

Court No. 1
Reserved

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

Original Application No. 353 of 2020

Friday, this the 23rd day of July, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Sunil Kumar Mishra (No. 15364457N Ex Sigm/TER), son of Lal Narayan Mishra, resident of House No. 594, Shahinor Colony, Nilmatha, Cantt, Lucknow (Uttar Pradesh).

.... **Applicant**

Ld. Counsel for the: **Shri Yashpal Singh**, Advocate.
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi.
2. Additional Director General Personnel Services/Adjutant General's Branch, Integrated Headquarters of Ministry of Defence (Army), PIN – 900256, C/O 56 A.P.O.
3. Officer –in- charge, The Records Signals, PIN – 908770, C/O 56 APO.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Prayagraj (UP).

... **Respondents**

Ld. Counsel for the: **Shri Amit Jaiswal**, Advocate.
Respondents.

ORDER

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

(a) Issue/pass an order or direction setting aside the recommendations of the Release Medical Board held on 13.09.1993; and decision of the competent authority rejecting the claim of the applicant for grant of disability pension as conveyed by the letter dated 05.02.2020 issued on behalf of the Officer-in-Charge, The Records, Signals, after summoning the relevant original records; and consider case of the applicant and grant disability pension for life, extending the benefit of rounding off from the date of discharge including arrears thereof with interest.

(b) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

(c) Allow this Original Application with cost.

2. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Indian Army on 05.02.1988 and was discharged from service on 30.09.1993 with about five years of service on account of suffering from '**GENERALISED SEIZURE-OLD V-67**'. Release Medical Board was conducted on 13.09.1993 which has assessed his disability @ less than twenty percent for two years neither attributable to nor aggravated by military service (NANA). Disability pension claim was rejected vide order dated 25.08.1994 with directions to submit an appeal within six months against rejection of disability pension. Thereafter, applicant submitted an application on 23.12.2006 for

grant of disability pension, but the same was rejected vide order dated 07.04.2007. Thereafter, applicant submitted an application along with DO letter of the then Hon'ble Minister Shri Ram Vilash Pashwan, but it was also denied vide letter dated 10.07.2007. Thereafter, applicant preferred a petition dated 05.02.2020 for the same cause, which was also rejected vide order dated 10.07.2020. Now, applicant has filed this O.A. for grant of disability pension.

3. Ld. Counsel for the applicant submitted that applicant was enrolled in the Army in medically and physically fit condition and there was no note in his service documents with regard to suffering from any disease prior to enrolment, therefore, any disability suffered by applicant after joining the service, should be considered as either attributable to or aggravated by military service and he should be entitled to disability pension. Ld. Counsel for the applicant further submitted that disability pension claim of applicant has been rejected being disability as NANA. Further submission of Ld. Counsel for the applicant is that applicant's disease is due to stress and strain related rigors of military service. He concluded by pleading for grant of disability pension to applicant.

4. On the other hand, Ld. Counsel for the respondents argued that the since the RMB has considered the applicant's disability as NANA, therefore, the competent authority has rejected claim of disability pension. The ground of rejection of the claim is primarily

in agreement with the opinion of RMB declaring the disease as NANA on grounds of the disease having no relation to service conditions.

5. Heard Ld. Counsel for the parties and perused the material placed on record. We have also gone through the RMB and the rejection order of disability pension claim. The question before us is simple and straight i.e. – is the disability of applicant attributable to or aggravated by military service?

6. We have noted that the applicant's disability '**GENERALISED SEIZURE-OLD V-67**' is assessed less than twenty percent for two years neither attributable to nor aggravated by military service (NANA). Since the applicant's services were cut short, he was not granted extension and he was removed on medical grounds by a duly constituted RMB.

7. Since applicant's disability arose while in service after serving in the Army for five years, his medical board should have been conducted as Invaliding Medical Board (IMB) and not Release Medical Board (RMB) as has been conducted. Since applicant's services were cut short, therefore it is a case of deemed invalidation. Further, applicant's disability is less than 20% for two years which shall be presumed to be 20% for two years in terms of the Hon'ble Apex Court Judgment rendered in the case of ***Sukhwinder Singh vs. Union of India & Ors*** reported in (2014) STPL (WEB) 468 SC. In our view, the case is fully covered by the aforesaid decision of the Hon'ble Apex Court

in which the substance of what has been held is that even if an individual is assessed to be less than 20%, the “*disability leading to invaliding out of service would attract the grant of fifty per cent disability pension.*”. Para 9 of the judgment, being relevant is quoted below.

*“9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Thirdly, there appears to be no provisions authorizing the discharge or invaliding out of service where the disability is below twenty per cent and seems to us to be logically so. Fourthly, wherever 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 per cent. **Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension.**”*

8. Learned counsel for the applicant has also pleaded in the petition for the benefit of rounding off of disability pension. His prayer for rounding off of disability pension cannot be conceded as rounding off of disability pension is applicable w.e.f. 01.01.1996.

9. Thus in the result, the Original Application succeeds and is **partly allowed**. The impugned orders are set aside. The respondents are directed to grant disability pension to the

