

Court No. 1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

ORIGINAL APPLICATION NO 142 of 2017

Wednesday, this the 13th day of December 2017

Hon'ble Mr. Justice D.P. Singh, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

Ex 794021 LAC Akhilesh Chandra Upadhyay, Son of Late Satish Chandra Upadhyay, Resident of 165 Karo-1 Karo, Tehsil-Ballia, District-Ballia.

....Applicant

Ld. Counsel for the: **Shri Rohit Kumar**, Advocate
Applicant

Verses

1. Chief of the Air Staff, New Delhi-110011.
2. Directorate of Air Veterans, Air Headquarters, Subroto Park, New Delhi.
3. Union of India, Through Secretary Ministry of Defence, New Delhi-110011.

.....Respondents

Ld. Counsel for the : **Ms Deepti P. Bajpai**, Central
Respondents. Govt Counsel assisted by Wg Cdr
Sardul Singh, OIC Legal Cell.

ORDER (Oral)

1. Counter affidavit filed by the respondents is taken on record.

2. The present application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for rounding off of disability pension.

3. We have heard Shri Rohit Kumar, Ld. Counsel for the applicant and Ms Deepti Prasad Bajpai, Ld. Counsel for the respondents, assisted by Wg Cdr Sardul Singh, OIC Legal Cell and perused the records.

4. The applicant was recruited in the Indian Air Force as airman on 16.06.2003. While serving in J&K the applicant was admitted in hospital on 23.02.2006 where he was found to be suffering from “**Paranoid Schizophrenia (old) F 20.0 & z 09.0.**” The Invaliding Medical Board was held on 07.04.2011 in 5 Air Force Hospital which recommended the applicant to be Invalided out of service with 40% disability for life neither attributable to nor aggravated by military service (NANA) and accordingly he was discharged on 11.10.2011 rendering 08 years’ 03 months’ and 25 days’ service. Representations submitted by the applicant for grant of disability pension were rejected.

5. Law with regard to attributability of disability and percentage of disability has been very well settled by the Hon’ble Supreme Court in the case of ***Dharamvir Singh vs.***

Union of India & Ors and **Sukhvinder Singh vs. Union of India & Ors**, reported in 2014 STPL (Web) 468 SC and (2013) 7 SCC 316 respectively. While considering the question with regard to attributability of the disease to army services, Hon'ble Supreme Court held as under:-

"18. A disability "attributable to or aggravated by military service" is to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982, as shown in Appendix II. Rule 5 relates to approach to the Entitlement Rules for Casualty Pensionary Awards, 1982 based on presumption as shown hereunder:

"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."

From Rule 5 we find that a general presumption is to be drawn that 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. If a person is discharged from service on medical ground for deterioration in his health it is to be presumed that the deterioration in the health has taken place due to service."

*"28. The learned counsel for the respondent Union of India relied on decisions of this Court in **Om Prakash Singh v. Union of India** (2010)12 SCC 667, **Ministry of Defence v. A.V. Damodara** (2009) 9 SCC 140, **Union of India v. Ram Prakash** (2010) 11 SCC 220 and submitted that this Court has already considered the effect of Rules 5, 14(a), (b) and (c) and held that the same cannot be read in isolation. After perusal of the aforesaid decisions we find that Rules 14(a), 14(b) and 14(c) as noticed and quoted therein are similar to Rule 14 as published by the Government of India and not Rule 14 as quoted by the respondents in their counter-affidavit. Further, we find that the question as raised in the present case that in case no note of disease or*

disability was made at the time of individual's acceptance for military service, the Medical Board is required to give reasons in writing for coming to the finding that the disease could not have been detected on a medical examination prior to the acceptance for service was neither raised nor answered by this Court in those cases. Those were the cases which were decided on the facts of the individual case based on the opinion of the Medical Board."

6. Admittedly the applicant was invalided out of service on account of "**Paranoid Schizophrenia (old) F 20.0 & z 09.0.**" with 40% of disability for life. The second case we would like to refer to it is **Sukhvinder Singh vs. Union of India & Ors**, reported in 2014 STPL (Web) 468 SC in which the Apex Court held that 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 and further as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension. Relevant portion of the judgment of Hon'ble Supreme Court in the case of **Sukhvinder Singh (supra)** is reproduced as under:-

"19. 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.

20. In view of our analysis, the Appellant would be entitled to the Disability Pension. The Appeal is, accordingly, accepted in the above terms. The pension along with the arrears be disbursed to the Appellant within three months from today.”

7. In the light of the aforesaid judgments, the applicant's disability is considered as attributable to military service and disability pension is rounded off to 50% for life which shall be payable to the applicant with arrears with effect from 02.05.2014 i.e. three years proceeding to filing of the O.A.

8. We **dispose** of the present O.A. in terms of the above judgment with a direction to the respondents to release the disability pension @ 50% along with arrears within a period of four months from the date of receipt of a certified copy of this order. In case this order is not complied with within the stipulated period, the amount so accrued shall carry interest @ 10% per annum from the due date, till actual payment thereof.

O.A. is **allowed** accordingly.

No order as to costs.

(Air Marshal BBP Sinha) **(Justice Devi Prasad Singh)**
Member (A) **Member (J)**

Dated:13 December, 2017
Rathore