

COURT NO 1
RESERVED

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

ORIGINAL APPLICATION No. 177 of 2019

Wednesday, this the 27th day of March, 2019

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

Rakesh Kumar (No. 10405695A), S/O Sri Parmeshwari Dayal, R/O Village-Rampura (Raja Nagla), Post-Central Jail, Fatehgarh, District-Farrukhabad.

..... Applicant

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

Versus

1. Union of India through Secretary, Ministry of defence, South Block, Delhi-110011.
2. Incharge, Records TA (JAT) Bareilly, C/O 56 APO.
3. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the
Respondents.

:**Mrs Anju Singh**,
Central Govt. Standing Counsel

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

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

(i) This Hon’ble Court may graciously be pleased to direct the respondents to give disability pension along with its arrears and interest to the applicant w.e.f. 10.06.2002 invalidated out for being medically unfit towards his disability “SCHIZOAFFECTIVE DISORDER (DEPRESSIVE TYPE).

(ii) This Hon’ble Court may further be pleased to pass such other and/or further order as deem fit, proper and necessary in the circumstances of this case.

(iii) Award costs to the applicant.

2. At the very outset it may be observed that the petition for grant of disability pension has been preferred by the applicant with delay of 15 years, 10 months and 06 days. Since payment of pension involves recurring cause of action, as such, the delay was condoned vide order dated 28.02.2019.

3. The factual matrix of the case is that the applicant was enrolled in the Indian Army (Territorial Army-JAT) in the year 1993 and was invalidated out from service w.e.f. 10.06.2002 before completion of terms of engagement in low medical category for the disability ‘SCHIZOAFFECTIVE DISORDER (DEPRESSIVE TYPE) (ICD-10-F 25.1, ICD 9-295.7)’. Invaliding Medical Board (IMB) held on 09.05.2002 had considered the aforesaid disability @ 20% for two years neither attributable to nor aggravated (NANA) by military service. Though on account of suffering from mental ailment, the applicant could

not avail alternative remedies prior to filing of the present O.A. but, he had approached Zila Sainik Kalyan Board, Farrukhabad and on their advice he has approached this Tribunal through his counsel.

4. Learned Counsel for the applicant submitted that at the time of enrolment, the applicant was examined by the Medical Board and was found medically and physically fit for a service in the Indian Army and there is no note, whatsoever, in his service documents that he was suffering from any disease at the time of entry in service, therefore, it must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. Learned counsel for the applicant fairly stated that except the opinion of the Graded Specialist (Psychiatry), no other evidence is available to support the opinion of the Medical Board that the applicant was suffering from the aforesaid disease prior to enrolment. The Ld. Counsel pleaded that the benefit of doubt should rightly be extended in favour of the applicant and he should be granted disability pension.

5. Per contra, Ld. Counsel for the respondents has orally submitted that the IMB has assessed applicant's disability 'SCHIZOAFFECTIVE DISORDER (DEPRESSIVE TYPE)' @ 20% for two years as neither attributable to nor aggravated by military service (NANA) therefore he is not entitled to disability pension. He pleaded for dismissal of the O.A.

6. Heard Shri Ashok Kumar, Ld. Counsel for the applicant and Mrs Anju Singh, Ld. Counsel for the respondents and perused the record. We have also perused the RMB proceedings.

7. We have given our anxious considerations to the pleadings and oral submissions of both the counsel and are of the view that the applicant was enrolled in the Army in physically and mentally fit condition and the disease first started on 16.10.2001 i.e. seven years after recruitment. The Graded Specialist (Psychiatry) in his summary and opinion dated 06.05.2002 has mentioned that the applicant was having family dispute over the property amongst his siblings. In addition he also appeared to be disturbed on account of infertility of his wife. The IMB has opined the disease as NANA and not connected with service.

8. We however find that property dispute amongst siblings is a common experience amongst defence personnel and infertility of wife also is not such a huge issue which can be said to trigger a disease like 'Schizoaffective Disorder (Depressive)'. We feel that these routine problems of life could not be handled by the applicant because of his disease. We are thus of the considered opinion that if the applicant has developed this disease after 08 years of service it will not be fair to say that the disease is not connected with service. Hence we would like to give the benefit of doubt to the applicant. Thus in light of the Hon'ble Apex Court judgment in

the case of ***Dharamvir Singh vs UOI & Ors*** reported in (2013) 7 SCC 316, the disability suffered by the applicant is to be treated as aggravated by military service.

9. Learned counsel for the applicant has also made an oral prayer for the benefit of rounding off of disability pension. Thus in consonance with the Policy Letter No. 1(2)/97/D (Pen-C) dated 31.01.2001 and in terms of the decision of Hon'ble Apex Court in the case of ***Union of India and Ors vs. Ram Avtar & Ors*** Civil Appeal No 418 of 2012 dated 10th December 2014), we are of the view that in principle the applicant is entitled to the benefit of rounding off. However, due to law of limitations given by the Hon'ble Supreme Court vide order dated 13.07.2018 in Civil Appeal Diary No 21811 of 2018, ***Union of India through its Secretary & Ors vs. Sgt Girish Kumar and Shiv Dass versus Union of India*** reported in 2007 (3) SLR 445, he shall not be entitled to the benefit of rounding off for the period in question i.e. 02 years w.e.f 10.06.2002.

10. Thus in the result, the Original Application succeeds and is **Partly allowed**. In the interest of substantive justice the applicant is held to be entitled to disability pension @ 20% for two years w.e.f. his date of discharge i.e. 10.06.2002. 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 for three years before the date of filing this O.A. i.e. 17.10.2018. The respondents are directed to hold Re-survey Medical Board

(RSMB) of the applicant within 03 months of this order. His further entitlement to disability element will be subject to the outcome of the RSMB. The whole exercise shall be completed within four months from the date of receipt of a certified copy of this order. Default will invite interest @ 9% per annum.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

Dated: March, 2019
gsr

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