

RESERVED**COURT NO.1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 390 of 2017**Wednesday, this the 31st day of January, 2018**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
“Hon’ble Air Marshal BBP, Sinha, Member (A)”****Sig/Man Awadh Bihari Murotiya (No. 14296853M) (R/O F-15
Income Tax Colony, Wazir Hasan Road, Hazratganj, Lucknow)**

..... Applicant

Ld. Counsel for the Applicant : **Col A.K. Srivastava (Retd), Advocate**
(Counsel for the applicant)**Versus**

1. Union of India, through the Secretary Ministry of Defence, New Delhi
2. Chief of the Army Staff, IHQ of MoD (Army), South Block New Delhi - 110011.
3. The Adjutant General IHQ of MoD (Army), South Block, DHQ New Delhi - 110011.
4. OIC Signal Records Jabalpur
5. Principal Controller of Defence Account (Pension) Draupadi Ghat, Allahabad - 211014.

...RespondentsLd. Counsel for the Respondents: **Dr. Shesh Narain Pandey, Advocate,**
Sr. Central Govt Standing Counsel.**Assisted by : Maj Salen Xaxa, OIC Legal Cell.**

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

1. Present O.A has been preferred by the Applicant under section 14 of the Armed Forces Tribunal Act for the relief of grant of disability pension attended with the relief of rounding off of disability percentage from 40% to 50%.
2. The thumbnail sketch of the case is that the applicant was enrolled in the Indian Army 17.06.1977 and was invalidated out from service on 21.03.1981 on account of being in low medical category EEE (Psy) due to the disability diagnosed as PERSONALITY DISORDER (301). The total service rendered by the Applicant was three years and 249 days. The Invalidating Medical Board (In short the “IMB”) opined the disability as neither attributable to nor aggravated by military service. The disability was rather opined as Constitutional. The disability was assessed as 40% for two years. The claim for disability pension was processed and transmitted to PCDA (P) which rejected the claim. The first appeal was also rejected.
3. We have heard learned counsel for the Applicant as also learned counsel for the respondents.
4. No doubt the O.A was filed after efflux of 35 years but the delay was condoned on the ground that the relief claimed involved a recurring cause of action.
5. The main brunt of contention of learned counsel for the respondents is that the disability was found to be not attributable to

nor aggravated by military service and it was rather opined to be constitutional.

6. Without delving deep into the matter as the law is now well settled, since the applicant was enrolled in a medically fit condition and discharged in low medical category and that since 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. In the case of ***Dharamvir Singh vs. Union of India & Ors***, the Apex Court held as under:

"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. Now we come to second issue of rounding off of disability percentage. 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.

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

10. 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. It is further directed that the respondents shall arrange for Re-survey medical Board (RSMB) for the applicant within three months from today. Further, eligibility to disability pension shall be

subject to the outcome of Resurvey Medical Board. 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. It is made clear that the disability pension and the arrears thereon if eligible after RSMB, shall be payable to the applicant with effect from 27.10.13 i.e. three years preceding filing of the O.A. 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.

11. No order as to cost.

(Air Marshal BBP Sinha)
Member (A)

(Justice S.V.S. Rathore)
Member (J)

Dated: January, 31 ,2018
MH/-

