

**RESERVED****ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW****ORIGINAL APPLICATION No. 37 of 2017**Monday, this the 27<sup>th</sup> day of May 2019**"Hon'ble Mr. Justice S.V.S. Rathore, Member (J)  
Hon'ble Air Marshal BBP Sinha, Member (A)"**

No. 18005065-M Ex-Spr (Elect) Dharmendra Singh of 413 (I) Engr Sqn, PIN-913413, C/O 56 APO, son of Shri Chander Singh Rawal, resident of village-Khoja, Post Office-Pamsyari, Tehsil-Didihat, District-Pithoragarh (Uttarakhand), Pincode-262551.

..... Applicant

Ld. Counsel for the Applicant : **Shri K.K.S. Bisht**, Advocate.

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi-110011.
3. Commanding Officer, 413 (I) Engineer Squadron, PIN-913413, C/O 56 APO.
4. Officer-in-Charge Records, Bengal Engineer Group and Centre, Roorkee, PIN-900477, C/O 56 APO.

.....Respondents

Ld. Counsel for the Respondents. : **Dr. Chet Narain Singh**,  
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:-

- (a) *Issue/pass an order or direction to the respondents to quash/set aside the arbitrary and illegal order passed by respondent No 4 vide letter No Pen/D-8034/R dated 20.02.2015 (Annexure No A-5) rejecting the disability pension claim.*
- (b) *Issue/pass an order or direction to the respondents to quash/set aside the arbitrary and illegal order passed by Appellate Committee on First Appeals (ACFA) vide letter No B/40502/451/2016/AG/PS-4 (Imp-II) dated 28.07.2017 (Annexure No SA-1) rejecting the disability pension claim.*
- (c) *Issue/pass an order or direction to the respondents to quash/set aside the arbitrary and illegal order passed by Second Appellate Committee on Pension (SACP) vide letter No B/38046A/71/2018/AG/PS-4 (2<sup>nd</sup> Appeal) dated 04.10.2018 (Annexure No SA-2) rejecting the disability pension claim.*
- (d) *Issue/pass an order or direction to the respondents to grant 20% disability which after rounding off will be 50% for life from the date of his discharge i.e. 07.01.2015.*
- (e) *Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*
- (f) *Allow this application with costs.*

2. Brief facts of the case are that the applicant was enrolled as a Sapper (Sepoy) in the Indian Army on 09.03.2010 and was invalidated out from service after rendering 04 years, 09 months and 03 days of service on 07.01.2015 in low medical category ‘S5H1A1P1E1’ in terms of Rule 13 (3) III (iii) of Army Rules, 1954. Prior to discharge from service, the applicant was brought before Invalidating Medical Board (IMB) held on 11.12.2014 at Military Hospital, Amritsar which opined the applicant to be invalidated out of service with disability element

@ 1-5% for life neither attributable to nor aggravated by military service (NANA) due to disability '**Bipolar Affective Disorder**'. Disability pension claim preferred by the applicant was rejected vide order dated 20.02.2015. Thereafter first and second appeals preferred against rejection of disability pension claim were rejected vide orders dated 28.07.2017 and 04.10.2018 respectively. Hence this O.A.

3. Ld. Counsel for the applicant submitted that the applicant was enrolled in the Army in medically and physically fit condition and there was no note in his service documents with regard to suffering from any disease prior to enrolment, therefore any disability suffered by the applicant after joining the service should be considered as attributable to or aggravated by military service in terms of para 423 (c) of Pension Regulations for the Army and the applicant should be entitled to disability pension. Ld. Counsel for the applicant further submitted that disability pension claim of the applicant has been rejected in a cavalier manner without assigning any meaningful reason. This disease, he feels, is due to stress and strain related rigors of military service. He further submitted that the assessment of disability by the IMB is contradictory as on one hand applicant's medical category is S5 and on the other hand the percentage of disability is limited to only 1-5%. He concluded by pleading for grant of disability pension to the applicant.

4. On the other hand, the only ground put forth by the respondents for denial of disability pension is that the applicant was discharged on account of a disability which was opined to be neither attributable to nor aggravated by military service (NANA), and since primary condition of grant of disability pension prescribed in Rule 173 and Rule 179 of Pension Regulations for the Army, 1961 (Part 1) was not met, he was not found to be entitled to disability pension. He pleaded for the O.A. to be dismissed.

