

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 76 of 2018**Thursday, this the 23rd day of Aug 2018**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal BBP Sinha, Member (A)”**Ex No. 2992253 Recruit Satendra Singh, The Rajput Regiment,
son of Shri Braj Pal Singh, resident of Village & Post Office :
Bhadei, Tehsil : Bhongaon, District : Mainpuri (UP)-209720**..... Applicant**Ld. Counsel for the : **Col Rakesh Johri (Retd)**
Applicant & **Shri BP Singh Chauhan, Advocate**

Versus

1. Union of India through The Secretary Ministry of Defence
New Delhi 110011.
2. Chief of the Army Staff, Integrated Headquarters of the
Ministry of Defence, South Block, New Delhi-110001
3. Additional Director General Personnel Services, Adjutant
General’s Branch, Ministry of Defence, Room No 11, Plot
No – 108 (West) Brassey Avenue, Church Road, New
Delhi-110001
4. Officer-in-Charge
Records The Rajput Regiment PIN 900427, C/O 56 APO
5. Principal Controller of Defence Accounts (Pensions),
Draupadi Ghat, Allahabad-211014.

.....RespondentsLd. Counsel for the : **Shri Ashish Kumar 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 :-

“(a) To issue/pass an order or direction to the respondents to set aside/quash the arbitrary order of denial of disability pension to the applicant as contained in Records The Rajput Regiment letter No 2992253/34/DP/PG dated 21.10.1993 .

(b) To issue/pass an order or direction to the respondents to set aside/quash arbitrary order of rejection of fist appeal preferred by the applicant against denial of the disability pension as contained in Govt. of India, Ministry of Defence, New Delhi letter No 7(1367)/96/D(Pen.A&AC), dated 06.01.1998.

(c) To issue/pass an order or direction to the respondents to set aside/quash the arbitrary order of rejection of the second appeal preferred by the applicant as conveyed by Army Headquarters, Additional Directorate General of Personnel Services, Adjutant General Branch letter No B/38046A/114/2017/AG/PS-4 (2nd Appeal dated 18.09.2017.

(d) Issue/pass an order or direction to the respondents to grant him 40% disability pension as assessed by the Invalidating Medical Board (IMB) along with benefit of rounding off being his constitutional right.

(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 cost.

2. We have heard learned counsel for the parties and perused the record.

3. In brief, the facts necessary for adjudication of this case, as averred in the O.A. are that the applicant was enrolled in the Indian Army on 24.05.1992 after having been found medically fit in all respect. During his training period at Fatehgarh, he was invalided out from service on 15.12.1992 under Army Rule 13

(3) III (iii) due to disability 'SCHIZOPHRENIA (UNSOUND MIND) in low medical category 'EEE' after rendering 06 months and 21 days of service. As per AFMSF-16 dated 20.11.1992, his disability was assessed as 40% for two years but was opined as neither attributable to nor aggravated by military service by the competent authority. His claim for disability pension was rejected by PCDA (Pension) Allahabad stating that disability 'SCHIZOPHRENIA (UNSOUND MIND)' was opined to be neither attributable to nor aggravated by military service. His First Appeal was rejected on the ground that the applicant was invalided out from service on disability which is a constitutional disorder and the onset of Invaliding Disability is just four months after joining training and also the disability has been regarded by the Medical Authority as neither attributable to nor aggravated by military service. His Second Appeal was also rejected stating that onset of ID was in Sep 1992 in Fatehgarh (Peace) within four months of his joining the initial training in Regimental Training Centre and his Invaliding Disease was regarded as neither attributable to nor aggravated (NANA) by military service. Aggrieved, the applicant has filed this Original Application.

4. Learned Counsel for the applicant vehemently pleaded that the applicant was recruited in a fit state and during training fell down from a rope climbing activity which resulted in blunt injury in the neck and head and rendered him senseless for some time. However he recovered his senses in a short time. Since there was no major bleeding or visible damage to his neck

or head, he was not referred for medical examination by his instructors even though he was unconscious for a short time. However, since he had become unconscious after his head injury he should have been referred for medical examination by his instructors. He further submitted that by not referring him for medical examination at the time of injury the respondents have done grave injustice to the applicant because now there is no evidence on medical records about the said injury to his neck and head after falling from rope during training. He added that the fact that applicant had received neck and head injury during training and had become senseless had been mentioned by the applicant in his first appeal dated 08.12.1994 addressed to Record Officer requesting for disability pension. A true copy of this letter is attached as **Annexure A-4 to the O.A.** He further submitted that the applicant was fit at the time of enrolment and has no personal or family history of mental ailments hence his disability has to be conceded as attributable to military service and he should be given disability pension.

