

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 290 of 2017**Friday, this the 17th day of September, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)Army No. 3199807 Ex Rect Rajendra Singh
S/o Sri Komal Singh
R/o Village – Nagla Jairam, PO – Akola,
Agra – 292011 (UP)

..... Applicant

Ld. Counsel for the Applicant: **Shri Veer Raghav Chaubey**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, Government of India, South Block, New Delhi-110011.
2. The Chief of the Army Staff, Integrated Headquarters, Ministry of Defence, South Block, New Delhi.
3. The Director of Pension, Adjutant Headquarter of Ministry of Defence (Army), DHQ PO, New Delhi.
4. Office of the PCDA (P) Draupadi Ghat, Allahabad.
5. Officer-in-Charge, Records, The Jat Regiment – 900496, C/o 56 APO.

..... Respondents

Ld. Counsel for the Respondents : **Shri Rajiv Pandey**,
Central Govt Counsel.**ORDER**

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

- “(i) This Hon'ble Tribunal may kindly be pleased to quash the impugned order dated 09.09.2016 passed by the opposite party no. 5 contained in annexure No. 1.

- (ii) Pass any other order or direction which this Hon'ble Tribunal may deem fit and proper under the circumstances of the case.
- (iii) To pass an order or direction to the opposite parties to provide the disability pension and other consequential benefits in regards to the discharge from service on 4/3/2004.
- (iv) Issue /pass order or direction as the Hon'ble Tribunal may deem fit in the circumstances of the case.
- (v) The cost of the original applicant may also be awarded to the applicant from the opposite parties.”

2. The brief facts of the case are that the applicant was enrolled in the Indian Army on 26.07.2003. While undergoing recruit training, applicant was admitted in MH Bareilly on 09.11.2003 and was transferred to Command Hospital, Lucknow for opinion of the Neurophysician on 15.11.2003. On examination, the Classified Specialist in Medicines and the Neurophysician considered him a case of Single Seizure and recommended him to be placed in low medical category P5. The applicant was transferred back to MH Bareilly on 20.11.2003. Thereafter, applicant was invalided out of service w.e.f. 04.03.2004. The Invaliding Medical Board (IMB) held on 03.01.2004 assessed his disability “SINGLE SEIZURE” @ 11-14% for life and considered as aggravated by military service due to stress and strain of military training. The disability pension claim of the applicant was rejected by Medical Advisor (Pension) attached to PCDA (P) Allahabad vide order dated 23.11.2004 stating that disability is viewed as neither attributable to nor aggravated by

military service being a constitutional disorder and not related to military service. The applicant was informed about rejection of his disability claim by JAT Records vide letter dated 04.01.2005. Instead of filing any appeal, the applicant submitted a legal notice dated 23.11.2004 to the respondents. Thereafter, the applicant filed M.A. No. 2041 of 2015 before this Tribunal which was disposed off by this Tribunal with direction to applicant to submit a statutory complaint raising all his grievances and that shall be decided by the respondents within four months from the date of presentation of copy of the order. Accordingly, a reasoned and speaking order dated 17.05.2016 was passed by JAT Records stating that applicant cannot be reinstated into service after being invalided out from service as no such provision exist under Army Act/Rules. Being aggrieved, the applicant has filed the present Original Application.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment. The applicant while participating in the parade (flag march) of unit, his head collided with a wall and sustained head injury. The disease 'Single Seizure' of the applicant was contracted during the service, hence, it was considered as aggravated by Military Service by the respondents.

4. Learned counsel for the applicant further submitted that applicant is fit and fine to resume his military service as is evident from the medical fitness certificate dated 05.10.2015 issued by the

Medical Superintendent of Community Health Centre, Akola, Agra. He said that action of the respondents is arbitrary, discriminatory and against the rules in invaliding out the applicant from service in a minor accident during routine exercise. The applicant moved a representation dated 16.11.2015 in compliance to Tribunal's order dated 30.10.2015 and a reminder representation dated 29.03.2016 was also moved but no suitable action is taken by the respondents to reinstate him in service as per the Hon'ble Apex Court judgments in invaliding cases. He also pleaded that applicant's disability is considered as aggravated by service, hence, he should be granted disability pension from the date of invaliding out from service.

5. On the other hand, Ld. Counsel for the respondents submitted that disability of the applicant has been assessed as aggravated by military service @ 11-14% for life but Medical Advisor (Pension) attached to PCDA (P), Allahabad had rejected the claim for grant of disability pension treating disability as NANA and below 20% and disability being constitutional in nature. Hence, as per Rule 173 of Pension Regulations for the Army, 1961 (Part-1), applicant is not entitled for disability pension. He pleaded for dismissal of the O.A.

6. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the IMB proceedings and rejection orders of disability pension claim as well as representation. The only question which needs to be answered is whether the Medical Advisor (Pension), PCDA (P) Allahabad has power to overrule the opinion of the IMB?

7. Since the applicant has been invalided out from service by IMB then his disability percentage can't be less than 20% as per law settled on this issue by the Hon'ble Apex Court in the case of **Sukhvinder Singh vs. Union of India & Ors.**, reported in (2014) STPL (WEB) 468 SC. Relevant extract of the judgment is as follows :

“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 authorising 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.”

8. This is a case where IMB had conceded the disability of applicant **“SINGLE SEIZURE”** @ 11-14% for life as aggravated by military service. However, PCDA (P) Allahabad has rejected the claim of applicant on the ground that disability of applicant has been viewed as NANA and below 20% (11-14%) for life and is constitutional in nature. However, it is clear that the higher competent authority i.e. PCDA (Pension) has not physically examined the applicant. The Hon'ble Apex Court has made it very clear that the opinion of the Medical Board cannot be overruled by higher chain of command without physical medical examination of the patient by a higher Medical Board. In this context the operative portion of the judgment of Hon'ble Apex Court in the case of **Ex. Sapper Mohinder Singh vs.**

Union of India in Civil Appeal No 104 of 1993 decided on 14.01.1993

is quoted below:-

“From the above narrated facts and the stand taken by the parties before us, the controversy that falls for determination by us is in a very narrow compass viz. whether the Chief Controller of Defence Accounts (Pension) has any jurisdiction to sit over the opinion of the experts (Medical Board) while dealing with the case of grant of disability pension, in regard to the percentage of the disability pension, or not. In the present case, it is nowhere stated that the Applicant was subjected to any higher medical Board before the Chief Controller of Defence Accounts (Pension) decided to decline the disability pension to the Applicant. We are unable to see as to how the accounts branch dealing with the pension can sit over the judgment of the experts in the medical line without making any reference to a detailed or higher Medical Board which can be constituted under the relevant instructions and rules by the Director General of Army Medical Core.”

9. Thus, in sum and substance we set aside the decision of competent authority and PCDA (Pension) overruling the opinion of IMB without physical examination of applicant by a higher Medical Board and restore the original opinion and findings of IMB for grant of disability pension and are of the considered opinion that the applicant was entitled to disability pension for his disability “**SINGLE SEIZURE**” @ 11-14% for life from the date of invalidment from service. The applicant is also entitled for benefit of rounding off from 11-14% to 50% for life from the date of invaliding out from service in terms of the decision of Hon'ble Supreme Court in **Union of India and others v. Ram Avtar** (Civil Appeal No 418 of 2012 dated 10.12.2014).

10. As far as reinstatement of applicant is concerned, the applicant has been recommended to be invalided out from service by Classified Specialist in Medicines and Neurophysician placing applicant in low medical category P5. While deciding representation of the applicant, the respondents in their letter dated 17.05.2016 have stated that

applicant is not eligible for grant of sheltered appointment in LMC during recruit period being not a trained soldier, hence, provision of sheltered appointment is not applicable in his case. Under the provisions of Para 143 (b) of Regulations for the Army, 1987, applicant will not be eligible for re-enrolment either in combatant or non combatant being invalided out from service in low medical category P5. He will also not be able to undergo such rigorous training at this belated stage due to his disease; hence, it is not feasible to reinstate him in service being medically unfit for training/service. Therefore, applicant's prayer for reinstatement in service is rejected.

11. Resultantly, the O.A. deserves to be partly allowed, hence **partly allowed**. The impugned orders passed by the respondents and PCDA (P) Allahabad are set aside and the original opinion of IMB is restored. The applicant's disability "**SINGLE SEIZURE**" is to be considered as aggravated by military service @ 11-14% for life in line with IMB recommendations. The applicant is entitled to disability pension @ 11-14%% for life from the next date of invalidment from service duly rounded off to 50% for life. The respondents are directed to grant disability pension @ 50% for life from the next date of invalidment from service. However, due to law of limitations settled by the Hon'ble Supreme Court in the case of ***Shiv Dass v. Union of India and others*** (2007 (3) SLR 445), the arrear of disability pension will be restricted to three years preceding the date of filing of the instant O.A. The date of filing of this O.A is 07.04.2017. The respondents are directed to give effect to this order within a period of

four months from the date of receipt of certified copy of the order.

Default will invite interest @ 8% per annum till actual payment.

12. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)

Member (A)

Member (J)

Dated: Sept., 2021

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