nor aggravated by military service (NANA) and we are satisfied with the reasons given by the Medical Board. Additionally a recruit is akin to a probationer and if the fitness levels of a recruit is below normal and is hampering his progression in training then the respondents as employers have every right to reject the probationer/recruit from training and discharge him.

8. Army is a combatant force and mental and physical fitness both are a must for a recruit. Since the disability of the applicant is of a personality/psychiatric nature and could not have been detected at the time of enrolment, we by no stretch of imagination can make the same as attributable to or aggravated by military service particularly so when it has manifested within about 04 months of training.

9. As a result of above discussions O.A. lacks merit and deserves to be dismissed.

10. Accordingly, the petition fails and is hereby **dismissed**.

There shall be no order as to cost.

(Air Marshal BBP Sinha)
Member (A)

(Justice VK Shali)
Member (J)

Dated: May 2019
gsr