5. Heard learned counsel for the parties and perused the material placed on record.

6. It has been noticed that earlier the applicant had filed this O.A. for re-instatement in service but later an amendment application was moved with a prayer for grant of disability pension. The amendment was allowed vide order dated 15.04.2019 and incorporated by Ld. Counsel for the applicant.

7. Perusal of records reveals that the disability was first detected on 12.01.2013 i.e. after completion of more than two years of service which denotes that the applicant was not suffering from any illness prior to enrolment.

8. After hearing the Ld. Counsels and after perusing the material on record, we are of the opinion that there are basically two questions which need to be answered, i.e. firstly, is it correct to invalidate out an attested soldier with 1-5%

disability? and secondly, is the disability of the applicant attributable to or aggravated by military service?

9. Coming to first question, the law on this matter is no more Res Integra. The issue of what is the minimum percentage of disability at which invalidation out of service can be done for a soldier has been settled in Hon'ble Apex Court Judgment rendered in the case of ***Sukhwinder Singh vs. Union of India & Ors*** reported in (2014) STPL (WEB) 468 SC. In our view, the present case is fully covered by the aforesaid decision of Hon'ble Apex Court. 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.**”*

10. Thus in line with the law settled by the Hon'ble Apex Court in the case of ***Sukhwinder Singh*** (supra), we are of the considered opinion that the disability of the applicant is to be considered @ 20% for life.

11. Coming to the second question of deciding attributability/aggravation of the applicant's disability, the same 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 SCC 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)."*

12. The above judgment has been constantly followed and further explored by the Supreme Court in ***Union of India and others v. Rajbir Singh*** (CA No. 2904 of 2011 decided on 13.2.2015); ***Union of India and others v. Manjit Singh*** (CA No. 4357-58 of 2015 (arising out of SLP ( C) No. 13732-33 of

2015) decided on 12.5.2015; **Union of India v. Angad Singh** (CA No. 2208 of 2011 decided on 24.2.2015); **KJS Butter v. Union of India** (CA No. 5591 of 2006 decided on 31.3.2011; **Ex. Hav Mani Ram Bharia v. Union of India and others**, Civil Appeal No. 4409 of 2011 decided on 11.2.2016; **Satwinder Singh v. Union of India**; OA 621 of 2014 **Bharat Kumar Vs UOI & Ors.**; OA 1235 of 2014 **Hoshiar Singh Vs UOI & Ors.** and 480 of 2015 **Jasbir Singh Vs UOI & Ors.** 18 and others Civil Appeal No. 1695 of 2016 (arising out of SLP (c) No. 22765 of 2011) and decided on 11.2.2016. Thus in light of the well settled law on attributability the disability of the applicant is to be considered as aggravated by military service.

13. Learned counsel for the applicant has also pleaded in the petition for the benefit of rounding off of disability pension and has also made oral prayer for the same. Thus in consonance with the Policy Letter No. 1(2)/97/D (Pen-C) dated 31.01.2001 and in terms of the decision of Hon'ble Apex Court in the case of **Union of India and Ors vs. Ram Avtar & ors** Civil Appeal No 418 of 2012 decided on 10.12.2014, we are of the view that in principle the applicant is entitled to the benefit of rounding off. However, due to law of limitations given by the Hon'ble Apex Court vide **Shiv Dass vs Union of India & Ors** reported in 2007 (3) SLR 445, he shall be entitled to arrears only up to three years before filing of this amended O.A.

14. Thus in the result, the Original Application succeeds and is **partly allowed**. The impugned orders dated 20.02.2015, 28.07.2017 and 04.10.2018 are set aside. The disability of the applicant 'Bipolar Affective Disorder' is to be considered @ 20% for life and aggravated by military service. Due to law of limitations the respondents are directed to grant disability pension to the applicant @ 20% for life rounded off to 50% for life w.e.f. three years prior to filing of amended application for grant of disability pension which was filed on 02.02.2019. The whole exercise shall be completed within four months from the date of receipt of a certified copy of this order. Default will invite interest @ 9% per annum.

No order as to costs.

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

**(Justice SVS Rathore)**  
**Member (J)**

Dated : May, 2019  
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