

RESERVED
Court No. 1

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

ORIGINAL APPLICATION NO 248 of 2016

Thursday, this the 04th day of January, 2018

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

Sant Lal (No 10182074 Ex Sepoy), S/O Late Sri Inder Narayan, R/O Village-Bari, Post-Bari, Tehsil-Sorao, District-Allahabad, State-Uttar Pradesh.

....Applicant

Ld. Counsel for the : **Shri R. Chandra, Advocate.**
Applicant

Verses

1. Union of India, through, the Secretary, Ministry of Defence, Government of India, New Delhi.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), DHQ, Post Office New Delhi.
3. The Officer-in-Charge Records The Kumaon Regiment, PIN-900473, C/o 56 APO.
4. The Chief Controller Defence Accounts, Draupadi Ghat, Allahabad (UP).

.....Respondents

Ld. Counsel for the : **Ms Deepti Prasad Bajpai**, Central
Respondents. Govt Counsel assisted by Maj Salen
Xaxa, OIC Legal Cell.

ORDER**“Per Hon’ble Air Marshal BBP Sinha, Member (A)”**

1. The present application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for grant of disability pension and its rounding off to the extent of 50%.
2. Heard Shri R. Chandra, Ld. Counsel for the applicant and Ms Deepti Prasad Bajpai, Ld. Counsel for the respondents, assisted by Maj Salen Xaxa, OIC Legal Cell and perused the records.
3. Brief facts of the case are that the applicant was recruited as Cook in the 111 Territorial Army (TA) on 07.01.1987 and was invalided out from service in low medical category on 16.02.1991 under TA Rule 14 (b) (iv) neither attributable to nor aggravated by military service (NANA).
4. The applicant was admitted to Military Hospital, Jaipur on 06.09.1988 where he was diagnosed to be suffering from ‘GENERALISED SEIZURE (OLD) 067’. Subsequently he was twice admitted to Military Hospital on account of same disease and later the Graded Specialist (Medicine) opined on 08.01.1991 that the applicant be discharged in Medical Category BEE (P). As such the Invaliding Medical Board was held at Military Hospital, Allahabad on 22.01.1991 and the applicant was invalided out from service on 16.02.1991. Disability pension claim submitted by the applicant was rejected by CDA (P) Allahabad on 21.05.1992. Representation submitted by the

applicant for grant of disability pension was also rejected by Govt of India, Ministry of Defence stating that applicant's disability is neither attributable to nor aggravated by the military service.

5. Ld. Counsel for the respondents contended that Invaliding Medical Board was held on 22.01.1991 which assessed applicant's disability as neither attributable to nor aggravated by military service on the plea that the disease is constitutional in nature and assessed it at 30% for two years. Hence the applicant is not eligible for Disability Pension.

6. The law on the issue of attributability has been well settled by Hon'ble Supreme Court in the case of ***Dharamvir Singh vs. Union of India & Ors.*** Relevant extracts of the judgment are as follows:

"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)."

7. Hence in the light of the law established on attributability, the disability of the applicant is to be treated as **‘ATTRIBUTABLE TO MILITARY SERVICE.’**

8. The law on the rounding off of Disability percentage is again well settled by the Hon'ble Supreme Court. Hence, we would like to refer to a decision of the Apex Court in ***Sukhvinder Singh Vs UOI & Ors***, reported in (2014) STPL (WEF) 468 SC, in which the Apex Court clearly held that whenever 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 percent 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.

9. In the circumstances, regard being had to the decision of the Apex Court in ***Sukhvinder Singh vs Union of India***

(supra), we converge to the conclusion that the assessment of disability by the Invaliding Medical Board was 30% for two years, it would perforce to be rounded off to 50% for two years from the date of Invalidation out i.e. 16.02.1991. Additionally the applicant will have to be examined by Re - Survey Medical Board (RSMB) for finalising his disability for life.

ORDER

10. Thus as a result of foregoing discussion, the O.A is allowed and the impugned order dated 22.01.1991, 23.02.1998 and 15.01.2005 are set aside. The Applicant is held entitled to disability pension to the extent of 30% for two years which is to be rounded off to 50% for two years wef 16.02.1991. The applicant is to be examined by an RSMB for deciding his disability for life. The subsequent arrears of Disability Pension if any will be from three years prior to filing this O.A. (O.A. filed on 27.09.2015). The RSMB is to be completed by respondents within 04 months. The Respondents are further directed to give effect to the order within four months from the date of receipt of a certified copy of this order failing which the Petitioner shall be entitled to interest at the rate of 9% per annum.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

Dated: January, 2018

BLY/-

(Justice Devi Prasad Singh)
Member (J)