

RESERVED
Court No. 1

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

ORIGINAL APPLICATION No. 699 of 2017

Thursday, this the 03rd day of January, 2019

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

No.14578113 N Ex Hav Samar Pal, S/o Sri Hukum Singh, R/o
Village Resulpur, PO Babugarh Cantt., District Hapur.

..... Applicant

Ld. Counsel for the : **Shri K.K. Mishra**, Advocate.
Applicant

Versus

1. Union of India, through its Secreary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Army Head Quarters, New Delhi.
3. Officer-in-Charge, Electronics and Mechanical Engineers, Records (EME), Secunderabad.
4. PCDA (Pension), Allahabad.

.....Respondents

Ld. Counsel for the : **Dr. Gyan Singh**,
Respondents. Central Govt. Standing Counsel

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

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

- (i) To quash EME Records letter No. 2708/RTI Cell dated 12 Aug 2017, (received through RTI Act 2005).*
- (ii) To direct the respondents grant 20% disability pension to the applicant w.e.f. the date of his retirement from the service i.e. 30.9.2000.*
- (iii) Thereafter, round of this disability percentage of pension to 50% for the purpose of payment of pension as per the policy on the subject and pay the arrears of pension with interest.*
- (iv) Any other relief which the Hon’ble Tribunal may think just and proper may be granted to the applicant.*
- (v) Cost of the case may be awarded in favour of the applicant.*

2. Briefly stated facts of the case are that the applicant was enrolled in the Indian Army on 15.01.1985 in the Corps of Electronics and Mechanical Engineers (EME) and was discharged on 30.09.2000 on compassionate grounds on own request before fulfilling the conditions of his enrolment under Rule 13(3) III (iv) of the Army Rules, 1954. The Release Medical Board (RMB) held at Command Hospital, Northern

Command, Udhampur on 30.05.2000 assessed his disability '**PRIMARY GENERALISED SEIZURES**' @ 20% for two years but opined the disability to be neither attributable to nor aggravated (NANA) by military service. The applicant wrote letters dated 05.03.2005, 17.09.2009 and 10.10.2012 to the EME Records, Secunderabad but no reply has been received by him. The applicant sought information with regard to grant of disability pension under Right to Information Act, 2005 which was replied by EME Records vide their letter dated 12.08.2017 informing the rejection of disability pension. It is in this perspective that the applicant has preferred the present O.A.

3. The delay in filing the Original Application has been condoned vide order dated 18.12.2017 passed by this Tribunal.

4. Ld. Counsel for the applicant pleaded that the applicant was fully fit at the time of his initial enrolment. He has picked up this disease in the year 1996 when he was posted at 268 Engineer Regiment located at Chandimandir. He vehemently pleaded for disability pension to be granted to the applicant.

5. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant has been regarded as NANA by the RMB hence he is not entitled to disability pension. He further pleaded that since applicant was discharged from service on his own request on extreme compassionate ground before fulfilling the conditions of his enrolment. Therefore,

disability of the applicant has been conceded as NANA by the RMB. He pleaded for dismissal of the O.A.

6. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Release Medical Board. The question which need to be answered are two folds :-

(a) Whether the disability of applicant 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?

7. 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)."

8. 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 '**PRIMARY GENERALISED SEIZURES**' to be neither attributable to nor aggravated (NANA) by military service without giving any meaningful reason. The disability has been firstly detected in the year 1996 whereas the applicant was enrolled in the year 1985 i.e. after about 11 years of military service. We are therefore of the

considered opinion that the benefit of doubt in these circumstances should be given to the applicant in view of ***Dharamvir Singh vs Union of India & Ors*** (supra) and the disability of the applicant should be considered as aggravated by military service.

9. However, since the applicant went on voluntary discharge at own request in the year 2000, he is not entitled to his disability pension w.e.f. his date of retirement.

10. The applicant is already in receipt of service element of pension after his discharge. On the date of his discharge i.e. 30.09.2000 there was no provision to provide disability element of pension to a person who has gone out of service on own request before completing his terms of engagement. The provision to provide Disability element of pension has been introduced w.e.f. VI Central Pay Commission w.e.f. 01.01.2006. Based on a series of Court orders on this matter the law on this issue is now well settled and all pre 2006 pre mature retirees are now eligible for disability element w.e.f. 01.01.2006.

11. Since the applicant's RMB was valid for two years w.e.f. 30.09.2000, hence, the respondents will now have to conduct a fresh RSMB for him.

12. In view of the above, the Original Application No.699 of 2017 deserves to be partly allowed, hence, **partly allowed**. The impugned order dated 12.08.2017, enclosed as Annexure

No. A-5 of the Original Application, is set aside. The disability of the applicant '**PRIMARY GENERALISED SEIZURES**' is to be considered as aggravated by military service. The respondents are directed to conduct RSMB for the applicant. His entitlement to disability element will depend on the outcome of the RSMB. The respondents are 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.

No order as to costs.

(Air Marshal B.B.P. Sinha)
Member (A)

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

Dated: January, 2019

AKD/-