

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

Original Application No. 249 of 2016

Tuesday, this the 30th day of May, 2017

Hon'ble Mr. Justice D.P. Singh, Member (J)
Hon'ble Lt Gen Gyan Bhushan, Member (A)

No. 14582870A EX Rect Shamsheer Singh son of late Mohan Singh R/O Village & Post Office- Jamtaula, District- Pithauragarh through his wife/next friend Smt. Parbeena Devi.

..... Applicant

By Legal Practitioner : Shri DS Tiwari,
Ld. Counsel for the Applicant.

Vs.

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi.
2. Chief of the Army Staff, Sena Bhawan, New Delhi, PIN-110106.
3. The Record Officer, EME Records -900453, C/O 56 APO.
4. The Principal Controller Defence Accounts, Draupadi Ghat Allahabad (UP).

..... Respondents

By Legal Practitioner : Shri DK Pandey,
Ld. Counsel for the respondents.

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ORDER (ORAL)

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant for grant of disability pension and for benefit of rounding off of disability pension.
2. The undisputed facts, as averred by the learned counsel for both the parties are that the applicant was enrolled in the Indian Army on 29.05.1985 in a medically fit condition and was discharged from service with effect from 25.05.1987(afternoon) in low medical category due to disability for "**SCHIZOPHRENIA (295)**" which was considered as neither attributable to nor aggravated by military service and was assessed as 40% for two years. The case for disability pension was rejected by the PCDA (P) Allahabad vide letter dated 30.05.1988 and his appeal was also rejected by Appellate Authority vide order dated 31.08.1989.
3. Being aggrieved by denial of disability pension, the applicant has approached this Tribunal by means of present Original Application. The delay in filing the Original Application has been condoned vide order dated 21.09.2016.
4. We have heard Shri DS Tiwari, Ld. Counsel for the applicant and Shri DK Pandey, Ld. Counsel for the respondents and perused the record.
5. Learned counsel for the applicant submitted that since the applicant was enrolled in a medically fit condition and discharged in Low Medical Category, his disability should be considered as attributable to military service and he should be granted disability pension.
6. While filing counter affidavit, the respondents have not disputed that the applicant suffered disability to the extent of



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40% for two years, but submitted that the disability due to the disease of "SCHIZOPHRENIA" was considered as neither attributable to nor aggravated by military service, as such, in terms of Para 173 of Pension Regulations for the Army, 1961(Part-1), his claim has correctly been rejected. Though initially, learned counsel for the respondents opposed but subsequently he conceded that in view of various judgments of Hon'ble Supreme Court and Armed Forces Tribunal, the applicant is entitled to grant of disability pension.

7. Since the applicant was enrolled in a medically fit condition and discharged from service in low medical category and respondents have not produced any documents on record to prove that the disability/disease existed at the time of enrolment. The disability has to be considered as attributable to and aggravated by military service in terms of judgment of **Dharamvir Singh vs. Union of India and others**, reported in (2013)7 SCC 316, **Sukhvinder Singh vs. Union of India**, reported in (2014) 14 SCC 364, **Union of India and others vs. Angad Singh Titaria**, reported in (2015) 12 SCC 257 and **Union of India and others vs. Rajbir Singh**, reported in (2015) 12 SCC 264 and the applicant is considered entitled for grant of disability pension.

8. Since the medical board has assessed the disability as 40% for two years, as such keeping in view the judgment of **Veer Pal Singh vs Ministry of Defence**, reported in (2013) 8 SCC 83, we feel that the case of the applicant should be recommended for Re-survey Medical Board to reassess further entitlement of disability pension.

9. On the issue of rounding off of disability pension, we are of the opinion that the case is squarely covered by the decision of **K.J.S. Buttar vs. Union of India and Others**, reported in (2011) 11 SCC 429 and Review Petition (C) No. 2688 of 2013



in Civil appeal No. 5591/2006, U.O.I. & Anr vs. K.J.S. Buttar and *Union of India vs. Ram Avtar & Others*, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014.

10. In view of the above the Original Application deserves to be allowed.

11. Accordingly the O.A. is **allowed**. The impugned orders passed by the respondents are set aside. The respondents are directed to grant disability pension to the applicant @ 40% for two years, which would stand rounded off to 50% for two years from the date of discharge. The respondents are further directed to refer the applicant's case to Re-survey Medical Board for further entitlement of disability pension, if any. The respondents are further directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. In case the respondents fail to give effect to this order within the stipulated time, they will have to pay interest @ 9% on the amount accrued from due date till the date of actual payment.

12. No order as to cost.



(Lt Gen Gyan Bhushan)
Member (A)



(Justice D.P. Singh)
Member (J)

Dated: 30 May, 2017
RPM/-