

RESERVED
Court No.1

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

Original Application No. 553 of 2017

Tuesday, this the 11th day of December 2018

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

No. 15661511 Ex Sigmn Dinkar Kumar, Son of Shri Krishna, Resident of Near Kunal Gas Godown, Kandharpur Lal Phatak, Budaun Road, Bareilly, PIN-243001 (UP).

..... Applicant

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

Versus

1. Union of India, through, the Secretary, Ministry of Defence, Government of India, New Delhi-11.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army) DHQ, Post Office-New Delhi-11.
3. The Officer-In-Charge The Records Signals, PIN-908770, C/O 56 APO.
4. The Chief Controller Defence Accounts, Draupadi Ghat, Allahabad-14 (UP).

..... Respondents

Ld. Counsel for the
Respondents

:Shri Anurag Mishra
Central Govt Counsel.

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

1. Being aggrieved with denial of disability pension, the applicant has filed the present Original Application under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-

- (a) *Hon’ble Tribunal may be pleased to set aside the Impugned Order dated 27.12.1999 (Annexure No A-1), Order dated 16.02.2017 (Annexure No A-2) and Order dated 18.09.2017 (Annexure No A-3).*
- (b) *Hon’ble Tribunal may be pleased to direct the respondents to grant disability pension with effect from 09.12.1997 to 09.12.1999 with the interest at the rate of 24% per annum.*
- (c) *Hon’ble Tribunal may be pleased to direct the respondents to organize Re-Survey Medical Board (RSMB) for further assessment of disability.*
- (d) *Hon’ble Tribunal may be pleased further to grant benefit of rounding of disability pension @ 50% Percent in terms of Ram Avtar’s case.*
- (e) *Any other appropriate order or direction which the Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case.*

2. Brief facts of the case are that the applicant was enrolled in the Army on 02.07.1996 in medical category SHAPE-I and invalided out of service on 08.12.1997 in low medical category ‘**EEE**’ having rendered only 01 year, 05 months and 10 days of service due to disability “**RT FOCAL SEIZURE WITH SECONDARY GENERALIZATION-345**”. The IMB of the applicant held on 31.10.1997 at Military Hospital (MH), Jabalpur assessed applicant’s disability @ 30% for two years

neither attributable to nor aggravated (NANA) by military service. Disability pension claim of the applicant was rejected vide order dated 29.11.1999. First and second appeals preferred by the applicant have been rejected vide orders dated 16.02.2017 and 18.09.2017 respectively. Hence this O.A.

3. Ld. Counsel for the applicant submitted that the applicant was found fit in all respects at the time of enrolment in the Army and there was no note in his primary service documents with regard to any disease. Therefore whatever the disease with which the applicant suffered during service is attributable to military service. He further submitted that since the applicant was invalided out of service due to "**RT FOCAL SEIZURE WITH SECONDARY GENERALIZATION-345**" he is entitled to disability pension in terms of Hon'ble Apex Court judgment in the case of ***Dharamvir Singh vs Union of India & Ors*** reported in (2013) 7 Supreme Court Cases 316. The Ld. Counsel further relied upon the judgment of Hon'ble Apex Court in the case of ***Sukhwinder Singh vs Union of India & Ors***, reported in (2014) STPL (Web) 468 SC and pleaded that the applicant is entitled to disability pension in the light of aforesaid judgments. Ld. Counsel for the applicant further submitted that the IMB has assessed disability of

the applicant @ 30% for two years therefore the respondents should have carried out RSMB of the applicant after two years to re-evaluate his disability for grant of disability pension.

