

COURT NO 1
RESERVED

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

ORIGINAL APPLICATION No. 534 of 2018

Friday, this the 29th day of March, 2019

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

No. 13897371-L Ex Sepoy Harish Chandra Pandey, son of Late Piare Lal Pandey, Resident of Village-Bhainssa, Post-Bhainssa, District-Jaunpur (UP).

.....Applicant

Ld. Counsel for the : **Shri R. Chandra**, Advocate.
Applicant

Versus

1. Union of India, through, the Secretary, Ministry of Defence, Government of India, New Delhi-11.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), DHQ, Post Office New Delhi-11.
3. The Officer In-Charge, Army Service Corps Records (South), Bangalore-560007.
4. The Controller Defence Accounts (Pension), Draupadi Ghat, Allahabad-14 (UP).

.....Respondents

Ld. Counsel for the Respondents. : **Dr. Shailendra Sharma Atal**,
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) *Hon’ble Tribunal may be pleased to set aside the impugned order dated 07.11.1987 (Annexure No A-1) and order dated 26.04.1994 (Annexure No A-2).*

(ii) *Hon’ble Tribunal may be pleased to direct the respondents to grant disability pension with effect from date of discharge (May 1987) with the interest at the rate of 18% per annum.*

(iii) *Hon’ble Tribunal may be pleased further to grant benefit of rounding of disability pension @ 50 percent in terms of Ram Avtar’s case.*

(iv) *Any other appropriate order or direction which the Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case.*

2. At the very outset it may be observed that the petition for grant of disability pension was preferred by the applicant with delay of 30 years, 01 month and 13 days. Since payment of pension involves recurring cause of action, as such, the delay was condoned vide order dated 13.11.2018.

3. The brief facts of the case are that the applicant was enrolled in the Indian Army on 24.03.1984 and was invalided out from service with effect from 10.06.1987 under Army Rule 13 (3) III (iii) in low medical category “EEE” for the disease ‘IDIOPATHIC EPILEPSY (345)’ after rendering 03 years, 02 months and 16 days of service.

Invaliding Medical Board (IMB) held on 20.03.1987 at Military Hospital, Meerut considered the disability @ 15-19% for two years neither attributable to nor aggravated by military service (NANA). His claim for grant of disability pension was rejected by the PCDA (P), Allahabad vide order dated 16.10.1987 on the ground that the disability suffered by the applicant is less than 20% and NANA by military service. Thereafter, the applicant preferred his appeal dated 18.01.1988 against the rejection of his disability pension claim but it was rejected by the competent authority vide order dated 22.11.1988. Feeling aggrieved, the applicant has filed this Original Application.

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. Ld. Counsel for the applicant further submitted that the applicant was first detected to be suffering from 'IDIOPATHIC EPILEPSY (345)' w.e.f. April 1986 after completion of approx two years of service. The Ld. Counsel further submitted that since his disability 'IDIOPATHIC EPILEPSY (345)' has taken place while on

military duty, it should have been either attributable to or aggravated by military service and the applicant should be granted disability pension. Relying upon the Hon'ble Apex Court judgment in the case of ***Dharamvir Singh vs UOI & Ors***, 2013 AIR SCW 4236, the Ld. Counsel for the applicant submitted that since the applicant was invalided out of service on account of disability suffered by the applicant after expiry of two years of service and it was not existing prior to enrolment, the disability is liable to be considered as attributable to or aggravated by military service.

5. Per contra, Ld. Counsel for the respondents has submitted that the IMB has assessed applicant's disability 'IDIOPATHIC EPILEPSY (345)' @ 15-19% for two years as neither attributable to nor aggravated by military service (NANA) therefore he is not entitled to disability pension. The Ld. Counsel further submitted that his claim for disability pension has rightly been rejected in accordance with Para 173 of the Pension Regulations for the Army, 1961 (Part-I) 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 aggravated by military service and is assessed at 20% or more. Relying upon para 198 of Pension Regulations for

the Army, 1961 (Part-I) the Ld. Counsel for the respondents further submitted that minimum period of qualifying service required for an invalid pension is 10 years but the applicant has rendered three years of service, hence he is not entitled to disability pension. He however, pleaded the O.A. to be dismissed on the ground that the applicant's degree of disability is below 20% and NANA by military service.

6. Heard Shri R. Chandra, Ld. Counsel for the applicant and Dr. Shailendra Sharma Atal, Ld. Counsel for the respondents and perused the records. We have also perused the IMB proceedings.

7. The questions which need to be answered are of three folds :-

(a) Whether the disability of the applicant is attributable to or aggravated by military service?

(b) Whether the applicant is entitled to grant of disability pension or not and if yes from which date?

(c) Whether the applicant is entitled for the benefit of rounding off of his disability pension?

8. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh vs. 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 Pension 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 invalidated 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)."

9. In view of the settled position of law on attributability, we find that the IMB has denied attributability to the

applicant only by endorsing a cryptic sentence that the disability of the applicant is an idiopathic disease, hence not connected with service, without giving any meaningful reason. Moreover, in Invaliding Medical Board Proceedings on page 3 Para 1 against the question "**Did the disability exist before entering service?**" – "**No**" has been answered. The applicant was enrolled in the Army on 24.03.1984 and the disability was first time detected in the year 1986 i.e. approx two years of military service. Since idiopathic basic means that cause is not known therefore we are 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 attributable to military service.

10. Since it is a case of invalidation, his disability of 15-19% for two years will be presumed to be 20% for two years in terms of Hon'ble Apex Court Judgment 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 Hon'ble Apex Court in which the substance of what has been held is that even if an individual's disability 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.**”*

5. We have heard Learned Counsel for the parties to the lis.

6. We do not see any error in the impugned judgment (s) and order(s) and therefore, all the appeals which pertain to the concept of rounding off of the disability pension are dismissed, with no order as to costs.

7. The dismissal of these matters will be taken note of by the High Courts as well as by the Tribunals in granting appropriate relief to the pensioners before them, if any, who are getting or are entitled to the disability pension.

8. This Court grants six weeks’ time from today to the appellant(s) to comply with the orders and directions passed by us.”

11. In the instant case, there is no dispute that the applicant’s disability has been assessed as 15-19% for two years. Thus in view of the law settled by the Hon’ble Apex Court on this matter, we are of the considered opinion that the applicant is entitled to 20% disability pension for two years.

12. Since the applicant was invalidated out from service in the year 1987 and the policy with regard to rounding off of disability pension came into existence w.e.f. 01.01.1996, hence he is not entitled to rounding off of disability pension.

13. Thus in the result, the Original Application succeeds and is **Partly allowed**. The impugned orders dated 07.11.1987 and 26.04.1994 are set aside. In the interest of substantive justice the applicant is held entitled to disability pension @ 20% for two years w.e.f. his date of discharge i.e. 10.06.1987. However, due to law of limitations the applicant will not be entitled to any arrears of disability element. However, he shall be entitled to arrears of service element for three years before the date of filing of this O.A. The date of filing of this O.A. is 06.06.2018. 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)