

**Court No. 1**

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

**ORIGINAL APPLICATION No. 550 of 2021**

Friday, this the 17<sup>th</sup> day of December, 2021

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 4257711-F Ex. Hav. Kailash Chandra Behera, S/o Shri Ram Krushan behara, R/o C/o Shri Krishna Murari Singh, Village – Naveen Gauri, sarojani Nagar, Lucknow-226008 (Uttar Pradesh).

**..... Applicant**

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

Versus

1. Union of India, through Secretary, Ministry of Defence (Army), South Block, New Delhi.
2. Chief of Army Staff, Integrated Headquarters, Ministry of Defence, South Block-III, New Delhi-110011.
3. O IC Records, The Bihar Regiment, PIN-908765, C/o 56 APO.
4. PCDA (Pension), Draupadi Ghat, Allahabad (UP)-211014.

**.....Respondents**

Ld. Counsel for the Respondents. : **Shri Devesh Kumar**, Advocate  
Central Govt. Counsel

**ORDER**

**“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- “(A) To issue order or directions to the respondents to decide the representation dated 18.02.2021 in correct perspective and to grant disability element of disability pension @30% for two years, from date of discharge i.e. 31.07.1994 along with @12% interest on arrear.*
- (B) To issue order or directions to the respondents to re-assess the disability of applicant by constituting Re-Survey Medical Board and if the said disability persist, to grant disability element of disability pension accordingly, with all consequential benefits including rounding off if any, in terms of Govt of India letter dated 31 Jan 2001 and Judgment passed by Hon’ble Apex Court in case of Ram Avatar Vs UoI & Others, because applicant is still suffering from said disease.*
- (C) Any other relief as considered proper by the Hon’ble Tribunal be awarded in favour of the applicant.*

2. Briefly stated, applicant was enrolled in Indian Army on 30.12.1978 and was discharged on 31.07.1994 (AN) in Low Medical Category on his own request on extreme compassionate ground. At the time of retirement from service, the Release Medical Board (RMB) held at Base Hospital, Barrackpore on 18.04.1994 assessed his disability ‘**CNS (INV) GENERALISED SEIZURE (345)**’ @ 30% for two years but opined the disability to be neither attributable to nor aggravated (NANA) by military service. The claim of disability was not processed in view of policy existed at that time. The applicant preferred representation dated 18.02.2021 for grant of disability element of disability pension but the same has

been rejected vide letter dated 26.05.2021. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Indian Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. The disease of the applicant was contracted during the service, hence it is attributable to and aggravated by Military Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension as well as arrears thereof. He further submitted that in similar cases, Hon'ble Apex Court and various Benches of the Armed Forces Tribunals have granted disability pension, as such the applicant is entitled to disability pension and its rounding off.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant i.e. '**CNS (INV) GENERALISED SEIZURE (345)**' has been regarded as 30% for two years by RMB. However, since the disability was opined by RMB to be neither attributable to nor aggravated by military service his claim for grant of disability pension was not granted. He pleaded for dismissal of the Original Application.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the

Release Medical Board proceedings and we find that the questions which need to be answered are of two folds :-

- (a) Whether the disability of applicant is attributable to or aggravated by military service?
- (b) Whether the applicant is entitled for the benefit of rounding off of his disability pension, if yes, from which date?

6. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Versus Union of India & Others***, reported in (2013) 7 Supreme Court Cases 316. In this case the Apex Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words.

*"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. In view of the settled position of law on attributability, we find that the RMB has denied attributability to the applicant only by endorsing that the disability '**CNS (INV) GENERALISED SEIZURE (345)**' to be neither attributable to nor aggravated (NANA) by military service and not connected with service. The disability has been firstly detected on 26.07.1991 whereas the applicant was enrolled on 30.12.1978 i.e. after about twelve years of military service. We are therefore of the considered opinion that the reasons given in RMB for declaring disease as NANA are brief and cryptic in nature. Therefore, benefit of doubt in these circumstances should be given to the applicant in view of the law settled on this matter by ***Dharamvir Singh vs Union of India & Ors*** (supra) and the disability of the applicant should be considered as aggravated by military service, as such the applicant is entitled

for the disability pension for two years from the next date of his discharge i.e. 31.07.1994.

8. As for as the benefit of Broad Banding is concerned, since benefit of broad banding has been extended w.e.f. 01.01.1996, hence, prima facie the applicant is not entitled to broad banding for period in question i.e. two years from 31.07.1994.

9. Since the applicant's RMB was valid for two years w.e.f. 31.07.1994, hence, the respondents will now have to conduct a fresh RSMB for him to decide his future eligibility to disability pension.

10. In view of the above, the **Original Application No. 550 of 2021** deserves to be allowed, hence, **allowed**. The impugned orders, rejecting the applicant's claim for grant of disability element of disability pension, are set aside. The disability of the applicant is held as aggravated by military service. The applicant is entitled to get disability element of disability pension @30% for two years from the next date of discharge of the applicant i.e. 31.07.1994. The respondents are directed to grant disability element to the applicant @30% for two years from the next date of his discharge. The respondents are further directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement of disability pension. 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 respondents shall have to pay interest @ 8% per annum till the date of actual payment.

No order as to costs.

**(Vice Admiral Abhay Raghunath Karve)**  
**Member (A)**

**(Justice Umesh Chandra Srivastava)**  
**Member (J)**

Dated : 17 December, 2021

AKD/-