5. Per contra the Ld. Counsel for the respondents disagreed with the contention of Ld. Counsel for the Applicant's so called injury during his rope climbing training. He contended that there is nothing on medical record to support his claim. He further submitted that the applicant was invalided out of service due to his disability being 'SCHIZOPHRENIA (UNSOUND MIND)'. The Invaliding Medical Board (IMB) decided that his disability is 40% and is neither attributable to nor aggravated (NANA) by military service. He further submitted that the First Appeal and Second

Appeal of the applicant have been rejected on 06.01.1998 and 08.09.2017 respectively. He concluded that in light of the opinion of IMB, the disability is NANA and constitutional in nature and in light of the opinion of First and Second Appeals regarding rejecting the applicant's claim to disability pension, the O.A. should be dismissed.

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. For adjudication of the controversy involved in the instant case, we need to address only one issue i.e., as to whether the disability is attributable to or aggravated by military service or not? We have specifically given our anxious thought to the contention of Ld. Counsel for the applicant that the applicant had received neck and head injury during rope climbing training which has rendered him unconscious for some time. We have found corroboration of this claim of the Ld. Counsel in the First Appeal of the applicant signed on 08.12.1994. We have also looked at the Medical Literature on SCHIZOPHRENIA and there is irrefutable evidence that there is a clear possibility of development of psychiatric disorders as a consequence of head injury. Thus we find that the fact that applicant had mentioned about this injury in his first appeal and the existence of this first appeal dated 08.12.1994 has been accepted by the respondents in their Counter Affidavit, now therefore, we are inclined to conclude the following :-

(a) There appears to be a reasonable element of truth in the claim of the applicant about the injury he had received because his abnormal behaviour started only after this injury.

(b) There is a bright possibility that because there were no serious marks of external injury, therefore, he was not referred to medical authorities for treatment despite receiving neck and head injuries and being unconscious for some time.

(c) That because he was not referred to medical authorities after injury, there is no medical evidence of this injury in the records of the respondents.

(d) The fact that Specialist Psychologist in his IMB has specifically opined that there is no previous personal history or family history of this disability is significant.

8. Thus in view of the fact that the IMB has held the applicant's disability to be constitutional in nature and has not given any meaningful reason as to why it could not be detected at the time of enrolment, therefore, we hold that the benefit of doubt, in the totality of circumstances, will go in favour of the applicant and the disability suffered by the applicant is to be considered as attributable to military service.

9. The provisions of Pension Regulations for the Army 1961 (Part I) and the Entitlement Rules for Casualty Pensionary Awards, 1982 are very relevant on attributability aspect and the same are excerpted herein below:-

(a) Pension Regulations for the Army 1961 (Part I)

Para 173. "Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20 percent or over.

The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II."

(b) Entitlement Rules for Casualty Pension Award, 1982

"5. The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions:-

Prior to and During Service.

- (a) A member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance.*
- (b) In the event of his subsequently being discharged from service on medical grounds any deterioration in his health which has taken place is due to service.*

Onus of Proof.

- 9. The claimant shall not be called upon to prove the conditions of entitlement. He/she will be given more liberally to the claimants in field/afloat service cases.*

Diseases

14. In respect of diseases, the following rule will be observed:-

- (a) cases.....*
- (b) a disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service, if no note of it was made at the time of the individual's acceptance for military service. However, if medical opinion holds, for reasons to be stated, that the disease could not*

have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.

10. The law on the point of attributability of the disability is no more RES INTEGRA in view of a catena of decisions on the subject. With regard to payment of disability pension, their Lordships of Hon'ble Supreme Court have held that Army personnel shall be presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance and in the event of his being discharged from service on medical grounds, any deterioration in his health, which may have taken place, shall be presumed due to service conditions. Additionally In the case of ***Sukhvinder Singh Vs Union of India and Ors*** reported in 2014 STPL (WEB) 468 SC their Lordships have held as under:-

*“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.**”*

11. Admittedly, the benefit of rounding off of disability pension came into force with effect from 01.01.1996; as such the applicant is not entitled to the benefit of rounding off of disability element of pension and, therefore, he is entitled to 40% disability element pension for two years with effect from the date of his discharge.

12. In view of the discussion held above, this O.A. deserves to be allowed and is hereby **allowed**. The impugned orders are hereby set aside. The applicant's disability @ 40% is considered as attributable to military service. The respondents are directed to grant disability pension to the applicant @ 40% for two years from the date of discharge i.e. 15.12.1992. The arrears of service element of disability pension is to be restricted to three years before filing of this O.A. The date of filing of this O.A. is 22.01.2018. 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 element of pension shall be subject to the outcome of Re-survey Medical Board. The respondents shall comply with this 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 @ 9% per annum to the applicant on the amount accrued till the date of actual payment.

No order as to cost.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated : 23.08.2018

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