4. Per contra Ld. Counsel for the respondents submitted that the claim of the applicant was rejected by PCDA (P), Allahabad as his disability was neither attributable to nor aggravated by military service. The Ld. Counsel further submitted that at the time of recruitment only visible medical disability is checked by the Recruiting Medical Board and internal assessment is done at a later stage. He vehemently argued that the applicant was suffering from the disease prior to his recruitment and was found to be suffering from the aforesaid disease within one year and one month after enrolment and hence it cannot be considered as attributable to military service particularly so when there is no history of any head injury and trauma during training. The first and second appellate authority after considering all relevant factors have rightly rejected the claim of the applicant on account of disability being NANA. He further stressed that the IMB has rightly opined the disability as neither attributable to nor aggravated by military service.

5. Heard Ld. Counsel for the parties and perused the material placed on record.

6. We have given our anxious consideration on pleadings and arguments of both the parties and gone into all relevant papers placed on record. On perusal of record it transpires that the applicant was enrolled on 02.07.1996 and he was admitted to Military Hospital, Jabalpur on 16.08.1997 for the said disease. Thus the disease started within one year and one month of his enrolment. From MH, Jabalpur he was transferred to Command Hospital Lucknow on 26.08.1997 for further evaluation and expert opinion where he was found to be suffering from Seizure (RT). During admission in the hospital the applicant had to undergo various tests and examinations and on 09.09.1997 Col PVS Rana, Senior Advisor Medicines and Neurology gave the following opinion on the applicant's condition which for convenience sake is reproduced as under:-

"SUMMARY AND OPINION OF COL PVS RANA, SENIOR ADV.
MEDICINE & NEUROLOGY CH (CC) LUCKNOW ON DATED 09
SEP 97

This 21 yrs old Rect presented with having suffered from (Rt) focal seizure with generalisation on 16 Aug 97. During which he sustained injury on (Rt) elbow. It was followed by post ictal sleep when examined in Jabalpur to lateralizing neurological deceit detected. The past and personal history has non contributory. He was later transferred here for further investigations.

Since, his admission he is seizure free and asymptomatic. The clinical examination did not reveal lateralising neurological deficit. Fundus and rest systemic examination are normal. No subcutaneous nodule felt.

Investigations revealed haemological, parameters, urine analysis blood sugar F+PP, X-ray Chest (PA), CT scan and EEG are normal.

Clinically a case of (Rt) focal seizure with generalisation. There is no clinical or EEG localisation. Investigations have excluded asymptomatic cause. (The diagnosis is based on history taken by the physician at M.H. Jabalpur).

As he is a Rect, he will be unfit to serve in Army due to the nature of illness. He is recommended Cat 'EEE' advised."

7. Thus keeping in view the remarks endorsed by Senior Advisor Medicine & Neurology, and the fact that the applicant is a recruit and akin to a probationer, we are of the considered opinion that the applicant was rightly discharged from service as he was declared unfit to undergo recruit training and since focal seizure is asymptomatic i.e. presenting no symptoms of disease, it could not be detected at the time of recruitment as it is caused by abnormal electrical disturbances in the brain. We have also noted that the IMB has held the disease as NANA and first and second appeals have rejected attributability of the disease on specific ground of no cerebral trauma, infections, cerebral anoxia in relation to service in High Altitude Area, cerebral infarction and hemorrhage and absence of certain metabolic (diabetes) and demyelinating disease. We are also of the view that since the disease was detected within a short span after enrolment i.e. within one year and one month, the applicant's disease has to be presumed to be existing

before enrolment particularly so when there is nothing to connect it with the military service in terms of head injury, trauma or related disease during training. We therefore agree with the opinion of IMB that the disease is neither attributable to nor aggravated by military service.

8. On the point of RSMB as pleaded by Ld. Counsel for the applicant, we agree with the pleadings of Ld. Counsel for the respondents wherein he stated that re-assessment of medical board is carried out in those cases where an individual is granted temporary disability element. Since the applicant was not granted disability element due to disability being neither attributable to nor aggravated by military service, no RSMB was required to be carried out.

9.. In view of the above the O.A. is liable to be dismissed.

10. It is accordingly **Dismissed**.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated : December, 2018

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