

**RESERVED**  
**COURT NO.1**

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

**ORIGINAL APPLICATION No. 179 of 2019**

**Thursday, this the 28<sup>th</sup> day of March, 2019**

**Hon'ble Mr. Justice S.V.S.Rathore, Member (J)**

**Hon'ble Hon'ble Air Marshal B.B.P. Sinha, Member (A)**

Ex Sepoy Akshayabar Singh (1486375)  
S/o Late Bhawani Baksh Singh,  
R/o Tiwaripur District Barabanki.

.....Applicant

Ld. Counsel for :  
the Applicant

**Col. A.K.Srivastava (Retd),  
Advocate**

Versus

1. Union of India through the Secretary,  
Ministry of Defence, New Delhi.
2. The Chief of Army Staff, IHQ of MoD (Army),  
South Block, New Delhi -110011.
3. OC BEG Records, Roorkee.
4. Principal Controller of Defence Account (Pension),  
PCDA (P), Draupadi Ghat, Allahabad 211014.

.....Respondents

Ld. Counsel for the :  
Respondents

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

**ORDER**

**Delivered by 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 grant of disability pension. The applicant has made the following prayers:

*“(a) Issue/Pass an order or direction of appropriate nature to quash/set aside respondents impugned order passed vide BEG Records letter dated 14/03/2018 rejecting applicant’s appeals for claiming disability pension.*

*(b) Issue/pass an order or direction of appropriate nature to quash/set aside respondent’s impugned order passed vide CGDA and CDA (Pension) letter dated August 1997 and 03.03.1997, Annexure No.A-2 rejecting applicant’s claim for 40% disability pension.*

*(c) Issue/pass an order or direction of appropriate nature to quash/set aside arbitrary and illegal recommendations/findings by respondent’s on pages 3 and 4 of IMB that his 40% disability due to Hysterical Reaction was neither attributable to nor aggravated by service, since his said disability has to be considered as attributable to/aggravated as per decision of Hon’ble Supreme in Dharamvir Singh v. Union of India (2013) 7 SCC.*

*(d) Issue/pass an order or direction of appropriate nature to the respondents to issue a disability pension PPO, comprising of service element and disability element, to the applicant for his 40% disability due to Hysterical Reaction w.e.f. 07.01.1994 to 31.12.1996, duly rounded off to 50% w.e.f. 01.01.1996 till 06.01.1996 and thereafter duly rounded off percentage of disability for life in terms of MoD letter dated 31.01.2001 after reassessment/review of his said disability by RSMB which was due after 2 years of his being invalid out from service w.e.f. 07.01.1996.*

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

*(f) Allow this application with costs and 18% interest on arrears.”*

2. The undisputed facts, as averred by the learned counsel for both the parties are that the applicant was enrolled in Indian Army on 28.12.1991 and was discharged from service w.e.f. 03.02.1994 and struck off strength w.e.f. 07.02.1994 under Rule 13(3) item III (iii) of Army Rule, 1954 invalided out of service in Low Medical Category “EEE” due to diagnosis “**HYSTERICAL REACTION 300(B)**”. The Release Medical Board was held on 07.01.1994 at Military Hospital, Roorkee for disability “**HYSTERICAL REACTION 300(B)**” and the medical authority had assessed his disability as neither attributable to nor aggravated by military

service and composite assessment was assessed as 40% for two years. The disability pension claim of the applicant was processed with PCDA (P), Allahabad and the same was rejected by the PCDA (P), Allahabad on 25.09.1995 stating that the disability is not attributable to military service. The said rejection order had been communicated to the applicant with liberty to prefer an appeal to the MoD within six months, but no appeal has been filed by the applicant.

3. Thereafter the applicant had submitted representation dated 06.01.1997 regarding disability pension and discharge book and suitable reply was forwarded to the applicant on 18<sup>th</sup> March 1997. On 27.11.2017 the applicant submitted an appeal and the same was suitably replied by the respondents on 03.02.2018. Another petition dated 25.11.2017 was filed by the applicant to BEG Records, Roorkee and the same was also suitably replied by the respondents.

4. Learned counsel for the applicant submitted that since the applicant was enrolled in medically fit condition thereafter he has invalided out of service in Low Medical Category, hence he is entitled to disability pension.

5. We have noted that while filing counter affidavit, the respondents have not disputed that the applicant suffered disability to the extent of 40% for two years, but submitted that the disability of “**HYSTERIC REACTION 300(B)**” was considered as neither attributable to nor aggravated by military service by the Invalidating Medical Board (IMB), as such, in terms of Para 173 of Pension Regulations, his claim for disability pension has correctly been rejected by the PCDA (P), Allahabad.

6. We have heard the learned counsels for the parties and perused the records. We have specifically perused the RMB and the opinion of the Psychiatrist in great details. The question before us is straight and simple i.e. is the disability of the applicant attributable to or aggravated by Military Service?

7. We have noted that the applicant was enrolled on 28.12.1991 and he has completed his training successfully. After about one and half year of

enrolment i.e. in July 1993, the applicant was reported for abnormal behaviour and Psychiatric evolution and accordingly he was invalided out of service on 06.02.1994 due to his disability “**HYSTERICAL REACTION 300 (b)**”.

8. In this case, admittedly the applicant was enrolled in the Army in a fit physical condition. The Release Medical Board has not given any specific opinion as to how this disease is not attributable to or aggravated by the Military service. A very vague line has been mentioned that personality disorder due to extraneous factors. This vague statement in the Medical Board does not exclude the stress of the military service as the same may also be an aggravating factor and, therefore, in view of the pronouncement of *Dharamvir Singh vs. Union of India and others*, reported in (2013)7 SCC 316, we would like to extend the benefit of doubt to the applicant. The disability of the applicant shall therefore be deemed to be attributable to military service which entitles him to disability pension from the date of discharge i.e. 03.02.1994. Since the applicant has approached this Tribunal with a delay of more than 21 years, therefore, in view of the pronouncement of *Shiv Dass vs. Union of India*, reported in 2007 (3) SLR 445, the applicant is entitled to the arrears of disability pension for a period of three years before filing this O.A.

9. Accordingly, this O.A. deserves to be partly allowed and is hereby **partly allowed**. The impugned orders/letter passed by the respondents are set aside. The disability of the applicant “**HYSTERICAL REACTION 300(B)**” is to be considered as attributable to Military service. The applicant is entitled to arrears of service element only for a period of three years before filing this O.A. The date of filing this O.A. is 17.10.2018. The respondents are required to conduct a Re-Survey Medical Board of the applicant and further entitlement of the disability element of disability pension shall depend on the outcome of the Re-Survey Medical Board. This order is to be implemented within four months of receiving a certified copy of this order. Default will invite an interest @9% till the date of actual payment.

10. No order as to costs.

**(Air Marshal BBP Sinha)**  
**Member (A)**

**(Justice SVS Rathore)**  
**Member (J)**

Dated: March, 2019

PKG