

(Reserved Judgment)
Court No.1

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

O. A. No. 209 of 2019

Wednesday, this the 27th day of March, 2019.

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

Satyendra Kumar Singh, No. 2998597K, Ex Sepoy, S/o Sri Hare Ram, R/o Village- Sonari, P.O. Bhalwani, Tehsil Barhaj, District- Deoria (UP)- 274601.

.....Applicant

Ld. Counsel for : **Shri Vinay Kumar Pandey,**
the Applicant **Advocate**

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, R.K. Puram, New Delhi-110011.
2. Additional Directorate General, Personnel Services/AG's Branch IHQ of MoD (Army), Pin-900256, C/o 56 APO.
3. OIC Records, The Rajput Regiment, PIN- 9000427, C/o 56 APO.
4. PCDA (P), Draupadi Ghat, Allahabad (UP).

.....Respondents

Ld. Counsel for the: **Dr Shailendra Sharma Atal, Advocate**
Respondents

ORDER

“(Per Hon'ble Mr Justice SVS Rathore, Member (J))”

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant for the following reliefs:

“(i) That this Hon’ble Tribunal may kindly be pleased to direct the opposite parties to pay the disability pension for life to the applicant w.e.f. 01.09.2002, to actual date of payment and also onwards, and provide the interest on the aforesaid delayed amount of disability pension with 18% p.a. since due date to actual date of payment.

(ii) That this Hon’ble Tribunal may kindly award the cost of Rs.20,20,000/-(RUPEES TWENTY LAC AND TWENTY THOUSAND ONLY) to the applicant against the opposite parties.

(iii) That this Hon’ble Tribunal may be pleased to pass any other order or direction which this Hon’ble Court may deem just and proper be passed in favour of the applicant.”

2. As per office report there was delay in filing this O.A. The delay has been condoned by this Tribunal vide order dated 27.02.2019. The undisputed facts, as averred by the learned counsel for both the parties are that the applicant was enrolled in the Indian Army on 11.01.1999 as Sepoy in medically fit condition and was discharged from service on 31.08.2002 after serving for 03 years and 233 days under Army Rule 13(3) III (V) of Army Rules, 1954. During the service he got admitted at MH Saugor. The Invalidating Medical Board (IMB) held before discharge considered the disability of the applicant for ‘GENERALISED SEIZURES –V-72 (Permanent)’ as neither attributable to nor aggravated by military service and assessed it as 20% for two years. Accordingly his case for disability pension was rejected by the PCDA (P) Allahabad vide letter dated 19.11.2003. According to the applicant he was not provided the copy of medical board proceedings for which he sent a letter to the Record Office on which the Record Office wrote a letter on 25.06.2003 where upon he was provided the copy of the medical board proceedings. It is also pleaded by

him that thereafter he made several representations to the respondents for the grant of disability pension but of no avail. Feeling aggrieved by denial of disability pension applicant filed W.P. No. 4450 of 2011 before the Hon'ble High Court for a direction to the respondents to decide the appeal filed by the applicant for grant of disability pension. The said writ petition was dismissed by the Hon'ble High Court vide order dated 29.01.2011 on the ground that the applicant can approach the Armed Forces Tribunal in the matter. According to the applicant thereafter he approached the Tribunal through his counsel but he filed an original application claiming reinstatement of the applicant which was dismissed on the ground of delay and laches on 15.04.2013. Applicant has also pleaded that his counsel did not inform him about the aforesaid order of dismissal of his petition and when he enquired about his case then only he came to know about the rejection of his case vide aforesaid order dated 15.04.2013 which was filed by his counsel for his reinstatement and not for disability pension. Hence the present O.A. has been filed by him for disability pension.

3. Learned counsel for the applicant submitted that since the applicant was enrolled in medically fit condition and thereafter he has been discharged in Low Medical Category, as such, his disability should be considered as attributable to and aggravated by military service and he should be granted disability pension. Learned Counsel for the applicant further submitted that IMB has not given any reason for not being connected the disability with the Army service and therefore the applicant is entitled for disability pension in view of Para 173 of the Pension Regulations (Part-I) 1961.

4. The respondents have not filed any counter affidavit in this case. While rebutting arguments of learned counsel for the applicant, learned counsel for the respondents submitted that

the applicant was discharged from service in low medical category for GENERALISED SEIZURES –V-72 (Permanent), which was considered as neither attributable to nor aggravated by military service and as such, he has rightly been denied disability pension. He has concluded that the applicant is not entitled to any disability pension in accordance with Para 173 of the Pension Regulations which clearly states that disability pension is admissible to an individual who is invalided out from service on account of disability, which is attributable to or

5. We have heard Shri Vinay Kumar Pandey, Ld. Counsel for the applicant and Dr Shailendra Sharma Atal, Ld. Counsel for the respondents and perused the original medical records. The only question to be adjudicated upon in this case is as to whether the disability of the applicant is attributable to or aggravated by military service ?

6. Since the applicant was enrolled in a medically fit condition and discharged after 03 years and 233 days of service in low medical category and respondents have not produced any documents on record to prove that the disability/disease existed at the time of enrolment. Additionally, the disease has started after more than 02 years of service and the reason for declaring the disease as NANA is very cryptic i.e. “Not connected with military service”. This does not convey clearly as to why this disease has been declared as NANA. In such circumstances we are of the considered opinion that the benefit of doubt goes in favour of the applicant. Therefore, 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 the applicant’s disability “GENERALISED

SEIZURES –V-72 (Permanent)” is considered as attributable to military service.

7. 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, Sukhvinder Singh vs. Union of India & Ors.***, reported in (2014) STPL (WEB) 468 SC and ***Union of India vs. Ram Avtar & Others***, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014).

8. It is well settled that the claim for pension is based on continuing wrong and the relief can be granted if such continuing wrong creates a continuing source of injury. In the case of ***Shiv Dass vs. Union of India***, reported in 2007 (3) SLR 445 the law settled by the Hon'ble Apex Court is that if a petition for pension (disability pension in this case) is filed beyond a reasonable period, the relief prayed for may be restricted to a reasonable period of three years.

9. Since the medical board has assessed the disability of the applicant as 20% for two years, as such, keeping in view the judgment of ***Veer Pal Singh vs. Ministry of Defence & ors***, reported in (2013) 8 SCC 83, we feel that the case of the applicant should be recommended for Re-survey Medical Board to reassess further element of disability pension, if any.

10. In view of what has been stated above the O.A. deserves to be partly allowed and is hereby **partly allowed**. The impugned orders passed by the respondents are set aside. The applicant is held to be entitled to disability pension @ 20% for two years from the date of his discharge i.e. 01.09.2002. The arrears of disability pension shall however be restricted to three years before the date of filing this O.A. Hence the applicant will be entitled to arrears of service element only three years before

the date of filing this O.A. i.e. 23.07.2018. The respondents are further directed to refer the applicant's case to Re-survey Medical Board. Applicant's future entitlement of disability element will depend on the outcome of Re-Survey Medical Board. The respondents are also 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. 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.

No order as to cost.

(Air Marshal BBP Sinha)
Member (A)

Dated: March, 2019

JPT

(Justice SVS Rathore)
Member (J)